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Title 3—

The President

Executive Order 13896 of October 28, 2019

Commission on Law Enforcement and the Administration of Justice

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance public safety and support the well-ordered administration of justice, it is hereby ordered as follows:

Section 1. *Purpose.* Crime, especially violent crime, denies people their unalienable rights to life, liberty, and the pursuit of happiness. Together as a society, we must work to prevent crime from occurring, ensure that those who perpetrate crime face justice, and assist victims in overcoming the effects of crime on their lives. My Administration is focused on reducing crime, and the social and economic problems—including family and neighborhood disintegration—that contribute to criminal behavior. In addition, the continued malign activity of transnational criminal organizations, and the widespread abuse of drugs trafficked by such groups, are challenges that confront our communities and law enforcement in their efforts to keep the American people safe.

Rigorous study of crime, including its causal factors, and current law enforcement practices is essential to assessing our current criminal justice system's merits and opportunities for improvement. Over 85 percent of United States law enforcement personnel are State, local, and tribal officials. The Department of Justice has long respected this traditional balance of law enforcement resources while supporting State, local, and tribal law enforcement efforts with Federal resources. State and local law enforcement benefit from Federal programs and partnerships in the areas of information-sharing, collaborative enforcement operations, training and technical assistance initiatives, and Federal grants. Public safety and proper policing are issues of both national and local significance that continue to require the close cooperation and coordination between the Department of Justice and State, local, and tribal law enforcement. In particular, the Department of Justice has a historically important role in helping to develop, identify, and establish best practices for law enforcement and supporting a range of programs related to the administration of justice. My Administration builds upon that important work every day.

Sec. 2. *Establishment.* (a) The Attorney General shall establish a Commission on Law Enforcement and the Administration of Justice (Commission), and designate an individual to chair the Commission.

(b) The Attorney General shall determine the composition of and procedures for the functioning of the Commission.

(c) Officers or employees of the Federal Government designated to the Commission shall be full-time, or permanent part-time, officers or employees of the Federal Government. Any such designation shall not affect the civil service status or privileges of the Federal officer or employee.

(d) The Attorney General may, at his discretion, invite elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) to serve on the Commission in their official capacities.

Sec. 3. *Function.* (a) The Commission shall study issues related to law enforcement and the administration of justice and make recommendations to the Attorney General, who shall submit a report and recommendations to the President on actions that can be taken to prevent, reduce, and control crime, increase respect for the law, and assist victims. The Commission shall undertake, as directed by the Attorney General, a review of relevant research and expertise and make recommendations regarding important current issues facing law enforcement and the criminal justice system such as:

(i) challenges to law enforcement associated with mental illness, homelessness, substance abuse, and other social factors that influence crime and strain criminal justice resources;

(ii) the recruitment, hiring, training, and retention of law enforcement officers, including in rural and tribal communities;

(iii) the potential for public and private initiatives, including in ''qualified opportunity zones'' as defined in section 13823(a) of the Tax Cuts and Jobs Act of 2017, to reduce crime and improve police-community relations;

(iv) refusals by State and local prosecutors to enforce laws or prosecute categories of crimes;

(v) the physical safety, health, and wellness of law enforcement officers;

(vi) the need to promote public respect for the law and law enforcement officers;

(vii) better integration of education, employment, social services, and public health services into efforts to reduce crime and ease the burden on law enforcement, courts, and corrections systems;

(viii) the use of targeted deterrence approaches to reduce violent crime;

(ix) new and developing methodologies, technologies, and best practices for combatting criminal activity, delinquency, and public disorder;

(x) the effects of technological innovations on law enforcement and the criminal justice system, including the challenges and opportunities presented by such innovations;

(xi) the effectiveness of contemporary law enforcement training methods around critical topics, the direction of next generation training methods, and an understanding of critical training needs;

(xii) the effectiveness of Federal grant programs in establishing best practices for law enforcement and supporting the administration of justice in State, local, and tribal jurisdictions; and

(xiii) other topics related to law enforcement and the control of crime as the Attorney General deems appropriate.

(b) In carrying out its functions under subsection (a) of this section, the Commission may host listening sessions and otherwise solicit input from a diverse array of stakeholders in the area of criminal justice, including State, local, and tribal law enforcement agencies and organizations; government service providers; businesses; nonprofit entities; public health experts; victims rights' organizations; other advocacy and interest groups; reentry experts; academia; and other public and private entities and individuals with relevant experience or expertise.

(c) In developing its recommendations under subsection (a) of this section, the Commission shall seek to recommend only practical and concrete actions that can be taken by Federal, State, local, and tribal law enforcement and other government entities to improve the administration of justice.

(d) Upon the request of the Chair, the heads of executive departments and agencies (agencies) shall, to the extent permitted by law, provide the Commission with reasonable access to the information it needs for purposes of carrying out its functions.

(e) Upon the request of the Attorney General, the heads of agencies may detail personnel to the Commission to assist in carrying out its functions, and shall endeavor to provide such personnel and other assistance to the Commission to the extent practicable, consistent with applicable law and within existing appropriations, through appropriate interagency agreements, including agreements under the Economy Act. Consistent with applicable law and within existing appropriations, the Attorney General shall use the resources and personnel of the Department of Justice in support of the Commission and its activities.

Sec. 4. *Reports.* The Commission shall submit a report and recommendations to the Attorney General no later than 1 year from the date of this order. The Attorney General, following consultation with the Director of the Office of Management and Budget, shall submit a report and recommendations to the President no later than 60 days thereafter.

Sec. 5. *Termination.* The Commission shall terminate no later than 90 days after submitting its report and recommendations to the Attorney General, unless extended by the President.

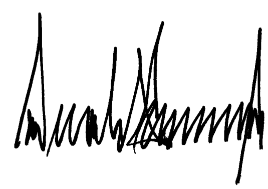
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

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



THE WHITE HOUSE,
October 28, 2019.

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Rules and Regulations

Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0372; Airspace Docket No. 18–ANM–17]

RIN 2120–AA66

Amendment of Class E Airspace; Walden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Walden-Jackson County Airport, Walden, CO, to accommodate a new area navigation (RNAV) procedure at the airport. Additionally, this action removes Class E airspace extending upward from 700 feet above the surface north of the airport that is not required to contain IFR procedures. This action also updates the geographic coordinates of the airport to match the FAA's data base. This action ensures the safety and management of instrument flight rules (IFR) operations at the Walden-Jackson County Airport.

DATES: Effective 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace to support a new RNAV procedure at Walden-Jackson County Airport, Walden, CO.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 36501; July 29, 2019) for Docket No. FAA–2019–0372 to amend Class E airspace extending upward from 700 feet above the surface at Walden-Jackson County Airport, Walden, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received. The commenter recommended that no additional airspace be established for the airport. The commenter also recommended that the volume of air traffic into the airport be reduced in order to manage noise. Airspace actions do not control the volume of air traffic at airports; they are completed to protect IFR aircraft operating on approved procedures for a particular airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Walden-Jackson County Airport, Walden, CO, within 4 miles each side of the 227° bearing from the airport extending from the 5 mile radius to 9.4 miles southwest of airport. Additionally, this action removes Class E airspace extending upward from 700 feet above the surface within 4 miles each side of the 342° bearing from the airport extending from the 5 mile radius to V–524 northwest of the Walden-Jackson County Airport, Walden, CO. This action updates the airport's geographic coordinates to match the FAA's database.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ANM CO E5 Walden, CO

Walden-Jackson County Airport, CO
(Lat. 40°45′01″ N, long. 106°16′18″ W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of airport, and within 4 miles each side of the 227° bearing from the airport extending from the 5-mile radius to 9.4 miles southwest of the Walden-Jackson County Airport.

Issued in Seattle, Washington, on October 16, 2019.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–23145 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0371; Airspace Docket No. 17–ANM–6]

RIN 2120–AA66

Amendment of Class E Airspace; Wray, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Wray Municipal Airport, Wray, CO, to accommodate new area navigation (RNAV) procedures at the airport. This action is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. Additionally, this action removes Class E airspace extending upward from 1,200 feet above the surface at Wray Municipal Airport, Wray, CO. This airspace is wholly contained within the Denver en route airspace area and duplication is not necessary.

DATES: Effective 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace to support new RNAV procedures at Wray Municipal Airport, Wray, CO.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 27044; June 11, 2019) for Docket No. FAA–2019–0371 to amend Class E airspace extending upward from 700 feet above the surface at Wray Municipal Airport, Wray, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2018, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Wray Municipal Airport, Wray, CO, to within 1 mile each side of the 180° bearing extending from the 6.5 mile radius to 11 miles south of the airport and 2 miles each side of the 360° bearing extending from the 6.5 mile radius to 10.8 miles north of the airport. Additionally, this action removes Class E airspace extending upward from 1,200 feet above the surface at Wray Municipal Airport, Wray, CO. This airspace is wholly contained within the Denver en route airspace area and duplication is not necessary.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ANM CO E5 Wray, CO

Wray Municipal Airport
(Lat. 40°06′01″ N, long. 102°14′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the airport, and within 1 mile each side of the 180° bearing extending from the 6.5 mile radius to 11 miles south of the airport, and within 2 miles each side of the 360° bearing extending from the 6.5 mile radius to 10.8 miles north of the Wray Municipal Airport.

Issued in Seattle, Washington, on October 18, 2019.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–23318 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2013–0290; FRL–10001–21–OAR]

RIN 2060–AT25

National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes certain amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Clay Ceramics Manufacturing source category. The final amendments are being issued in response to a petition for reconsideration filed by an affected industry (Kohler Company) on the final rule promulgated on October 26, 2015, as well as our review of the 2015 rule with respect to certain other issues raised by Kohler. This action revises the temperature monitoring methodology used to demonstrate continuous compliance with the dioxin/furan (D/F) emissions limit of the final rule. In addition, we are addressing concerns raised by Kohler regarding visible emissions (VE) monitoring of tunnel kiln stacks for continuous compliance with particulate matter (PM) and mercury (Hg) emission limitations. This action also amends the requirements for weekly visual inspections of system ductwork and control device equipment for water curtain spray booths. Lastly, this action amends the NESHAP to include provisions for emissions averaging, makes technical corrections, and adds certain definitions.

DATES: This final rule is effective on November 1, 2019.

ADDRESSES: The U.S. Environmental Protection agency (EPA) has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2013–0290. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy form 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.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Brian Storey, 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) 541–1103; fax number: (919) 541–4991; and email address: *storey.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

BSCP brick and structural clay products
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
D/F dioxins/furans
EJ environmental justice
EPA U.S. Environmental Protection Agency
HAP hazardous air pollutant(s)
Hg mercury
HON Hazardous Organic NESHAP
lb pounds
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
No. number
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PM particulate matter
POC products of combustion
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code
v. versus
VE visible emissions

Background information. On August 20, 2018, the EPA proposed revisions to the Clay Ceramics Manufacturing NESHAP. In this action, we are finalizing revisions to the rule. The EPA briefly summarizes the more significant comments we received regarding the proposed rule that have resulted in changes to the final rule, and we provide our responses in this preamble. A more comprehensive summary of the public comments on the proposal and the EPA's responses to those comments is available in the *National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Amendments—Background Information for Final Rule: Summary of Public Comments and Responses.* A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

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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
L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this final action. Table 1 is not intended to be exhaustive but rather provides a guide for readers regarding the entities that this final action is likely to affect. The final amendments will be directly applicable to the affected sources. Federal, state, local and tribal government entities would not be affected by this final 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* (*see* EPA–450/3–91–030), the Clay Products Manufacturing source category as originally listed included any facility engaged in manufacturing of clay products such as brick, vitrified clay pipe, structural clay tile, and clay refractories. The Clay Products Manufacturing source category has since been replaced by the Brick and Structural Clay Products (BSCP) Manufacturing source category and the Clay Ceramics Manufacturing source category (see 67 FR 47894, July 22, 2002).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	327120	Ceramic wall and floor tile manufacturing facilities (Clay Ceramics Manufacturing NESHAP).
	327110	Vitreous plumbing fixtures (sanitaryware) manufacturing facilities (Clay Ceramics Manufacturing NESHAP).
Federal government		Not affected.
State/local/tribal government		Not affected.

[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 final action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/brick-and-structural-clay-products-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final amendments and key technical documents at this same website.

A redline version of the regulatory language that incorporates the changes in this final action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2013–0290).

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 31, 2019. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the CAA as amended (42 U.S.C. 7412 and 7607(d)(7)(B)).

B. What actions preceded these final amendments?

The initial NESHAP for Clay Ceramics Manufacturing was published in the **Federal Register** on May 16, 2003 (68 FR 26690), and codified at 40 CFR part 63, subpart KKKKK, pursuant to section 112 of the CAA. These standards were challenged and subsequently vacated by the United States Court of Appeals for the District of Columbia Circuit in 2007. See *Sierra Club* v. *EPA,* 479 F.3d 875, 876 (D.C. Cir. 2007). Following the 2007 vacatur of the 2003 rule, the EPA collected additional data and information to support new standards for the clay ceramics industry. This information is contained in the docket at *https://www.regulations.gov/* (see Docket ID No. EPA–HQ–OAR–2013–0290). On December 18, 2014, the EPA proposed the new NESHAP for Clay Ceramics Manufacturing (79 FR 75622). The EPA received additional data and comments during the public comment period. These data and comments were considered and analyzed and, where appropriate, revisions to the NESHAP were made. The NESHAP for Clay Ceramics Manufacturing was finalized on October 26, 2015 (80 FR 65470).

On December 23, 2015, Kohler Company (Kohler) petitioned the EPA for reconsideration of the final rule for Clay Ceramics Manufacturing (Docket ID No. EPA–HQ–OAR–2013–0290–0316). On August 20, 2018, we proposed revisions to the Clay Ceramics Manufacturing NESHAP based on the information provided by Kohler in their petition and information collected by the EPA (83 FR 42066). Public comments were received on the proposal requesting some changes to the proposed revisions. This action finalizes the revisions to the NESHAP and, where deemed appropriate, incorporates the requested changes. The intent of these amendments is to provide flexibility to the clay ceramics manufacturing industry, while maintaining the emissions and operational standards of the NESHAP.

III. Summary of the Final Amendments

The EPA is issuing the following amendments to 40 CFR part 63, subpart KKKKK, in response to Kohler's petition for reconsideration on the October 26, 2015, final rule (80 FR 65470):

- Revise the temperature monitoring methodology used to demonstrate continuous compliance with the D/F emissions limits from sanitaryware first-fire tunnel kilns;
- Provide an alternative to the monitoring provisions for VE from tunnel kiln exhaust stacks;
- Amend the requirements for weekly visual inspections of system ductwork and control device equipment for water curtain spray booths;
- Define cooling stacks in the rule and differentiate cooling stacks from kiln exhaust stacks for compliance purposes; and
- Include provisions to allow emissions averaging for emissions from existing tunnel kilns and glaze spray booths and make associated revisions to the definition of affected source and recordkeeping and reporting requirements.

We are finalizing all the amendments listed above as proposed except for the provisions to allow emissions averaging. A description of the changes made to the emissions averaging provisions since proposal along with the rationale for those changes is provided in section IV of this preamble.

This final rule achieves meaningful burden reduction by providing regulated facilities with the ability to use existing monitoring equipment and removing the requirements for periodic inspections that we have determined are not necessary to demonstrate compliance. We also more clearly identify which stacks are cooling stacks; thus, avoiding the possibility that a source might be required to perform an emission test on a stack that emits only cooling air. Finally, this action provides additional compliance flexibility for sources to meet certain emissions limits by averaging; thereby, simplifying compliance. All of these actions should reduce the overall burden to the regulated sources.

This action is limited to the specific issues raised in the petition for reconsideration, plus some minor technical corrections. There are no changes to emission limits as a result of these final amendments. Technical corrections are being issued as proposed to correct inaccuracies that were promulgated in the final rule, replace text that might be considered confusing, and correct outdated information. These changes are described in Table 2 of this preamble.

TABLE 2—TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART KKKKK

Table to subpart KKKKK	Description of correction
40 CFR 63.8635(g)(1)	Update the addresses for EPA websites.
Table 2, item 3	To avoid confusion, revise the description of the operating limit for carbon flow rate.

TABLE 2—TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART KKKKK—Continued

Table to subpart KKKKK	Description of correction
Table 2, items 10 and 11	Revise the block period for average operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.
Table 4, item 8	In the measurement of carbon flow rate data, include data from the Hg and D/F performance test data for tunnel or roller kilns equipped with an activated carbon injection system.
Table 4, items 11 and 12	Revise the block average for operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.
Table 6, items 2.a.ii, 2.b.ii, 2.c.ii, 3.a.ii, 3.b.ii, 3.c.ii, 4.a.ii, 4.b.ii, 4.c.ii, 5.a.ii, 5.b.ii, 6.a.ii, 7.a.ii, 8.a.ii, 9.a.ii, 10.a.ii, 11.a.ii, 12.a.ii, 12.b.ii, 12.c.ii, 13.a.ii, 13.b.ii, 13.c.ii, 14.a.ii, 14.b.ii, 14.c.ii, 15.a.ii, 15.b.ii, 16.a.ii, 17.a.ii, 18.a.ii, 19.a.ii, 20.a.ii, and 21.a.ii.	To avoid confusion, remove mention of the specific block period and simply refer to "the period of the initial performance test."
Table 7, items 10 and 11	Revise the block average for operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.

IV. Rationale for Changes to the Proposed Amendments

A. Visible Emissions Monitoring of Tunnel Kiln Exhaust

In its petition for reconsideration, Kohler stated that the EPA failed to adequately respond to Kohler's public comments regarding VE monitoring in the Agency's response to comments document and in the preamble for the final rule. In their comments on the December 18, 2014, proposal, Kohler had argued that VE monitoring is not a useful parameter to assess kiln operation nor to assess hazardous air pollutant (HAP) emissions. Kohler requested that the EPA open a new public comment period to reconsider and respond to Kohler's concerns. In response to the petition, we proposed amendments to 40 CFR 63.8620 in the Clay Ceramics Manufacturing NESHAP, adding a new paragraph (e)(2) which provided an alternative to VE testing that allowed sources to demonstrate compliance by maintaining the kiln temperature profile within acceptable parameters and, for any incidence where the kiln exceeds its temperature profile, monitor VE at each kiln stack as specified.

In public comments on the proposed amendments, a commenter questioned Kohler's assertion about VE monitoring and recommended that the EPA define what a "temperature profile" is and clarify what it means to "maintain" it *v.* "exceed" it. In response to this comment, we are finalizing amendments to 40 CFR 63.8620(e)(2), the operating limits table (Table 2), and the continuous compliance table (Table 7) to clarify that the owner or operator will be required to maintain their kiln operating temperature within the range of acceptable temperatures (*i.e.,* a temperature profile) established for each kiln and product. For any incident where the kiln is operating outside of its acceptable temperature range (*i.e.,* exceeding its temperature profile) for the product being fired, the owner or operator will be required to record the incident as a deviation, and perform corrective action in accordance with the facility's operation, maintenance, and monitoring (OM&M) plan.

B. Weekly Visual Inspections of Water Curtain Spray Booths

In its petition for reconsideration, Kohler requested that the EPA reconsider the frequency of visual inspection requirements for system ductwork and control device equipment for water curtain spray booths. In response to the petition, we proposed amendments to the operating limits table (Table 2) and the continuous compliance table (Table 7) to remove the requirement to conduct weekly visual inspections of the system ductwork and control equipment for leaks for all glaze spray operations equipped with water curtains.

In public comments on the proposal, one commenter stated that if the EPA is relying on operator observations of visible particulate on the product to determine when there is a leak in the spray booth ductwork, the rule should require operators to log such incidents and report them as deviations when they occur. We recognize the commenter's concerns and agree that if there is an indication of particulate in the glaze of the product, then it is likely there is a failure in the ductwork requiring corrective action, and, therefore, this would be considered a deviation. We are finalizing amendments to Table 7 to require owners or operators to record as deviations any observations of particulates or other impurities getting into the glaze that has been sprayed onto a piece of ware and perform corrective action in accordance with the facility's OM&M plan.

C. Emissions Averaging

In its petition for reconsideration, Kohler requested that the EPA allow the use of emissions averaging as a compliance option in the Clay Ceramics Manufacturing NESHAP for existing tunnel kilns and glaze spray booths. In response to the petition, we proposed amendments to 40 CFR 63.8595 in the Clay Ceramics Manufacturing NESHAP that included alternative emissions averaging limits for the following:

- PM and Hg, in units of pounds per ton (lb/ton) of fired product for existing floor tile roller kilns;
- PM and Hg in units of lb/ton of fired product for existing wall tile roller kilns;
- PM and Hg, in units of lb/ton of greenware fired for existing first-fired sanitaryware tunnel kilns;
- PM and Hg, in units of lb/ton of first-fired glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying; and
- PM, in units of lb/ton of first-fire glaze sprayed (dry weight basis), for existing sanitaryware manual, spray machine, or robot glaze applications.

The proposed conditions required for emissions averaging included the following: (1) Emissions averaging would only be permitted between individual sources at a single existing affected source; (2) emissions averaging would only be permitted between individual sources subject to the Clay Ceramics Manufacturing NESHAP; (3) emissions averaging would not be permitted between two or more different affected sources; (4) emissions averaging would not be permitted between two or more sources in different subcategories;

(5) new sources could not use emissions averaging; and (6) averaged emissions could not exceed 90 percent of the applicable emission limit, which translates to a discount factor of 1.1 applied to actual emissions.

The emissions averaging provisions that we proposed were based, in part, on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON (59 FR 19425, April 22, 1994).

In public comments on the proposal, two commenters requested that the EPA remove the requirement that averaged emissions cannot exceed 90 percent of the applicable emission limit, and a third commenter stated that no justification was provided for the selection of 90 percent (instead of an alternate value, such as 80 or 99 percent). While averaging should only be permitted if it can be demonstrated that the total quantity of any HAP will not be greater than it could be if each individually affected unit complied separately with the applicable standard, one commenter stated this requirement can be demonstrated without the ''90 percent of the limit'' safety factor. The commenter noted that the EPA has allowed emissions averaging across similar emission units in other NESHAP, such as the Reinforced Plastics Composites NESHAP (40 CFR part 63, subpart WWWW), and stated that similar logic for averaging should be applied to this subpart to eliminate the unnecessary factor.

In response to these comments, we have re-evaluated whether a discount factor is appropriate for the emissions averaging provisions in this subpart and have concluded that a discount factor is not necessary here. The issues faced in the HON, where a discount factor of 1.1 was applied to the emissions averaging calculation, included significant differences in toxicity of the various HAP and a situation where facilities were applying emissions controls. This is not the case here. All facilities are meeting the relevant standards in this subpart without added controls and are using pollution prevention where needed. Accordingly, a straight average, without any discount factor, is appropriate in this situation. This straight-average approach is consistent with other rules, such as the Reinforced Plastic Composites NESHAP. Therefore, the EPA has decided not to include a discount factor in 40 CFR 63.8595(h), Equation 9, and 40 CFR 63.8620, Equation 10 to calculate the average weighted emissions.

In addition, a commenter noted that the proposed emissions averaging provisions prohibited emissions averaging of new sources but did not prohibit emissions averaging of reconstructed sources. The commenter stated that reconstructed sources should not be allowed to use the emissions averaging provisions. We agree with the commenter, and in the final amendments the EPA has revised 40 CFR 63.8595(h)(1) to indicate that neither new nor reconstructed sources can be included in the emissions averaging.

Finally, we note that Equations 9 through 11 were all proposed to be added to 40 CFR 63.8595(h). However, one commenter noted an apparent discrepancy between Equation 9 and Equation 10, and it appears that the commenter misunderstood that Equation 9 is intended to determine initial compliance based on an initial performance test, while Equation 10 is intended to determine ongoing compliance based on the latest performance test. Equation 11 is also used for ongoing compliance and is intended to determine the 12-month rolling average of the monthly weighted average emission rates. Therefore, in the final amendments, Equations 10 and 11 have been moved to 40 CFR 63.8620, the section that describes how to demonstrate continuous compliance.

V. Summary of Cost, Environmental, and Economic Impacts

This action will have no cost, environmental, energy, or economic impacts beyond those impacts presented in the October 26, 2015, final rule for Clay Ceramics Manufacturing and may result in a cost savings due to the changes in monitoring and testing requirements discussed in section III of this preamble. The technical corrections are cost neutral.

VI. 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 the OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by providing additional regulatory flexibilities.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart KKKKK) and has assigned OMB control number 2060–0513. This action does not change the information collection requirements.

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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This final rule will not impose any additional requirements on small entities, only alternatives to existing requirements. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate 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. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The final amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions 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 the docket. (See *EJ Screening Report for Clay Ceramics,* Docket ID Item No. EPA–HQ–OAR–2013–0290–0241.)

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 10, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is amended 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 KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

■ 2. Section 63.8595 is amended by:
■ a. Revising paragraph (c);
■ b. Redesignating paragraph (h) as paragraph (i);
■ c. Adding a new paragraph (h); and
■ d. Revising newly redesignated paragraphs (i) introductory text and (i)(1) introductory text.

The revisions and addition read as follows:

§ 63.8595 How do I conduct performance tests and establish operating limits?

* * * * *

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart. Stacks to be tested at sanitaryware manufacturing facilities shall be limited to products of combustion (POC) stacks and not include cooling stacks.

* * * * *

(h)(1) As an alternative to meeting the requirements of § 63.8555 for PM or mercury, if you have more than one existing source in any subcategories located at your facility, you may demonstrate compliance by emissions averaging, if your averaged emissions are no higher than the applicable emission limit, according to the procedures in this section. You may not include new or reconstructed sources in an emissions average.

(2) For a group of two or more existing sources in the same subcategory that each vent to a separate stack, you may average PM or mercury emissions among existing units to demonstrate compliance with the limits in Table 1 to this subpart as specified in paragraph (h)(2)(i) through (iv) of this section, if you satisfy the requirements in paragraphs (h)(3) and (4) of this section.

(i) You may average across existing sources in the same kiln type and size category (*e.g.,* roller or tunnel kilns, large or small kilns) and the same subcategory (*e.g.,* sanitaryware manual or spray machine or robot glaze application) where applicable;

(ii) You may not include a unit in the emissions average if the unit shares a common stack with units in other subcategories;

(iii) You may not include spray dryers or press dryers in the emissions average; and

(iv) You may not average between different types of pollutants.

(3) The averaged emissions rate from the existing sources participating in the emissions averaging option must not exceed the limits in Table 1 to this subpart at all times the affected units are subject to numeric emission limits following the compliance date specified in § 63.8545.

(4)(i) You must demonstrate initial compliance using the maximum process rate and the results of the initial performance tests.

(ii) You must use Equation 9 of this section to demonstrate that the PM or mercury emissions from all existing units participating in the emissions averaging option for that pollutant do not exceed the emission limits in Table 1 to this subpart.

$$ER_i = \sum_{i=1}^{n}\left(E_i \times P_{max\ i}\right) \div \sum_{i=1}^{n} P_{max\ i} \quad \text{(Eq. 9)}$$

Where:

ER_i = Average weighted emissions for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications.

E_i = Emission rate (as determined during the initial compliance demonstration) of PM or mercury from unit i, in units of kilograms (pounds) per megagram (ton). Determine the emission rate for PM or mercury by performance testing according to Table 4 to this subpart using the applicable equation in paragraph (f) of this section.

$P_{max\ i}$ = Maximum process rate for unit i, in units of megagrams per hour (tons per hour).

n = Number of units participating in the emissions averaging option.

(5) You must develop and submit upon request to the applicable Administrator for review and approval, an implementation plan for emissions averaging according to the following procedures and requirements in paragraphs (h)(5)(i) through (iv) of this section.

(i) If requested, you must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emissions averaging option.

(ii) You must include the information contained in paragraphs (h)(5)(ii)(A) through (D) of this section in your implementation plan for all emission sources included in an emissions average:

(A) The identification of all existing sources in the averaging group, including for each either the applicable HAP emissions level or the control technology installed and the date on which you are requesting emissions averaging to commence;

(B) The specific control technology or pollution prevention measure to be used for each source in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple sources, the owner or operator must identify each source;

(C) The test plan for the measurement of emissions in accordance with the requirements in this section; and

(D) The operating parameters to be monitored for each control system or device consistent with § 63.8555 and Table 2 to this subpart, and a description of how the operating limits will be determined.

(iii) If submitted upon request, the Administrator shall review and approve or disapprove the plan according to the following criteria:

(A) Whether the content of the plan includes all of the information specified in paragraph (h)(5)(ii) of this section; and

(B) Whether the plan presents sufficient information to determine that compliance will be achieved and maintained.

(iv) The applicable Administrator shall not approve an emissions averaging implementation plan containing any of the following provisions:

(A) Any averaging between emissions of differing pollutants or between differing sources; or

(B) The inclusion of any emission source other than an existing unit in the same subcategories.

(i) For each affected source that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

* * * * *

■ 3. Section 63.8620 is amended by:

■ a. Redesignating paragraphs (e) introductory text and (e)(1) through (3) as paragraphs (e)(1) introductory text and (e)(1)(i) through (iii), respectively;

■ b. Revising newly redesignated paragraph (e)(1) introductory text; and

■ c. Adding new paragraph (e)(2) and paragraphs (f) and (g).

The revision and additions read as follows:

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(e)(1) *Visible emissions testing.* You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from tunnel or roller kilns that are uncontrolled or equipped with DIFF, DLS/FF, or other dry control device by monitoring VE at each kiln stack according to the requirements in paragraphs (e)(1)(i) through (iii) of this section.

* * * * *

(2) *Alternative to VE testing.* You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for kiln temperature profile for tunnel or roller kilns that are uncontrolled or equipped with DIFF, DLS/FF, or other dry control device by maintaining the kiln operating temperature within the range of acceptable temperatures (*i.e.,* temperature profile) established for each kiln and product. For any incidence where the kiln is operating outside of its acceptable temperature range (*i.e.,* exceeds its temperature profile) for the product being fired, you must record the incident as a deviation, and perform the necessary corrective action in accordance with your OM&M plan to return the kiln to the acceptable operating temperature for the product being fired. To confirm the kiln has returned to the acceptable temperature range, you will monitor VE at the kiln stack according to the requirements in paragraphs (e)(2)(i) through (iii) of this section.

(i) Perform VE observations at the stack of each kiln operating outside of its temperature profile according to the procedures of Method 22 of 40 CFR part 60, appendix A–7. The duration of each Method 22 test must be at least 15 minutes.

(ii) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must continue to perform corrective action until VE are no longer observed.

(iii) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must report these deviations by following the requirements in § 63.8635.

(f) Following the compliance date, you must demonstrate compliance with the emissions averaging provision under this subpart on a continuous basis by meeting the requirements of paragraphs (f)(1) through (3) of this section.

(1)(i) After the initial compliance demonstration described in § 63.8595(h)(4), you must demonstrate compliance on a monthly basis determined at the end of every month (12 times per year) according to paragraph (f)(1)(ii) of this section. The first monthly period begins on the compliance date specified in § 63.8545.

(ii) For each calendar month, you must use Equation 10 of this section to calculate the average weighted emission rate for that month.

$$ER_i = \sum_{i=1}^{n}\left(E_i \times P_{month\ i}\right) \div \sum_{i=1}^{n} P_{month\ i} \quad \text{(Eq. 10)}$$

Where:

ER_i = Average weighted emissions for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications, for that calendar month.

E_i = Emission rate (as determined during the most recent compliance demonstration) of PM or mercury from unit i, in units of kilograms (pounds) per megagram (ton). Determine the emission rate for PM or mercury by performance testing according to Table 4 to this subpart using the applicable equation in § 63.8595(f).

$P_{month\ i}$ = The process rate for that calendar month for unit i, in units of megagrams (tons).

n = Number of units participating in the emissions averaging option.

(2) Until 12 monthly weighted average emission rates have been accumulated, calculate and report only the average weighted emission rate determined under paragraph (f)(1)(ii) of this section for each calendar month. After 12 monthly weighted average emission rates have been accumulated, for each subsequent calendar month, use Equation 11 of this section to calculate the 12-month rolling average of the monthly weighted average emission rates for the current calendar month and the previous 11 calendar months.

$$E_{avg} = \sum_{i=1}^{n} ER_i \div 12 \quad \text{(Eq. 11)}$$

Where:

E_{avg} = 12-month rolling average emission rate for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications.

ER_i = Monthly weighted average, for calendar month ‘‘i,’’ in units of kilograms (pounds) per megagram (ton), as calculated by paragraph (f)(1)(ii) of this section.

(3) For each existing unit participating in the emissions averaging option, you must comply with the continuous compliance requirements in Table 7 to this subpart.

(g) Any instance where you fail to comply with the continuous monitoring requirements in paragraphs (f)(1) through (3) of this section is a deviation.

■ 4. Section 63.8630 is amended by revising paragraph (c) introductory text and adding paragraph (c)(4) to read as follows:

§ 63.8630 What notifications must I submit and when?

* * * * *

(c) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 6 to this subpart, your Notification of Compliance Status as specified in Table 9 to this subpart must include the information in paragraphs (c)(1) through (4) of this section.

* * * * *

(4) Identification of whether you plan to demonstrate compliance by emissions averaging. If you plan to demonstrate compliance by emissions averaging, report the emissions level that was being achieved or the control technology employed on December 28, 2015.

* * * * *

■ 5. Section 63.8635 is amended by:

■ a. Revising paragraphs (c) introductory text and (c)(4)(iii)(C);

■ b. Adding paragraph (c)(9); and

■ c. Revising paragraph (g)(1).

The revisions and addition read as follows:

§ 63.8635 What reports must I submit and when?

* * * * *

(c) The compliance report must contain the information in paragraphs (c)(1) through (9) of this section.

* * * * *

(4) * * *

(iii) * * *

(C) Based on the information recorded under paragraphs (c)(4)(iii)(A) and (B) of this section, compute the annual percent of affected source operating uptime during which the control device was offline for routine maintenance using Equation 12 of this section.

$$RM = \frac{DT_p + DT_c}{SU_p + SU_c}(100) \quad \text{(Eq. 12)}$$

Where:

RM = Annual percentage of affected source uptime during which control device was offline for routine control device maintenance.

DT_p = Control device downtime claimed under the routine control device maintenance alternative standard for the previous semiannual compliance period.

DT_c = Control device downtime claimed under the routine control device maintenance alternative standard for the current semiannual compliance period.

SU_p = Affected source uptime for the previous semiannual compliance period.

SU_c = Affected source uptime for the current semiannual compliance period.

* * * * *

(9) If you plan to demonstrate compliance by emissions averaging, certify the emissions level achieved or the control technology employed is no less stringent than the level or control technology contained in the notification of compliance status in § 63.8630(c)(4), including all necessary documentation

to support this certification, such as inputs to Equations 9 through 11 of this subpart.

* * * * *

(g) * * *

(1) For 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/electronicreporting-air-emissions/electronicreporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*).) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file 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, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (g)(1).

* * * * *

■ 6. Section 63.8640 is amended by revising paragraph (c) introductory text and adding paragraph (c)(11) to read as follows:

§ 63.8640 What records must I keep?

* * * * *

(c) You must also maintain the records listed in paragraphs (c)(1) through (11) of this section.

* * * * *

(11) If you elect to average emissions consistent with § 63.8595(h), you must additionally keep a copy of the emissions averaging implementation plan required in § 63.8595(h)(5), all calculations required under § 63.8595(h), including monthly records of process rate, as applicable, and monitoring records consistent with § 63.8620(f).

■ 7. Section 63.8665 is amended by adding definitions for "Cooling stack," "Emissions averaging sources," and "Products of combustion (POC) stack" in alphabetical order to read as follows:

§ 63.8665 What definitions apply to this subpart?

* * * * *

Cooling stack means a stack (release point) installed on the cooling zone of a tunnel kiln to release air used to cool down the fired product from its maximum temperature to room temperature. A cooling stack does not release any air from the firing zone of the tunnel kiln.

* * * * *

Emissions averaging sources means, for purposes of the emissions averaging provisions of § 63.8595(h), the collection of all existing ceramic tile roller kilns, sanitaryware tunnel kilns, ceramic tile glaze lines using glaze spraying, and sanitaryware glaze spray booths, within a kiln type and size category and within a subcategory.

* * * * *

Products of combustion (POC) stack means a stack (release point) installed on the front end of the firing zone of a tunnel kiln to release air used to heat the greenware from room temperature to its maximum temperature.

* * * * *

■ 8. Table 1 to subpart KKKKK is revised to read as follows:

TABLE 1 TO SUBPART KKKKK OF PART 63—EMISSION LIMITS

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

For each . . .	You must meet the following emission limits . . .
1. Collection of all tunnel or roller kilns at facility.	HF and HCl emissions must not exceed 62 kilograms per hour (kg/hr) (140 pounds per hour (lb/hr)) HCl equivalent, under the health-based standard, as determined using Equations 4 and 5 of this subpart.
2. Existing floor tile roller kiln	a. PM emissions must not exceed 0.063 kilogram per megagram (kg/Mg) (0.13 pound per ton (lb/ton)) of fired product. b. Hg emissions must not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 2.8 nanograms per kilogram (ng/kg) of fired product.
3. Existing wall tile roller kiln	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product. b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.
4. Existing first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired. b. Hg emissions must not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired. c. Dioxin/furan emissions must not exceed 3.3 ng/kg of greenware fired.
5. Existing tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis). b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
6. Existing sanitaryware manual glaze application.	PM emissions must not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).
7. Existing sanitaryware spray machine glaze application.	PM emissions must not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).
8. Existing sanitaryware robot glaze application.	PM emissions must not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
9. Existing floor tile spray dryer	Dioxin/furan emissions must not exceed 19 ng/kg of throughput processed.
10. Existing wall tile spray dryer	Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.
11. Existing floor tile press dryer	Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.
12. New or reconstructed floor tile roller kiln.	a. PM emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product. b. Hg emissions must not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 1.3 ng/kg of fired product.

TABLE 1 TO SUBPART KKKKK OF PART 63—EMISSION LIMITS—Continued

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

For each . . .	You must meet the following emission limits . . .
13. New or reconstructed wall tile roller kiln.	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.
14. New or reconstructed first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired.
	b. Hg emissions must not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired.
	c. Dioxin/furan emissions must not exceed 0.99 ng/kg of greenware fired.
15. New or reconstructed tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis).
	b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
16. New or reconstructed sanitaryware manual glaze application.	PM emissions must not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
17. New or reconstructed sanitaryware spray machine glaze application.	PM emissions must not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).
18. New or reconstructed sanitaryware robot glaze application.	PM emissions must not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).
19. New or reconstructed floor tile spray dryer.	Dioxin/furan emissions must not exceed 0.071 ng/kg of throughput processed.
20. New or reconstructed wall tile spray dryer.	Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.
21. New or reconstructed floor tile press dryer.	Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.
22. Collection of emissions averaging sources.	PM emissions must not exceed the applicable emission limit, under the emissions averaging option, as determined using Equations 9 through 11 of this subpart.
23. Collection of emissions averaging sources.	Hg emissions must not exceed the applicable emission limit, under the emissions averaging option, as determined using Equations 9 through 11 of this subpart.

■ 9. Table 2 to subpart KKKKK is revised to read as follows:

TABLE 2 TO SUBPART KKKKK OF PART 63—OPERATING LIMITS

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

For each . . .	You must . . .	Or you must . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and	i. Maintain no VE from the DIFF or DLS/FF stack; or ii. Maintain your kiln operating temperature within the range of acceptable temperatures (*i.e.,* temperature profile established for each kiln and product.
	b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting (on a per ton of throughput basis) at or above the level established during the performance test for continuous injection systems in which compliance was demonstrated.	
2. Tunnel or roller kiln equipped with a WS.	a. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test in which compliance was demonstrated; and	
	b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests in which compliance was demonstrated.	
3. Tunnel or roller kiln equipped with an ACI system.	Maintain the 3-hour block average carbon flow rate at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests in which compliance was demonstrated.	

TABLE 2 TO SUBPART KKKKK OF PART 63—OPERATING LIMITS—Continued

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

For each . . .	You must . . .	Or you must . . .
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	i. Maintain your kiln operating temperature within the range of acceptable temperatures (*i.e.,* temperature profile established for each kiln and product.
5. Tunnel or roller kiln with no add-on control.	a. Maintain no VE from the stack; and	
	b. Maintain the kiln process rate at or below the kiln process rate determined according to § 63.8595(g)(1) if your total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart; and	
	c. Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	i. Maintain no VE from the FF stack.
6. Glaze spray operation equipped with a FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	
7. Glaze spray operation equipped with a WS.	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test in which compliance was demonstrated; and	
	b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test in which compliance was demonstrated.	
8. Glaze spray operation equipped with a water curtain.	a. Conduct daily inspections to verify the presence of water flow to the wet control system; and	
	b. Conduct annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.	
9. Glaze spray operation equipped with baffles.	Conduct an annual visual inspection of the baffles to confirm the baffles are in place.	
10. Spray dryer	Maintain the average operating temperature for each 4-hour block period at or above the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
11. Floor tile press dryer	Maintain the average operating temperature for each 4-hour block period at or below the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	

■ 10. Table 4 to subpart KKKKK is revised to read as follows:

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Tunnel or roller kiln	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure HF and HCl emissions.	i. Method 26A of 40 CFR part 60, appendix A–8; or	You may use Method 26 of 40 CFR part 60, appendix A–8, as an alternative to using Method 26A of 40 CFR part 60, appendix A–8, when no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present. ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see § 63.14) may be used as an alternative to Methods 26 and 26A.
		ii. Method 320 of appendix A of this part.	When using Method 320 of appendix A of this part, you must follow the analyte spiking procedures of section 13 of Method 320 of appendix A of this part, unless you can demonstrate that the complete spiking procedure has been conducted at a similar source. ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see § 63.14) may be used as an alternative to Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte.
	f. Measure PM emissions ..	i. Method 5 of 40 CFR part 60, appendix A–3; or ii. Method 29 of 40 CFR part 60, appendix A–8.	
	g. Measure Hg emissions	Method 29 of 40 CFR part 60, appendix A–8.	ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14) may be used as an alternative to Method 29 (portion for Hg only).
	h. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A–7.	
2. Glaze spray operation	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure PM emissions	Method 5 of 40 CFR part 60, appendix A–3.	
	f. Measure Hg emissions (tile glaze spray operations only).	Method 29 of 40 CFR part 60, appendix A–8.	ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14) may be used as an alternative to Method 29 (portion for Hg only).
3. Spray dryer or floor tile press dryer.	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A–7.	
4. Tunnel or roller kiln with no add-on control.	a. Establish the operating limit(s) for kiln process rate if the total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart.	HCl-equivalent limit in Table 1 to this subpart and emissions and production data from the HF/HCl/Cl_2 performance test.	Using the procedures in § 63.8595(g)(1), you must determine the maximum process rate(s) for your kiln(s) that would ensure total facility maximum potential HCl-equivalent emissions remain at or below the HCl-equivalent limit in Table 1 to this subpart. The maximum process rate(s) would become your site-specific process rate operating limit(s).
	b. Establish the operating limit for kiln operating temperature.	i. Data from the kiln operating temperature measurement device during the dioxin/furan performance test.	(1) You must continuously measure the kiln operating temperature during three 4-hour test runs and, from a 12-hour block of time consisting of 1-hour increments, calculate the following two values: (a) The standard deviation of the 12 1-hour temperature measurements (refer to Note 1). (b) 1 percent of the 12-hour block average. (2) You must decide which of the two values would provide the greatest variability (*i.e.,* the highest value), and then add this value to the 12-hour block average measured during the compliance testing. The result is the maximum temperature at which your kiln may operate during normal operations.
5. Tunnel or roller kiln that is complying with PM and/or Hg production-based emission limits.	Determine the production rate during each PM/Hg test run in order to determine compliance with PM and/or Hg production-based emission limits.	Production data collected during the PM/Hg performance tests (*e.g.,* the number of ceramic pieces and weight per piece in the kiln during a test run divided by the amount of time to fire a piece).	You must measure and record the production rate, on a ton of throughput processed basis, of the affected kiln for each of the three test runs.
6. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the HF/HCl performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting, on a per ton of throughput basis, for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs. The average of the three test runs establishes your minimum site-specific feed rate operating limit.
7. Tunnel or roller kiln equipped with a WS.	a. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the HF/HCl performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid pH operating limit.
	b. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the HF/HCl and PM performance tests.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating level. If different average wet scrubber liquid flow rate values are measured during the HF/HCl and PM tests, the highest of the average values become your site-specific operating limit.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
8. Tunnel or roller kiln equipped with an ACI system.	Establish the operating limit for the average carbon flow rate.	Data from the carbon flow rate measurement conducted during the Hg and dioxin/furan performance tests.	You must measure the carbon flow rate during each test run, determine and record the block average carbon flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded carbon flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific activated carbon flow rate operating limit.
9. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	a. Establish the operating limit for kiln operating temperature.	i. Data from the kiln operating temperature measurement device during the dioxin/furan performance test.	(1) You must continuously measure the kiln operating temperature during three 4-hour test runs and, from a 12-hour block of time consisting of 1-hour increments, calculate the following two values: (a) The standard deviation of the 12 1-hour temperature measurements (refer to Note 1). (b) 1 percent of the 12-hour block average (2) You must decide which of the two values would provide the greatest variability (*i.e.,* the highest value), and then add this value to the 12-hour block average measured during the compliance testing. The result is the maximum temperature at which your kiln may operate during normal operations.
10. Glaze spray operation equipped with a WS.	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the PM performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. The average of the three test runs establishes your minimum site-specific pressure drop operating limit.
	b. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the PM performance test.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating limit.
11. Spray dryer	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 4-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your minimum site-specific operating limit.
12. Floor tile press dryer	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 4-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your maximum site-specific operating limit.

Note 1: The standard deviation of the 12 1-hour temperature measurements is calculated as follows:

$$\sigma = \sqrt{\frac{1}{N} \times \sum_{i=1}^{N} \left(x_i - \mu\right)^2} \quad \text{(Eq. 13)}$$

Where:

σ = standard deviation

x_i = each 1-hour temperature measurement

μ = mean of all 12 1-hour measurements

N = 12 measurements

■ 11. Table 6 to subpart KKKKK is revised to read as follows:

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
1. Collection of all tunnel or roller kilns at the facility.	a. HF, HCl, and Cl_2 emissions must not exceed 62 kg/hr (140 lb/hr) HCl equivalent.	i. You measure HF and HCl emissions for each kiln using Method 26 or 26A of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see § 63.14); or Method 320 of appendix A of this part or its alternative, ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see § 63.14); and ii. You calculate the HCl-equivalent emissions for HF for each kiln using Equation 4 to this subpart; and iii. You sum the HCl-equivalent values for all kilns at the facility using Equation 5 to this subpart; and iv. The facility total HCl-equivalent does not exceed 62 kg/hr (140 lb/hr).
2. Existing floor tile roller kiln	a. PM emissions must not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product; and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product.
	b. Hg emissions must not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 2.8 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 2.8 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 2.8 ng/kg of fired product.
3. Existing wall tile roller kiln	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.22 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.22 ng/kg of fired product.
4. Existing first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired; and

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
		ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired.
	b. Hg emissions must not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired.
	c. Dioxin/furan emissions must not exceed 3.3 ng/kg of greenware fired.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 3.3 ng/kg of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 3.3 ng/kg of greenware fired.
5. Existing tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
	b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
6. Existing sanitaryware manual glaze application.	a. PM emissions must not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).
7. Existing sanitaryware spray machine glaze application.	a. PM emissions must not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).
8. Existing sanitaryware robot glaze application.	a. PM emissions must not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
9. Existing floor tile spray dryer	a. Dioxin/furan emissions must not exceed 19 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 19 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 19 ng/kg of throughput processed.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
10. Existing wall tile spray dryer	a. Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.058 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.058 ng/kg of throughput processed.
11. Existing floor tile press dryer	a. Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.024 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.024 ng/kg of throughput processed.
12. New or reconstructed floor tile roller kiln.	a. PM emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.
	b. Hg emissions must not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 1.3 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 1.3 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 1.3 ng/kg of fired product.
13. New or reconstructed wall tile roller kiln.	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.22 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.22 ng/kg of fired product.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
14. New or reconstructed first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired.
	b. Hg emissions must not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired.
	c. Dioxin/furan emissions must not exceed 0.99 ng/kg of greenware fired.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.99 ng/kg of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.99 ng/kg of greenware fired.
15. New or reconstructed tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis).
	b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
16. New or reconstructed sanitaryware manual glaze application.	a. PM emissions must not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
17. New or reconstructed sanitaryware spray machine glaze application.	a. PM emissions must not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).
18. New or reconstructed sanitaryware robot glaze application.	a. PM emissions must not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
19. New or reconstructed floor tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.071 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.071 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.071 ng/kg of throughput processed.
20. New or reconstructed wall tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.058 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.058 ng/kg of throughput processed.
21. New or reconstructed floor tile press dryer.	a. Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.024 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.024 ng/kg of throughput processed.
22. Existing, new, or reconstructed sanitaryware shuttle kiln.	a. Minimize HAP emissions	i. Use natural gas, or equivalent, as the kiln fuel; and ii. Develop a designed firing time and temperature cycle for the sanitaryware shuttle kiln. You must either program the time and temperature cycle into your kiln or track each step on a log sheet; and iii. Label each sanitaryware shuttle kiln with the maximum load (in tons) of greenware that can be fired in the kiln during a single firing cycle; and iv. Develop maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles.

■ 12. Table 7 to subpart KKKKK is revised to read as follows:

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. If you use a bag leak detection system, as prescribed in § 63.8450(e), initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; and	(1) Performing VE observations of the DIFF or DLS/FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the DIFF or DLS/FF stack; or (2) Maintaining your kiln operating temperature within the range of acceptable temperatures (*i.e.,* temperature profile for each kiln and product; for any incidence where the kiln is operating outside of its acceptable temperature range (*i.e.,* exceeds its temperature profile) for the product being fired, performing VE observations of the DIFF or DLS/FF stack as specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and observing no VE from the DIFF or DLS/FF stack.

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
		ii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the HF/HCl performance test in which compliance was demonstrated.	
2. Tunnel or roller kiln equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber liquid pH data according to § 63.8600(a); reducing the scrubber liquid pH data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test in which compliance was demonstrated; and	
		ii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests in which compliance was demonstrated.	
3. Tunnel or roller kiln equipped with an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with ACI system.	Collecting the carbon flow rate data according to § 63.8600(a); reducing the carbon flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average carbon flow rate for each 3-hour block period at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests in which compliance was demonstrated.	
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 4 of Table 2 to this subpart for kilns intending to comply with dioxin/furan emission limit without an ACI system.	Collecting the operating temperature data according to § 63.8600(a); and maintaining the operating temperature at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to a 12-hour block average; and maintaining the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.
5. Tunnel or roller kiln with no add-on control.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 5 of Table 2 to this subpart for tunnel or roller kilns with no add-on control.	i. Performing VE observations of the stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the stack; and	(1) Maintaining your kiln operating temperature within the range of acceptable temperatures (*i.e.,* temperature profile established for each kiln and product for any incidence where the kiln is operating outside of its acceptable temperature range (*i.e.,* exceeds its temperature profile) for the product being fired, performing VE observations of the DIFF or DLS/FF stack as specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and observing no VE from the DIFF or DLS/FF stack.

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
		ii. If your last calculated total facility maximum potential HCl-equivalent was not at or below the health-based standard in Table 1 to this subpart, collecting the kiln process rate data according to § 63.8600(a); reducing the kiln process rate data to 3-hour block averages according to § 63.8600(a); maintaining the average kiln process rate for each 3-hour block period at or below the kiln process rate determined according to § 63.8595(g)(1); and	
		iii. Collecting the operating temperature data according to § 63.8600(a); and maintaining the operating temperature at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	(1) Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to a 12-hour block average; and maintaining the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.
6. Glaze spray operation equipped with a FF.	Each emission limit in Table 1 to this subpart and each operating limit in Item 6 of Table 2 to this subpart for glaze spray operations equipped with a FF.	If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action.	Performing VE observations of the FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the FF stack.
7. Glaze spray operation equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 7 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to § 63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test in which compliance was demonstrated; and	
		ii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test in which compliance was demonstrated.	
8. Glaze spray operation equipped with a water curtain.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 8 of Table 2 to this subpart for kilns equipped with a water curtain.	i. Conducting daily inspections to verify the presence of water flow to the wet control system; and	

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
		ii. Conducting annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment; and iii. Recording as deviations any observations of particulates or other impurities getting into the glaze that has been sprayed onto a piece of ware and completing corrective actions in accordance with your OM&M plan.	
9. Glaze spray operation equipped with baffles.	Each emission limit in Table 1 to this subpart and each operating limit in Item 9 of Table 2 to this subpart for kilns equipped with baffles.	Conducting an annual visual inspection of the baffles to confirm the baffles are in place.	
10. Spray dryer	Each emission limit in Table 1 to this subpart and each operating limit in Item 10 of Table 2 to this subpart for spray dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 4-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 4-hour block period at or above the average operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
11. Floor tile press dryer.	Each emission limit in Table 1 to this subpart and each operating limit in Item 11 of Table 2 to this subpart for floor tile press dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 4-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 4-hour block period at or below the average operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
12. Sanitaryware shuttle kiln.	a. Minimize HAP emissions.	i. Maintaining records documenting your use of natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.8665; and. iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.8635(g); and iv. Using a designed firing time and temperature cycle for each sanitaryware shuttle kiln; and v. For each firing load, documenting the total tonnage of greenware placed in the kiln to ensure that it is not greater than the maximum load identified in Item 1.a.iii of Table 3 to this subpart; and vi. Following maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles; and	

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
		vii. Developing and maintaining records for each sanitaryware shuttle kiln, as specified in § 63.8640.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0047; FRL–10000–79]

Isotianil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of isotianil in or on banana. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 1, 2019. Objections and requests for hearings must be received on or before December 31, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0047, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0047 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 31, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0047, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 11, 2018 (83 FR 15528) (FRL–9975–57), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8656) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide isotianil in or on banana at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by

Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has recommended the tolerance be set at 0.02 ppm in or on banana. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Subchronic and chronic studies indicate that the liver is the primary target organ for isotianil in all species except for rats, in which the primary target organ for isotianil was the forestomach. Liver effects include organ weight increases, histopathology alterations, and associated enzyme and cholesterol increases. Hyperplasia was observed in the forestomach of rats in longer duration studies. Kidney effects, seen in dogs and rats, included chronic nephropathy and organ weight increases with longer exposure durations. Altered hematological profiles and spleen weight changes were also seen near the limit dose in longer duration studies of dogs and rats. Skin effects/hair loss were seen at high doses, but either occurred above the lowest-observed-adverse-effect-level (LOAEL) or were considered not adverse. Lung bronchiolization of the alveolar wall was observed in the longer duration dietary rat studies.

No evidence of neurotoxicity was observed in the isotianil guideline studies. The database does not include any guideline neurotoxicity studies but limited functional observational battery and motor activity-related measurements were incorporated in the design of the available subchronic and chronic rat and dog guideline studies. No signs of neurotoxicity were noted at any dose in the database.

Evidence of quantitative susceptibility was observed in the developmental rabbit and two-generation rat reproductive toxicity studies. The 2-generation reproductive toxicity study in rats showed no parental or reproductive effects up to the highest dose tested; however, both generations of offspring exhibited decreased body weight in both sexes. Decreased fetal weights were observed in the absence of maternal toxicity in the developmental rabbit study. The immunotoxicity study was waived based on the available hazard and exposure data.

There was a slight increase in liver tumors in male mice at the highest dose tested, but the rat carcinogenicity study did not show an increased incidence of tumors in either sex. Studies showed no evidence of mutagenicity or genotoxicity. Therefore, isotianil is classified as ''not likely to be carcinogenic to humans.''

Additional studies were available for the select metabolites of isotianil, DCIT-acid and anthranilonitrile. In a subchronic rat oral toxicity study, DCIT-acid showed no evidence of toxic effects up to 349 mg/kg and DCIT-acid was not mutagenic with or without metabolic activation. A developmental study with DCIT-acid noted toxicity in both the maternal (mortality, clinical signs) and fetal (decreased fetal weight) groups at 250 mg/kg, with a no-observed-adverse-effect-level (NOAEL) of 50 mg/kg. Anthranilonitrile was not mutagenic with or without metabolic activation.

Specific information on the studies received and the nature of the adverse effects caused by isotianil as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document ''Isotianil. Human Health Risk Assessment of the Proposed Tolerance for Residues on Imported Bananas without a U.S. Registration'' on pages 21–25 in docket ID number EPA–HQ–OPP–2018–0047.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoint for isotianil used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINT FOR ISOTIANIL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	PAD for risk assessment	Study and toxicological effects
Acute dietary (General population, including females 13 to 49 years of age).	An appropriate endpoint was not identified for acute exposure.		
Chronic dietary (All populations)	NOAEL = 27 mg/kg/day UF_A = 10× UF_H = 10× FQPA SF = 1×	cPAD = 0.27 mg/kg/day	Chronic Dog LOAEL = 107/110 (M/F) mg/kg/day based on clinical chemistry, hematology, liver weight and histopathology, spleen weight and appearance, increased hematopoiesis, and kidney weight and histopathology.
Cancer (Oral, dermal, inhalation)	Classification: "Not Likely to be Carcinogenic to Humans."		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (c = chronic). UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isotianil, EPA considered exposure under the petitioned-for tolerance. EPA assessed the dietary exposure to isotianil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for isotianil; therefore, a quantitative acute dietary exposure assessment was unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, ''What We Eat in America'' (NHANES/WWEIA) from 2003 through 2008. As to residue levels in food, EPA used the tolerance value for parent isotianil (0.02 ppm) plus the maximum observed residue value of the DCIT-acid metabolite from the magnitude of the residue study. The maximum DCIT-acid residue observed in the magnitude of the residue study was <0.010 ppm, so the total isotianil residue estimate used in the chronic assessment was 0.030 ppm. It is EPA's typical practice to include plantains in dietary assessments that include bananas, so EPA used the banana residue data to estimate a value for residues of isotianil in/on plantains. The chronic assessment made use of EPA's 2018 default processing factor for dried bananas and dried plantains (processing factor of 4.8x). HED assumed 100% crop treated (PCT) for all commodities in the chronic assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that isotianil does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk was unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for isotianil. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* Isotianil is not registered for use in the U.S. Therefore, residues are not expected in groundwater or surface water sources of drinking water, and no exposure to isotianil through drinking water is anticipated.

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

Isotianil is not currently registered for any uses that could result in residential exposures.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Quantitative susceptibility was observed in the 2-generation rat reproductive toxicity study in rats and in the developmental rabbit study. In the rat reproduction study, decreased pup body weights were observed in the absence of parental toxicity. The developmental rabbit study noted decreased fetal weights in the absence of maternal effects at the highest dose tested (1,000 mg/kg/day). Although susceptibility was observed, clear NOAELs were observed and the doses selected for risk assessment are protective of the observed susceptibility; therefore, there are no residual uncertainties with respect to pre- or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of

infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for isotianil is complete.

ii. There is no indication that isotianil is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There was evidence of quantitative susceptibility in the database, observed in the rabbit developmental toxicity study and the rat reproductive toxicity study; however, the degree of concern is low because clear NOAELs were identified, and the endpoint selected for risk assessment is protective of the observed susceptibility.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. These assessments will not underestimate the exposure and risks posed by isotianil.

E. Aggregate Risks and Determination of Safety

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

There are no residential uses for isotianil, and therefore aggregate exposure and risk estimates are equivalent to dietary exposure and risk estimates, which are not of concern.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, isotianil is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isotianil from food is not of concern for the general U.S. population and all population subgroups. The population subgroup that received the greatest exposure estimate was the children 1 to 2 years old subgroup, which utilized <1% of the cPAD. There are no residential uses for isotianil, so aggregate risk is equivalent to dietary risk, and is not of concern.

3. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, isotianil is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Method 01390, a high-performance liquid chromatography with tandem mass spectrometry (HPLC–MS/MS method) is adequate to measure residues of isotianil in/on plant matrices. Method 01390 has a limit of quantification (LOQ) of 0.01 ppm for isotianil.

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for isotianil.

C. Revisions to Petitioned-For Tolerances

The petitioner's requested tolerance of 0.01 ppm for residues of isotianil in/on banana is based on magnitude of the residue data collected for bagged bananas. EPA standard practice is to use unbagged banana residue data for tolerance establishment. Based on magnitude of the residue data collected for unbagged bananas and the Organization for Economic Development and Cooperation (OECD) tolerance calculation procedure, EPA is establishing a tolerance of 0.02 ppm for residues of isotianil in or on banana.

V. Conclusion

Therefore, tolerances are established for residues of isotianil in or on banana at 0.02 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 10, 2019.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.708 to subpart C to read as follows:

§ 180.708 Isotianil; tolerances for residues.

(a) *General.* Tolerances are established for residues of isotianil, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance level specified in the table in this paragraph (a) is to be determined by measuring only isotianil (3,4-dichloro-N-(2-cyanophenyl)-5-isothiazolecarboxamide) in or on the commodity.

Commodity	Parts per million
Banana [1]	0.02

[1] There are no U.S. registrations for bananas as of November 1, 2019.

(b) [Reserved]

[FR Doc. 2019–23385 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL SERVICES AGENCY

40 CFR Part 282

[EPA–R01–UST–2019–0421; FRL–10001-60–Region 1]

New Hampshire: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Services Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Services Agency (EPA) is taking direct final action to approve revisions to the State of New Hampshire's Underground Storage Tank (UST) program submitted by the New Hampshire Department of Environmental Services (NH DES). This action also codifies EPA's approval of New Hampshire's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective December 31, 2019, unless EPA receives adverse comment by December 2, 2019. If EPA receives adverse comments, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of December 31, 2019, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: hanamoto.susan@epa.gov.*
3. *Mail:* Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912.
4. *Hand Delivery or Courier:* Deliver your comments to Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R01–UST–2019–0421. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or email. The Federal website, *http://www.regulations.gov,* is an ''anonymous access'' system, 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 *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information might not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, might be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy.

IBR and supporting material: You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment only; tel: (617) 918–1990. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT:
Susan Hanamoto, (617) 918–1219, *hanamoto.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to New Hampshire's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States that have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved state may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

B. What decisions has the EPA made in this rule?

On June 24, 2019, in accordance with 40 CFR 281.51(a), New Hampshire submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). New Hampshire's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant state statutes and regulations. We have reviewed the State Application and determined that the revisions to New Hampshire's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the New Hampshire program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants New Hampshire final approval to operate its UST program with the changes described in the program revision application, and as outlined below in section I.G of this document.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in New Hampshire, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrent with a proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA is providing an opportunity for public comment now.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final, the EPA is publishing a separate document in the ''Proposed Rules'' Section of this issue of the **Federal Register** that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has New Hampshire previously been approved?

On June 19, 1991, the EPA finalized a rule approving the UST program, effective July 19, 1991, to operate in lieu of the Federal program. On November 2, 1993, effective January 3, 1994, the EPA codified the approved New Hampshire program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

On June 24, 2019, in accordance with 40 CFR 281.51(a), New Hampshire submitted a complete application for final approval of its UST program revisions adopted on October 10, 2018. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that New Hampshire's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants New Hampshire final approval for the following program changes:

Required Federal element	Implementing State authority
40 CFR 281.30, New UST Systems and Notification	Env-Or 401.03(k), 404.01–404.03, 404.10, 405.01–405.06, 405.07(d), 405.08, 405.09, 407, 408.05(d).
40 CFR 281.31, Upgrading Existing UST Systems	Not applicable.
40 CFR 281.32, General Operating Requirements	RSA 146–C:19, II(c); Env-Or 404.09(a) and (b); 405.01(h) and (i), 405.10, 405.11; 406.03, 406.08(g)(1) and (2), 406.09–406.19; 408.01(c).
40 CFR 281.33, Release Detection	Env-Or 405.08, 405.09; 406.02, 406.13.
40 CFR 281.34, Release Reporting, Investigation, and Confirmation.	Env-Or 406.04; 604.06; 605.03 and 605.10; 606.01.

Required Federal element	Implementing State authority
40 CFR 281.35, Release Response and Corrective Action.	Env-Or 605.03, 605.04, 605.07, 605.08; 606.01, 606.08, 606.10; 607.02(b).
40 CFR 281.36, Out-of-service Systems and Closure	Env-Or 408.04, 408.05(e), 408.06–408.10.
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum.	Env-Or 404.04(h); 404.12(a), (c), (d), and (j).
40 CFR 281.40, Legal Authorities for Compliance Monitoring.	RSA 146–C:5.
40 CFR 281.41, Legal Authorities for Enforcement Response.	RSA 146–C:9–a, RSA 146–C:10, RSA 21–O:9, RSA 541.

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The NH DES has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: New Hampshire Revised Statutes Annotated, Title I, The State and its Government, Chapter 21–O Department of Environmental Services; New Hampshire Revised Statutes Annotated, Title X, Public Health, Chapter 146–C Underground Storage Facilities; New Hampshire Revised Statutes Annotated Title L, Water Management and Protection, Chapter 485–C Groundwater Protection Act; New Hampshire Revised Statutes Annotated Title LV, Proceedings in Special Cases, Chapter 541 Rehearings and Appeals in Certain Cases.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law:

For any UST system installed prior to April 22, 1997 or that otherwise does not have existing spill containment at Stage I system connections, the owner shall install spill containment meeting the requirements of Env-Or 405.05(f) at Stage I system connections no later than October 13, 2021.

Each dispensing area shall have a concrete pad with positive limiting barrier that contains a volume of at last five gallons and extends beyond the reach of all dispensing nozzles.

Tank pads installed after October 10, 2018 shall be constructed of reinforce Portland cement concrete and have liquid-tight sealed joints at all expansion, contraction, cold, and crack control joints within three feet of spill containment. The tank pads shall be sealed and maintained with a fuel-product compatible joint sealant installed per manufacturer's instruction.

Any day tank that is connected by piping to an underground storage tank that is subject to the rules shall be marked with the type of product stored, the registered tank number corresponding to the UST that automatically supplies product to the day tank, and the appropriate emergency response system symbol(s) that meet(s) the requirements of section 21.7.2.1 of NFPA 30 to identify the hazards posed by the product stored.

All Stage I system connection spill containment equipment shall be tested for tightness no later than October 13, 2021 and triennially thereafter.

Prior to commencing construction or installation of a new facility or making one or more substantial modifications at an existing facility, including any changes to a cathodic protection system, an owner shall submit plans and specifications stamped by an engineer licensed to practice in New Hampshire. Within 90 days of receipt of a complete plan and specification submittal, the department shall send the owner written notice of construction approval or disapproval. Failure to send a notice within 90 days shall be deemed to be approval of the plans. A UST or UST system component shall be installed only by a certified tank installer.

UST systems shall not be installed within the sanitary protective area of a public water system well and in any area where flooding over the top of the tank is reasonably likely or the ground surface is below the 100-year flood elevation, unless the plans include specific requirements designed to ensure that the tank will not float and its contents will not escape during a flood.

New UST systems installed on or after February 2, 2005 shall be installed no closer to public and non-public water supply wells than the minimum distances specified in Table 407–1.

With the exception of marinas and fueling systems over water, no UST system at any new site shall be located closer than 75 feet from surface waters of the state.

Storm water runoff from UST facilities shall not be directly discharged to surface water or below the ground surface unless a permit is obtained under applicable state or federal law. Storm water shall not be directed to flow over any tank or dispensing pad.

The owner of any UST system that has been red-tagged in accordance with RSA 146–C:15 shall bring the system into compliance with all applicable requirements or permanently close the system within one year of the date the red tag was placed.

An owner who wishes to obtain a waiver form any rule in Env-Or 400 shall request a waiver as specified in Env-Or 409.02.

A responsible party shall apply for and obtain a groundwater management permit for any site where the discharge of a regulated contaminant at that site has caused and continues to cause the groundwater quality criteria of Env-Or 603.01 to be violated.

More Stringent Provisions

The following statutory and regulatory provisions are considered more stringent than the Federal program and are therefore enforceable as a matter of Federal law:

Airport hydrant fuel distribution systems and UST systems with field-constructed tanks shall meet release detection requirements for tanks and piping systems. Piping associated with airport hydrant distribution systems and field constructed UST systems shall have secondary containment.

For any UST system installed on or after September 1, 2013, all spill containment equipment shall be installed within a liquid-tight sump or be of double walled construction.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable state provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of New Hampshire's UST program?

EPA incorporated by reference the New Hampshire DES approved UST program effective January 3, 1994 (58 FR 58624; November 2, 1993). In this document, EPA is revising 40 CFR 282.79 to include the approved revisions.

C. What codification decisions have we made in this rule?

Incorporation by reference: In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the New Hampshire statutes and regulations described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 1 office (see the **ADDRESSES** Section of this preamble for more information).

The purpose of this **Federal Register** document is to codify New Hampshire's approved UST program. The codification reflects the State program that would be in effect at the time EPA's approved revisions to the New Hampshire UST program addressed in this direct final rule become final. The document incorporates by reference New Hampshire's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved New Hampshire program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the New Hampshire program.

EPA is incorporating by reference the New Hampshire approved UST program in 40 CFR 282.79. Section 282.79(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.79 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of New Hampshire's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved states. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved New Hampshire procedural and enforcement authorities. Section 282.79(d)(1)(ii) of 40 CFR lists those approved New Hampshire authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.79(d)(1)(iii) lists for reference and clarity the New Hampshire statutory and regulatory provisions which are broader in scope than the Federal program and which are not, therefore, part of the approved program being codified in this document. Provisions that are broader in scope cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to New Hampshire's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of New Hampshire's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action 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.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Services of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). However, this action will be effective December 31, 2019 because it is a direct final rule.

Authority: This rule is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental Services, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water supply.

Dated: October 7, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.79 to read as follows:

§ 282.79 New Hampshire State-Administered Program.

(a) The State of New Hampshire is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the New Hampshire Department Environmental Services (NH DES), was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the New Hampshire program on June 19, 1991, which was effective on July 19, 1991.

(b) New Hampshire has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, New Hampshire must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If New Hampshire obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notification of any change will be published in the **Federal Register**.

(d) New Hampshire has final approval for the following elements of its program application originally submitted to EPA and approved effective July 19, 1991, and the program revision application approved by EPA, effective on December 31, 2019.

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The material cited in this paragraph (d)(1)(i), and listed in appendix A to this part, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the New Hampshire regulations and statutes that are incorporated by reference in this paragraph (d)(1)(i) from Oil Compliance Section Supervisor, New Hampshire DES, PO Box 29, Concord, NH 03302–0029; Phone number: 603–271–6058; Hours: Monday–Friday, 8:00 a.m. to 4:00 p.m.; link to statutes and regulations: NH RSA 21–O: *http://www.gencourt.state.nh.us/rsa/html/l/21-O-mrg.htm*; NH RSA 91–A: *http://www.gencourt.state.nh.us/rsa/html/vi/91-a/91-a-mrg.htm*; NH RSA 146–C: *http://www.gencourt.state.nh.us/rsa/html/X/146-C/146-C-mrg.htm*; NH RSA 485–C: *http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-L-485-C.htm*; NHDES Env-Or 400: *https://www.des.nh.gov/organization/commissioner/legal/rules/documents/env-or400.pdf*; NHDES Env-Or 600: *https://www.des.nh.gov/organization/commissioner/legal/rules/documents/env-or600.pdf*.

(A) ''New Hampshire Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, October 2018.''

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(*1*) *New Hampshire Revised Statutes Annotated, Title I, The State and its Government, Chapter 21–O, Department of Environmental Services,* Section 21–O:9. Waste Management Council; Section 21–O:14 Administrative Appeals.

(*2*) *New Hampshire Revised Statutes Annotated, Title X, Public Health, Chapter 146–C Underground Storage Facilities,* Section C:5 Records Required, Inspections; Section C:9–a Orders, Injunctions; Section C:10 Penalty; Section C:10–a Administrative Fines; Section C:11 Liability for Cleanup Costs, Municipal Regulations; Section C:13 Penalty, Persons Strictly Liable; Section C:14 Delivery Prohibition; Section C:15 Non-Compliant Storage Tanks or Facilities, Red-Tagging Procedure; Section C:16 Appeals.

(*3*) *New Hampshire Revised Statutes Annotated, Title L, Water Management and Protection, Chapter 485–C Groundwater Protection Act,* Section C:15 Investigation and Inspections; Section C:16 Cease and Desist Orders; Section C:17 Appeals; Section C:18 Administrative Fines; Section C:19 Penalties and Other Relief.

(*4*) *New Hampshire Revised Statutes Annotated, Title LV, Proceedings in Special Cases,* Chapter 541 Rehearings and Appeals in Certain Cases.

(B) The regulatory provisions include:

(*1*) *New Hampshire Code of Administrative Rules,* Chapter Env-Or 400 Underground Storage Tank Facilities: 404.05(b)(3) Signature Required; 404.11 Suspension or Revocation of Permit to Operate.

(*2*) [Reserved]

(iii) *Provisions not incorporated by reference.* The following specifically identified statutory and regulatory provisions applicable to the New Hampshire's UST program are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) *New Hampshire Code of Administrative Rules,* Chapter Env-Or 400 Underground Storage Tank Facilities: 405.05(f) and (g) Spill Containment; 405.07(a)(2) Dispensing Areas; 405.12(a) Day Tank Markings Required; 406.12(c) Spill Containment Integrity Testing; 407.01(a) Application for Approval of UST Systems; 407.06(b–e), (g) and (h) UST System Design Requirements; 408.05(f) Permanent Closure Required; Part Env-Or 409 Waivers.

(B) [Reserved]

(2) *Statement of legal authority.* The Attorney General's Statements, signed by the Attorney General of New Hampshire on November 1, 1990, and June 3, 2019, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the original application on January 8, 1991, and as part of the program revision application for approval on June 24, 2019 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on January 8, 1991, and as part of the program revision application on June 24, 2019, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 1 and the New Hampshire Department of Environmental Services, signed by the EPA Regional Administrator on February 12, 2019 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to part 282 is amended by revising the entry for New Hampshire to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

New Hampshire

(a) The statutory provisions include:

1. New Hampshire Revised Statutes Annotated, Title I, The State and its Government, Chapter 21–O Department of Environmental Services

Section O:1. Establishment, General Functions; Section O:8 Division of Waste Management.

2. New Hampshire Revised Statutes Annotated, Title VI, Public Officers and Employees, Chapter 91–A Access to Government Records and Meetings

Section 91–A:1 Preamble, Section 91–A:1–a Definitions, Section 91–A:4 Minutes and Records Available for Public Inspection.

3. New Hampshire Revised Statutes Annotated, Title X Public Health, Chapter 146–C Underground Storage Facilities

Section 146–C:1 Definitions; Section 146–C:2 Discharges Prohibited; Section 146–C:3 Registration of Underground Storage Facilities; Section 146–C:4 Underground Storage Facility Permit Required; Section 146–C:6 Transfer of Ownership; Section 146–C:6–a Exemption; Section 146–C:7 New Facilities; Section 146–C:8 Prohibition Against Reusing Tanks; Section 146–C:17 Operator Training Required; Section 146–C:18 Operator Training Program Requirements; Section 146–C:19 Additional Operator Requirements; Section 146–C:20 Revocation of Operator Training Program Approval; Section 146–C:21 Repeating Operator Training.

4. New Hampshire Revised Statutes Annotated, Title L Water Management and Protection, Chapter 485–C Groundwater Protection Act

Section 485–C:1 Statement of Purpose, Section 485–C:2 Definitions, Section 485–C:3 Duties of the Department, Section 485–C:5 Classes of Groundwater, Section 485–C:6 Ambient Groundwater Quality Standards, Section 485–C:6–a Groundwater Management Zones, Section 485–C:6–b Recordation of Groundwater Management Zone Permits, Section 485–C:7 Potential Contamination Sources, Section 485–C:8 Inventory and Management, Section 485–C:9 Procedures for Classification and Reclassification, Section 485–C:10 Degraded Groundwater, Section 485–C:11 Best Management Practices, Section 485–C:12 Prohibited Uses, Section 485–C:13 Groundwater Release Detection Permit, Section 485–C:14 Notice to Municipality, Section 485–C:14–b Notification of Groundwater Contamination Required.

(b) The regulatory provisions include:

1. New Hampshire Code of Administrative Rules, Chapter Env-Or 400 Underground Storage Tank Facilities: (Effective October 10, 2018)

Part Env-Or 401 Purpose, Applicability, Federal Regulations; Section 401.01 Purpose; Section 401.02 Applicability; Section 401.03 Exclusions, except 401.03(b); Section 401.04 Date of Incorporated Federal Regulations;

Part Env-Or 402 Definitions;

Part Env-Or 403 Reference Standards; Section 403.01 Availability and Applicability of Reference Standards; Section 403.02 American Petroleum Institute, Section 403.03 ASME International, Section 403.04 Fiberglass Tank and Pipe Institute, Section 403.05 NACE International, Section 403.06 National Fire Protection Association, Section 403.07 Petroleum Equipment Institute.

Part Env-Or 404 Registration; Permit to Operate; Required Notifications and Records; Financial Responsibility; Section 404.01 Registration; Section 404.02 Change from Use Not Previously Covered to Covered Use; Section 404.03 Change in Product; Section 404.04 Additional Information Required for Registration; Section 404.05 Signature Required, except 404.05(b)(3); Section 404.06 Permit to Operate Required; Section 404.07 Obtaining a Permit to Operate; Section 404.08 Display, Applicability, and Validity of Permit to Operate; Section 404.09 Records to be Maintained; Section 404.10 Transfer of Facility Ownership; Section 404.12 Financial Responsibility, except 404.12(d)(4) and (m); Section 404.13 Owner Liability.

Part Env-Or 405 Equipment Standards; Section 405.01 Tank Standards for UST Systems; Section 405.02 Piping Standards for UST Systems; Section 405.03 Secondary Containment for Tanks; Section 405.04 Secondary Containment and Sumps for Piping Systems; Section 405.05 Spill Containment, except 405.05(f) and (g);, and 405.12(a); Section 405.06 Overfill Protection; Section 405.07 Dispensing Areas, except for 405.07(a–c), (g), and (h); Section 405.08 Leak Monitoring Systems for Tanks; Section 405.09 Leak Monitoring Systems for Piping Systems; Section 405.10 Cathodic Protection Systems; Section 405.11 Changes to Cathodic Protection Systems.

Part Env-Or 406 Operation, Maintenance, and Testing; Section 406.01 On-Going Maintenance Required; Section 406.02 Operation and Maintenance of Leak Monitoring Systems; Section 406.03 Delivery or Transfer of Regulated Substances; Section 406.04 Unusual Operating Conditions; Section 406.05 Requirements for Tightness Testers and Test Methods; Section 406.06 Leak Rate Detection Criteria; Section 406.07 Requirements for Test Reports; Section 406.08 Test Failures; Section 406.09 Automatic Line Leak Detector Testing; Section 406.10 Cathodic Protection System Testing; Section 406.11 Overfill Prevention Device Testing; Section 406.12 Spill Containment Integrity Testing, except 406.12(c); Section 406.13 Leak Monitoring Equipment Testing; Section 406.14 Containment Sump Integrity Testing; Section 406.15 Hydrostatic Testing Test for Sumps and Spill Containment; Section 406.16 Pneumatic Tightness Test for Piping; Section 406.17 Primary Containment System Testing; Section 406.18 Monthly, Bi-Monthly, and Annual Visual Inspections; Section 406.19 Reports of Visual Inspections.

Part Env-Or 407 Installation Requirements, Section 407.06(a) UST System Design Requirements.

Part Env-Or 408 Repair, Closure, Removal; Section 408.01 Repair of Tanks: Pre-Repair Considerations and Requirements; Section 408.02 Repair of Tanks: Post-Repair Requirements; Section 408.03 Repair and Replacement of Underground Piping, Containment Sumps, and Spill Containment; Section 408.04 Temporary Closure; Section 408.05 Permanent Closure Required, except 408.05(f); Section 408.06 Permanent Closure: Notification and Supervision Required; Section 408.07 Procedures for Permanent Closure; Section 408.08 Permanent Closure: Site Assessment; Section 408.09 Permanent Closure: Inspection Required; Section 408.10 Permanent

Closure: Closure Report, Recordkeeping; Section 408.11 Limitations on Re-Use of Tanks. APPENDIX A: State Statutes and Federal Statutes/Regulation Implemented, APPENDIX B: Incorporation by Reference Information, APPENDIX C: Statutory Definitions, APPENDIX D: Excerpts from RSA 146–C, APPENDIX E: 40 CFR Provisions Referenced.

2. New Hampshire Code of Administrative Rules, Chapter Env-Or 600 Contaminated Site Management: (Effective June 1, 2015)

Part Env-Or 601 Purpose and Applicability, Section 601.01 Purpose, Section 601.02 Applicability.

Part Env-Or 602 Definitions.

Part-Env-Or 603 Groundwater Quality Criteria, Section 603.01 Groundwater Quality Criteria, Section 603.02 Exemptions to Groundwater Quality Criteria, Section 603.03 Ambient Groundwater Quality Standards (AGQS).

Part Env-Or 604 Notification, Section 604.01 Purpose, Section 604.02 Notification of Groundwater Quality Violation, Section 604.03 Exemptions to Notification of Groundwater Quality Violation, Section 604.05 NAPL Notification, Section 604.06 Discharges of Oil Requiring Immediate Notification, Section 604.07 Potential Discharges of Oil Requiring Notification Within 60 Days, Section 604.08 Oil Notification Requirements.

Part Env-Or 605 Preliminary Response Actions, Section 606.01 Purpose, Section 605.03 Emergency Response Actions for Oil Discharges, Section 605.04 Initial Response Actions, Section 605.05 Emergency and Initial Response Action Approval, Section 605.06 Emergency and Initial Response Action Reporting Requirements, Section 605.07 Initial Site Characterization Required, Section 605.08 Initial Site Characterization, Section 605.09 Initial Site Characterization Report, Section 605.10 Investigation Due to Discovery of Discharges from Unknown Sources.

Part Env-Or 606 Comprehensive Response Actions, Section 606.01 Site Investigation Required; Section 606.02 Site Investigation Request, Exemptions; Section 606.03 Site Investigation Report ; Section 606.04 Site Background Information; Section 606.05 Summary of Subsurface Explorations and Sampling; Section 606.06 Site Geology and Hydrology; Section 606.07 Conceptual Model; Section 606.08 Remedial Alternatives, Summary, and Recommendations; Section 606.09 Appendices; Section 606.10 Remedial Action Plan; Section 606.11 Remedial Action Plan Exemptions; Section 606.12 Remedial Action Plan Report; Section 606.13 Remedial Action Plan Approval; Section 606.14 Corrective Action Prior to Remedial Action Plan Approval; Section 606.15 Remedial Action Implementation; Section 606.16 Design Plans and Construction Specifications; Section 606.17 Remedial Action Implementation Report; Section 606.18 Periodic Status Report; Section 606.19 Soil Remediation Criteria; Section 606.20 Financial Assurance; Section 606.21 Financial Assurance Mechanisms.

Part Env-Or 609 Certificates of Completion or No Further Action, Section 609.01 Certificate of Completion, Section 609.02 Certificate of No Further Action.

Part Env-Or 610 Monitoring and Reporting, Section 610.01 Applicability, Section 610.02 Sampling and Analysis, Section 610.03 Reporting, Section 610.04 Groundwater Monitoring Wells.

Part Env-Or 611 Contaminated Soil, Section 611.01 Requirements for Managing Contaminated Soil, Section 611.02 Definitions, Section 611.03 Non-hazardous Oil-Contaminated Soil (NOCS) Certification, Section 611.04 Contaminated Soil Sampling, Section 611.05 Contaminated Soil Storage, Section 611.06 Contaminated Soil Disposal and Reuse.

Appendix A: State States and Federal Statutes/Regulations Implemented; Appendix B: Incorporation by Reference Information; Appendix C: Statutory Definitions.

* * * * *

[FR Doc. 2019–23709 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 84, No. 212

Friday, November 1, 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–2019–0861; Product Identifier 2019–NM–129–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 A320–214, –232, and –271N airplanes, and Model A321–231 airplanes. This proposed AD was prompted by a report of a production line inspection finding of damage on a main landing gear (MLG) side stay attachment outboard lug. This proposed AD would require an inspection for discrepancies of the MLG side stay attachment outboard lugs, left-hand and right-hand sides, and applicable corrective action, 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 *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 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 *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0861.

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–2019–0861; 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

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–2019–0861; Product Identifier 2019–NM–129–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, 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 EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0167, dated July 15, 2019 (''EASA AD 2019–0167'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–214, –232, and –271N airplanes, and Model A321–231 airplanes.

This proposed AD was prompted by a report of a production line inspection finding of damage on a MLG side stay attachment outboard lug. Investigation results determined that the detected damage had been caused by using incorrect tooling, and identified a batch of affected parts that may have received the same treatment. The FAA is proposing this AD to address damaged MLG side stay attachment outboard lugs, which could reduce the structural integrity of the attachment of the MLG to the wing. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0167 describes procedures for an inspection for discrepancies (cracks, wear, damage, and corrosion) of the MLG side stay attachment outboard lugs, left-hand and right-hand sides, and corrective action (repair). 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 FAA has been notified of the unsafe condition described in the MCAI 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 in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0167 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 2019–0167 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0167 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 2019–0167 that is required for compliance with EASA AD 2019–0167 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0861 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 1 airplane 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
121 work-hours × $85 per hour = $10,285	$0	$10,285	$10,285

The FAA has received no definitive data that would enable the FAA to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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–2019–0861; Product Identifier 2019–NM–129–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 A320–214, –232, –271N airplanes, and Model A321–231 airplanes certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0167, dated July 15, 2019 (''EASA AD 2019–0167'').

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report of a production line inspection finding of damage on a main landing gear (MLG) side stay attachment outboard lug. The FAA is issuing this AD to address damaged MLG side stay attachment outboard lugs, which could reduce the structural integrity of the attachment of the MLG to the wing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0167.

(h) Exception to EASA AD 2019–0167

The ''Remarks'' section of EASA AD 2019–0167 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0167 specifies to submit certain information to the manufacturer, and specifies that action as ''RC'' (required for compliance), 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 2019–0167 that contains RC procedures and tests: Except as required by paragraph (2) of EASA AD 2019–0167 and paragraphs (i) and (j)(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.

(k) Related Information

(1) For information about EASA AD 2019–0167, 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 *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0861.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

Issued in Des Moines, Washington, on October 24, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23867 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0719; Product Identifier 2019–NM–137–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 The Boeing Company Model 787–8 airplanes. This proposed AD was prompted by a report of failure of a wing strut leak test due to a missing bolt on the firewall. This proposed AD would require a one-time leak test of the strut upper spar areas for the left and right wing struts, and corrective action if necessary. 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 service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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–2019–0719; 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: Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3553; email: *takahisa.kobayashi@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–2019–0719; Product Identifier 2019–NM–137–AD'' at the beginning of your comments. The agency 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 *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 FAA received a report indicating failure of a wing strut leak test due to a missing bolt on the firewall. Failure during manufacture to install a bolt that plugs a strut firewall penetration would result in a hole in the firewall. This condition, if not addressed, could allow flammable fluid leakage in the strut area. This leakage could overwhelm the drainage provision, enter the engine compartment, and result in an uncontrollable engine fire and consequent structural failure of the wing.

FAA's Determination

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 a one-time leak test of the strut upper spar areas for the left and right wing struts, and corrective action if necessary.

Costs of Compliance

The FAA estimates that this proposed AD would affect 2 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
3 work-hours × $85 per hour = $255	$0	$255	$510

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any proposed actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	Minimal	$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):

The Boeing Company: Docket No. FAA–2019–0719; Product Identifier 2019–NM–137–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, line numbers 6, 11, 17, 19, 20, 21, 23, 25 through 30 inclusive, and 32 through 38 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Unsafe Condition

This AD was prompted by a report of failure of a wing strut leak test due to a missing bolt on the firewall. The FAA is issuing this AD to address a hole in the firewall, which could allow flammable fluid leakage in the strut area. This leakage could overwhelm the drainage provision, enter the engine compartment, and result in an uncontrollable engine fire and consequent structural failure of the wing.

(f) Compliance

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

(g) Leak Test and Corrective Action

Within 12 months after the effective date of this AD: Do a one-time leak (functional) test of the strut upper spar areas for the left and right wing struts, by doing the actions specified in paragraphs (g)(1) through (5) of this AD. A review of airplane maintenance records is acceptable in lieu of this test if it can be conclusively determined from that review that the leak test was previously accomplished and successfully completed.

(1) Put a plug in the strut forward drain outlet (this drain outlet is labeled as ''pylon strut''). Put an empty container below the strut forward drain outlet to collect water drained through this outlet.

(2) Apply 381 to 387 fluid ounces (11.3 to 11.4 liters) of water in 2.5 to 3.5 minutes, to the strut upper spar (strut areas between the forward and mid-vapor barriers).

(3) Make sure that no leakage occurred after doing the action specified in paragraph (g)(2) of this AD.

(4) Remove the plug from the strut forward drain outlet and make sure that the water is drained through the strut forward drain outlet only.

(5) After 3 minutes from accomplishing the action specified in paragraph (g)(4) of this AD, measure the water collected in the container, and do the applicable actions specified in paragraphs (g)(5)(i) through (iii) of this AD.

(i) If leaks were found, do corrective action before further flight using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(ii) If no leaks were found and less than 354 fluid ounces (10.5 liters) of water is collected in the container, do corrective action before further flight using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(ii) Before further flight after accomplishing any corrective action required by paragraph (g)(5)(i) or (ii) of this AD, repeat the actions specified in paragraphs (g)(1) through (5) of this AD until successful completion of the test (*i.e.,* no leaks are found and 354 fluid ounces (10.5 liters) of water or more is measured in the container).

Note 1 to paragraph (g): Additional guidance for performing the leak (functional) test can be found in Boeing Model 787 Aircraft Maintenance Manual (AMM), 54–65–01, Strut Spar—Upper—Functional Test.

(h) Alternative Methods of Compliance (AMOCs)

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

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

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

(i) Related Information

(1) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3553; email: *takahisa.kobayashi@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on October 24, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23788 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0827; Product Identifier 2019–SW–014–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2011–12–07 for Eurocopter France (now Airbus Helicopters) Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. AD 2011–12–07 currently requires repetitively inspecting the adhesive bead between the bushings and the Starflex star (Starflex) arms and the Starflex arm ends. Since the FAA issued AD 2011–12–07, Airbus Helicopters has developed an improved Starflex. This proposed AD would retain the requirements of AD 2011–12–07 and revise the Applicability paragraph by omitting helicopters with the improved Starflex installed. 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 31, 2019.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0827; 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 proposed AD, the European Aviation Safety Agency (EASA) AD, the economic 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 service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments that the FAA receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

The FAA issued AD 2011–12–07, Amendment 39–16714 (76 FR 35346, June 17, 2011) (''AD 2011–12–07'') for Eurocopter France (now Airbus Helicopters) Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. AD 2011–12–07 requires repetitively inspecting the adhesive bead between the bushings and the Starflex arms for a crack, a gap, and loss of the adhesive bead, inspecting the Starflex arm ends for delamination, and replacing the Starflex if any of these conditions are found. AD 2011–12–07 was prompted by three cases of deterioration of a Starflex arm end. In two of these cases, the deterioration caused high amplitude vibrations in flight, compelling the pilot to make a precautionary landing. The requirements of AD 2011–12–07 are intended to prevent failure of the Starflex, high-amplitude vibrations in flight, and subsequent loss of control of the helicopter.

Actions Since AD 2011–12–07 Was Issued

Since the FAA issued AD 2011–12–07, Airbus Helicopters has developed new part-numbered Starflex, 365A31–1212–00 and 365A31–1213–00, with different material. This change in material improves the reliability and technical performance of the Starflex, improves temperature-related behavior in the area of the Starflex arm ends, and increases dimension margins. Subsequently, Airbus Helicopters has extended the inspection interval of Starflex arm ends with these Starflex installed. Airbus Helicopters identifies helicopters with Starflex part number 365A31–1212–00 or 365A31–1213–00 installed as Modification (MOD) 0762C37.

Accordingly, EASA, which is the Technical Agent for the Member States of the European Union, issued AD No. 2008–0165R1, dated June 30, 2017 (EASA AD 2008–0165R1), to address this unsafe condition for Airbus Helicopters Model SA 365 N, SA 365 N1, AS 365 N2, AS 365 N3, SA 365 C, SA 365 C1, SA 365 C2, SA 365 C3 and SA 366 G1 helicopters, except helicopters with MOD 0762C37 installed in production. EASA advises that the Airbus Helicopters Starflex manufactured with improved materials make the 10-hour repetitive inspections specified in the original issue of EASA AD 2008–0165R1 unnecessary. EASA AD 2008–0165R1 retains the repetitive inspections from the original issue but does not apply to helicopters with the new Starflex.

Also since the FAA issued AD 2011–12–07, Eurocopter France changed its name to Airbus Helicopters. This proposed AD reflects that change and updates the contact information to obtain service documentation.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed one document that co-publishes four Airbus Helicopters Emergency Alert Service Bulletin (EASB) identification numbers: No. 05.00.51 for Model 365N-series helicopters, No. 05.35 for Model 366G1 helicopters, No. 05.28 for Model 365C-series helicopters, and No. 05.00.21 for non FAA-type certificated military helicopters, all Revision 4 and dated November 20, 2014. EASB Nos. 05.00.51, 05.35, and 05.28 are proposed for incorporation by reference in this proposed AD. EASB No. 05.00.21 is not proposed for incorporation by reference in this proposed AD.

This service information specifies visually inspecting the adhesive bead on the bushes of the Starflex arm ends for bonding failure of the bushes and distortion of the Starflex arm ends. This service information also specifies inspecting the leading edges and the trailing edges of the Starflex arm ends for delamination.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Master Servicing Manual (MSM) AS 365 N for Model SA–365N helicopters, MSM AS 365 N1 for Model SA–365N1 helicopters, MSM AS 365 N2 for Model AS–365N2 helicopters, and MSM AS 365 N3 for Model AS 365 N3 helicopters, all Revision 7 and dated October 9, 2017. This service information provides a schedule of maintenance tasks for the helicopters.

The FAA also reviewed one document that co-publishes four Eurocopter EASB identification numbers: No. 05.00.51 for Model 365N-series helicopters, No. 05.35 for Model 366G1 helicopters, No. 05.28 for Model 365C-series helicopters, and No. 05.00.21 for non FAA-type certificated military helicopters, all Revision 3 and dated August 18, 2008. This service information specifies the same Accomplishment Instructions as Revision 4, which is issued under the name Airbus Helicopters, although Revision 4 excludes helicopters that have MOD 0762C37 installed.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2011–12–07 to repetitively inspect the adhesive bead between the bushings and the Starflex arms for a crack, a gap, and loss of the adhesive bead, and repetitively inspect the Starflex arm ends for delamination. However, this proposed AD would not apply to helicopters with MOD 0762C37 installed.

Differences Between This Proposed AD and the EASA AD

The EASA AD uses the word ''check,'' whereas this proposed AD uses the word ''inspect'' instead. In some ADs, the FAA uses the word ''check'' to designate specific actions that may be performed by the owner/operator (pilot). An ''inspection'' is a maintenance action that must be performed by a certificated person as specified in 14 CFR 43.3.

Costs of Compliance

The FAA estimates that this proposed AD affects 35 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Inspecting the Starflex would take about 0.25 work-hour for an estimated cost of $21 per helicopter and $735 for the U.S. fleet per inspection cycle. Replacing the Starflex would take about 10 work-hours and parts would cost about $65,900 for an estimated cost of $66,750.

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.

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, 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.

The FAA prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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) 2011–12–07, Amendment 39–16714 (76 FR 35346, June 17, 2011), and adding the following new AD:

Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Docket No. FAA–2019–0827; Product Identifier 2019–SW–014–AD.

(a) Applicability

This AD applies to Airbus Helicopters (Type Certificate previously held by Eurocopter France) Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category, without Airbus Helicopters Modification 0762C37 (starflex arm part number (P/N) 365A31–1212–00 or P/N 365A31–1213–00) installed.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the Starflex star (Starflex) arm. This condition could result in high amplitude vibrations in flight and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD replaces AD 2011–12–07, Amendment 39–16714 (76 FR 35346, June 17, 2011).

(d) Comments Due Date

The FAA must receive comments by December 31, 2019.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

Within 10 hours time-in-service (TIS) and thereafter at intervals not to exceed 10 hours TIS:

(1) Visually inspect the adhesive bead between the bushing and the Starflex arm for a crack, a gap, and loss of the adhesive bead, and inspect the Starflex arm ends for delamination in accordance with the Accomplishment Instructions, paragraphs 2.B.1. and 2.B.2. of Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. 05.00.51, Revision 4, dated November 20, 2014 (EASB 05.00.51), EASB No. 05.35, Revision 4, dated November 20, 2014 (EASB 05.35), or EASB No. 05.28, Revision 4, dated November 20, 2014 (EASB 05.28), as applicable to your model helicopter.

(2) If there is a crack in the shockproof paint around the entire adhesive bead where the Starflex arm joins the bushing (as shown in Figure 2 of EASB 05.00.51, EASB 05.35, or EASB 05.28, as applicable to your model helicopter), a gap between the adhesive bead and the bushing (as shown in Figure 3 of EASB 05.00.51, EASB 05.35, or EASB 05.28, as applicable to your model helicopter), delamination of a Starflex arm end (as shown in Figure 4 of EASB 05.00.51, EASB 05.35, or EASB 05.28, as applicable to your model helicopter), or loss of adhesive bead (as shown in Figure 5 of EASB 05.00.51, EASB 05.35, or EASB 05.28, as applicable to your model helicopter), replace the Starflex before further flight.

(g) Credit for Previous Actions

Actions accomplished before the effective date of this AD in accordance with the procedures specified in Eurocopter Emergency Alert Service Bulletin Nos. 05.00.51, 05.35, or 05.28, all Revision 3 and dated August 18, 2008, as applicable to your model helicopter, are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD as long as the last inspection was accomplished within the prior 10 hours TIS.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or

certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

(1) Airbus Helicopters Master Servicing Manual (MSM) AS 365 N, MSM AS 365 N1, MSM AS 365 N2, and MSM AS 365 N3, all Revision 7 and dated October 9, 2017; and Eurocopter Emergency Alert Service Bulletin Nos. 05.00.51, 05.35, 05.28, and 05.00.21, all Revision 3 and dated August 18, 2008, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html*. You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2008–0165R1, dated June 30, 2017. You may view the EASA AD on the internet at *http://www.regulations.gov* in the AD Docket.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

Issued in Fort Worth, Texas, on October 21, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–23832 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0562; FRL–10001–51–Region 9]

Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Determination of Attainment by the Attainment Date; Imperial County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''Act'') requirements for the 2008 ozone national ambient air quality standards (NAAQS) in the Imperial County nonattainment area, as follows. The EPA proposes to approve the ''Imperial County 2017 State Implementation Plan for the 2008 8-Hour Ozone Standard'' (''Imperial Ozone Plan'' or ''Plan'') and the portions of the ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update'') that address the requirement for a reasonable further progress (RFP) demonstration for the Imperial County for the 2008 ozone standards. In addition, the EPA is proposing to determine, based on a separate demonstration submitted by the State of California, that the Imperial County nonattainment area would have attained the 2008 ozone NAAQS by the ''Moderate'' area attainment date of July 20, 2018, but for emissions emanating from outside of the United States, and therefore would no longer be subject to the CAA requirements pertaining to reclassification upon failure to attain. If we finalize these proposed actions, the Imperial County nonattainment area would remain classified as a Moderate nonattainment area for the 2008 ozone NAAQS.

DATES: Any comments must arrive by December 2, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0562, at *https://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3227, *mays.rory@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA. The EPA proposes to approve the portions of the Imperial Ozone Plan that address the requirements for emissions statements, a base year emissions inventory, a reasonably available control measures (RACM) demonstration, a demonstration of attainment of the standards by the applicable attainment date but for emissions emanating from outside of the United States, and motor vehicle emission budgets. The EPA proposes that the requirements for contingency measures for failing to meet RFP would be moot if we finalize our proposed determination that Imperial County has met its 2017 RFP targets. The EPA also proposes that contingency measures for failing to attain the standards would not be required if we finalize our proposed approval of the State's demonstrations of attainment by the attainment date but for international emissions. The EPA proposes to approve the portions of the 2018 SIP Update that address the requirement for a reasonable further progress (RFP) demonstration for the Imperial County for the 2008 ozone standards.

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I. Background

A. Ozone Standards, Area Designations, and SIPs

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and non-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[1]

Under CAA section 109, the EPA promulgates NAAQS (or ''standards'') for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.[2] In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period.[3] Although the EPA tightened the 8-hour ozone standards in 2015 (to 0.070 ppm), this action relates to the requirements for the 2008 ozone standards.[4]

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS. Under the CAA, after the EPA designates areas as nonattainment for a NAAQS, states with nonattainment areas are required to submit SIP revisions that provide for, among other things, attainment of the NAAQS within certain prescribed periods that vary depending on the severity of nonattainment. Areas classified as Moderate must attain the NAAQS within 6 years of the effective date of the nonattainment designation.[5]

The EPA designated Imperial County, California, as nonattainment for the 2008 ozone standards on May 21, 2012, and classified the area as ''Marginal.''[6] Within 6 months of the applicable attainment date, the EPA is required under CAA section 181(b)(2) to determine whether an area has attained the NAAQS based on the design value of the area as of the area's attainment date. Based on 2012–2014 ozone monitoring data, on May 4, 2016, the EPA determined that Imperial County had not attained the 2008 ozone NAAQS by the July 20, 2015 Marginal area attainment date and reclassified the area as Moderate with an attainment date of no later than July 20, 2018.[7]

In California, the California Air Resources Board (CARB) is the state agency responsible for the adoption and submission to the EPA of the California SIP and revisions to the SIP and has broad authority to establish emission standards and other requirements for mobile sources. Local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality plans. The Imperial County Air Pollution Control District (Imperial County APCD or ''District'') develops and adopts air quality management plans to address CAA planning requirements applicable to Imperial County. Such plans are then submitted to CARB for adoption and submitted to the EPA as revisions to the California SIP.

B. Imperial County Ozone Nonattainment Area

The Imperial County nonattainment area for the 2008 ozone standards includes the whole county as well as Indian country within the geographic boundary of Imperial County pertaining to the Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians.[8] The County encompasses over 4,000 square miles in southeastern California.[9] It is home to approximately 184,000 people, and its principal industries are farming and retail trade. It is bordered by Riverside County to the north, Arizona to the east, Mexico to the south, and San Diego County to the west. The Imperial Valley runs north-south through the central part of the County and includes the County's three most populated cities: Brawley, El Centro, and Calexico. Most of the County's population and industries exist within this relatively narrow land area that extends about one-fourth the width of the County. The rest of Imperial County is primarily desert, with little or no human population.

Ambient 8-hour ozone concentrations in Imperial County are above the level of the 2008 8-hour ozone NAAQS of 0.075 ppm. The maximum design value for the area, based on certified monitoring data at the Calexico monitor (Air Quality System (AQS) ID: 06–025–0005), was 0.077 ppm for the 2015–2017 period.[10]

II. Imperial Ozone Plan and 2018 SIP Update

A. Overarching Requirements

States must implement the 2008 ozone standards under Title 1, part D of the CAA, which includes the ozone specific requirements for attainment plans in sections 181–185 of subpart 2 (''Additional Provisions for Ozone Nonattainment Areas'') and, to the extent not amended by subpart 2, the general requirements for attainment plans in section 172 (''Nonattainment plan provisions in general''). To assist states in developing plans to address ozone nonattainment problems, in 2015, the EPA issued a SIP Requirements Rule for the 2008 ozone standards (''2008 Ozone SRR'') that addresses statutory obligations pertaining to implementation of the NAAQS, including requirements for emissions inventories and attainment and RFP demonstrations.[11] The 2008 Ozone SRR is codified at 40 CFR part 51 subpart AA.

Following a challenge to the EPA's 2008 Ozone SRR, on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit (''D.C. Circuit'') published its decision in *South Coast Air Quality Management District* v. *EPA* (''*South Coast II*'').[12] The primary aspect of the *South Coast II* decision that affects the 2017 Imperial Ozone Plan is the vacatur of a provision in the 2008 Ozone SRR that allowed states to demonstrate RFP using baseline years other than 2011. The 2017 Imperial Ozone Plan's RFP demonstration used 2008 as the baseline year; following *South Coast II,* CARB submitted the 2018 SIP Update, which includes an RFP demonstration for Imperial County that uses 2011 as the RFP baseline year.

Pursuant to CAA Title I, Part D, the District's nonattainment new source

[1] ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone,'' March 2008.

[2] The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. 62 FR 38856 (July 18, 1997).

[3] 73 FR 16436 (March 27, 2008).

[4] Information on the 2015 ozone standards is available at 80 FR 65292 (October 26, 2015).

[5] CAA section 181(a)(1), 40 CFR 51.1102 and 40 CFR 51.1103(a).

[6] 77 FR 30088 (May 21, 2012).

[7] 81 FR 26697 (May 4, 2016).

[8] 40 CFR 81.305.

[9] Imperial Ozone Plan, 2–1 to 2–3.

[10] AQS Design Value Report (AMP480) for Imperial County for 2008 ozone NAAQS for 2015–2017, August 10, 2018. We also note that the maximum design value for the area in 2016–2018 is 0.077 ppm at Calexico. AQS Design Value Report (AMP480) for Imperial County for 2008 ozone NAAQS for 2016–2018, August 8, 2019.

[11] 80 FR 12264 (March 6, 2015).

[12] *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The term ''*South Coast II*'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 with the same lead plaintiff. The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standards. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

review (NSR) program must regulate new major sources and major modifications of NO_X and VOC as ozone precursors. The EPA recently approved Imperial County APCD rules addressing various permit rule requirements, including Rules 204 (''Applications''), 206 (''Processing of Applications''), and 207 (''New and Modified Stationary Source Review'') into the California SIP.[13] Therefore, the EPA is not proposing any further action on nonattainment NSR requirements for Imperial County in this notice.

We discuss the CAA and regulatory requirements for 2008 ozone plans that are relevant to this proposal in more detail in the following sections of this proposed rule.

B. Requirements for International Border Areas

For a nonattainment area affected by emissions emanating from outside the U.S., CAA section 179B(a) provides that, notwithstanding any other provision of law, the EPA Administrator shall approve a SIP revision required under Title I of the CAA for such an area if (i) the SIP revision meets all of the applicable requirements other than the requirement to demonstrate attainment and maintenance of the relevant NAAQS by the applicable attainment date; and (ii) the state establishes to the Administrator's satisfaction that the SIP revision would be adequate to attain and maintain the relevant NAAQS by the applicable attainment date, but for emissions emanating from outside of the U.S. Moreover, for any state that establishes to the Administrator's satisfaction that the state would have attained the ozone NAAQS by the applicable attainment date, but for emissions emanating from outside the U.S., CAA section 179B(b) provides that the area shall not be subject to section 181(b)(2), which obligates the Administrator to determine whether the area attained by its attainment date and if not, to reclassify such area to a higher classification.[14]

It is important to note that the EPA's approval of a state's CAA section 179B(a) demonstration that a nonattainment area would attain the standards but for emissions emanating from outside the U.S. does not affect the area's nonattainment designation—the area retains its nonattainment designation and remains subject to requirements applicable to nonattainment areas, such as nonattainment new source review and conformity.[15] Similarly, where the EPA approves a state's CAA section 179B(b) demonstration that the nonattainment area would have attained the standards by the applicable attainment date but for emissions emanating from outside of the U.S., the area retains its nonattainment designation and is still subject to all applicable requirements, based on the area's classification.

The 2008 Ozone SRR does not include regulatory requirements specific to CAA section 179B. Instead, the preamble of the 2008 Ozone SRR recommends that states work with relevant EPA Regional Offices ''on a case-by-case basis to determine the most appropriate information and analytical methods for each area's unique situation.'' [16]

In addition, both the EPA's 1992 General Preamble and 1994 General Preamble Addendum provide general guidance on CAA section 179B.[17] The General Preamble Addendum describes several types of information that may be relevant, such as analyzing monitoring data where a dense network exists, meteorological influences, particle composition, comparison of U.S. and international emissions inventories, and modeling that can be used to evaluate the impact of emissions emanating from outside the U.S. In the General Preamble Addendum, the EPA indicated that it is appropriate to consider this information ''for individual nonattainment areas on a case-by-case basis in determining whether an area may qualify for treatment under section 179B.'' [18] While the focus of the EPA's discussion in the General Preamble Addendum is on particulate matter (*e.g.,* evaluation of particle composition), the EPA is applying these general principles for evaluation of international impacts on ambient ozone levels to the Imperial County nonattainment area.

C. Summary of the Imperial Ozone Plan and 2018 SIP Update

On November 14, 2017, CARB submitted the Imperial Ozone Plan as a revision to the Imperial County portion of the California SIP.[19] The Imperial Ozone Plan addresses the requirements for base year inventories for attainment planning, baseline emissions inventories for RFP plans, and periodic emission inventories at 3-year intervals. It also includes air quality modeling demonstrating that the area would attain the 2008 ozone standards by the July 20, 2018 Moderate area attainment date (based on a modeled attainment year of 2017), but for emissions emanating from Mexico (pursuant to section 179B(a)), demonstrations for implementation of reasonably available control technology (RACT) and RACM, a demonstration for RFP, motor vehicle emission budgets for 2017, and contingency measures for failure to make RFP. The Plan also includes a certification that an existing SIP-approved rule from the District meets the CAA's emission statement requirements for the 2008 ozone NAAQS.

On December 11, 2018, CARB submitted the 2018 SIP Update to the EPA as a revision to the California SIP for several ozone nonattainment areas.[20] In part, CARB developed the 2018 SIP Update in response to the court's decision in *South Coast II* vacating the 2008 Ozone SRR with respect to the use of an alternate baseline year for demonstrating RFP. For Imperial County, the 2018 SIP Update includes a revised RFP demonstration for the 2008 ozone NAAQS using 2011 as the baseline year, as well as an updated emissions inventory for 2017 that is also used for the revised RFP demonstration (to reflect actual emissions data for 2017 for certain sources, and updated activity data for certain other sources that were not available when the Imperial Ozone Plan was adopted in 2017). The 2018 Update also addresses aspects of contingency measure and motor vehicle emission budget requirements.

Sections 110(a)(1) and (2) and 110(l) of the CAA require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public

[13] 82 FR 27125 (June 14, 2017), for Rules 204 and 206; 84 FR 44545 (August 26, 2019), for Rule 207.

[14] The actual text of CAA section 179B(b) refers to section 181(a)(2); however, the EPA has long understood this reference to be erroneous and that Congress intended to refer to section 181(b)(2). ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, 13569, n. 41 (April 16, 1992) (''General Preamble'').

[15] 78 FR 34178, 34205 (June 6, 2013).

[16] 2008 Ozone SRR, 12293. See also 78 FR 34178, 34204.

[17] General Preamble, 13569; and ''State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998, 42000 (August 16, 1994) (''General Preamble Addendum'').

[18] General Preamble Addendum, 42001.

[19] Letter dated November 14, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region 9.

[20] Letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region 9.

notice and hearing prior to adoption and submission of the Imperial Ozone Plan. The District provided a public comment period and held a public hearing prior to the adoption of the SIP submission on September 12, 2017.[21] CARB provided the required public notice and opportunity for public comment prior to its October 26, 2017 public hearing and adoption of the SIP submission.[22] The submission includes proof of publication of notices for the respective public hearings. Therefore, we find that the Imperial Ozone Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

Similarly, CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submission of the 2018 SIP Update. CARB provided the required public notice and opportunity for public comment prior to its October 25, 2018 public hearing and adoption of the SIP submission.[23] The submission includes proof of publication of notices for the respective public hearings. Therefore, we find that the Imperial Ozone Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section of the CAA also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. The Imperial Ozone Plan submission, dated November 14, 2017, became complete by operation of law on May 14, 2018. The 2018 SIP Update, submitted December 11, 2018, was found complete as part of the EPA's completeness review for purposes of another ozone nonattainment area addressed in the 2018 SIP Update.[24]

[21] Imperial County APCD, ''Notice of Public Hearing for Adoption of the 2017 Imperial County State Implementation Plan for 8-Hour Ozone (Ozone SIP),'' August 9, 2017; and Imperial County Air Pollution Control Board, Minute Order #20, September 12, 2017.

[22] CARB, ''Notice of Public Meeting to Consider the Ozone State Implementation Plan for Imperial County,'' September 22, 2017; and CARB Board Resolution 17–18, ''Ozone State Implementation Plan for Imperial County,'' October 26, 2017.

[23] CARB, ''Notice of Public Meeting to Consider the 2018 Updates to the California State Implementation Plan,'' September 21, 2018; and CARB Board Resolution 18–50, ''2018 Updates to the California State Implementation Plan,'' October 25, 2018.

[24] 84 FR 11198, 11199 (March 25, 2019).

D. Emissions Statement Certification

1. Statutory and Regulatory Requirements

Section 182(a)(3)(B)(i) of the Act requires states to submit a SIP revision requiring owners or operators of stationary sources of VOC or NO_X to provide the state with statements of actual emissions from such sources. Statements must be submitted at least every year and must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. Section 182(a)(3)(B)(ii) allows states to waive the emissions statement requirement for any class or category of stationary sources that emits less than 25 tons per year of VOCs or NO_X if the state provides an inventory of emissions from such class or category of sources as part of the base year or periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(A) that is based on the use of emission factors established by the EPA or other methods acceptable to the EPA.

The preamble of the 2008 Ozone SRR states that if the EPA has previously approved an emissions statement rule for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, then such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS.[25] The state should review the existing rule to ensure it is adequate and, if so, may rely on it to meet the emissions statement requirement for the 2008 ozone NAAQS. In cases when an existing emissions statement requirement is still adequate to meet this requirement for the 2008 ozone NAAQS, states can provide the rationale for that determination to the EPA in a written statement in the SIP submission explaining how it meets this requirement. States should identify the various requirements within the emissions statement requirement and indicate how each is met by the existing emissions statement program. In cases when an emissions statement requirement is modified for any reason, states must provide the revisions to the emissions statement as part of their SIP submission.

2. Summary of State's Submission

The Imperial Ozone Plan explains that Imperial County APCD adopted Rule 116 (''Emissions Statement and Certification'') in 2010 to address the emissions statement requirements for the 1997 ozone NAAQS.[26] The District notes that Rule 116 applies to the nonattainment area for the 1997 ozone NAAQS, which covers the same area as the nonattainment area for the 2008 ozone NAAQS, and that EPA approved the rule into the California SIP in 2012 for purposes of meeting the 1997 ozone NAAQS planning requirements.[27] The Plan then includes a summary of the requirements of CAA section 182(a)(3)(B) and how the District reviewed Rule 116 against those requirements for the 2008 ozone NAAQS.

[25] 2008 Ozone SRR, 12291.

The District states that the explicit purpose of Rule 116 is to address the requirement for owners and operators of stationary sources of NO_X or VOC to provide a statement of actual emissions of such pollutants; that the rule requires such statements to be submitted annually with a certification by a responsible company official; and that the rule addresses the provision of CAA section 182(a)(3)(B)(ii) that allows states to waive the application of the emissions statement requirements for sources emitting less than 25 tons per year (tpy) or NO_X or VOC so long as the state provides emissions inventories for such classes or categories of sources. Based on this review, the District concludes that Rule 116 fulfills the emissions statement requirements for the 2008 ozone NAAQS.

3. EPA Review of State's Submission

The EPA evaluated Imperial County APCD Rule 116 and the Plan's assessment of Rule 116 for compliance with the specific requirements for emissions statements under CAA section 182(a)(3)(B)(i). We find that Rule 116 applies within the entire nonattainment area for the 2008 ozone NAAQS; applies to all permitted sources of VOC and NO_X; requires the submittal, on an annual basis, of the types of information necessary to estimate actual emissions from the subject stationary sources; and requires certification by the responsible officials representing the owners and operators of stationary sources. Therefore, we propose to find that Rule 116 meets the requirements of CAA section 182(a)(3)(B)(i).

We also note that, while Rule 116 provides authority to the District to waive the requirement for any class or category of stationary sources that emit less than 25 tons per year, such a waiver is allowed under CAA section 182(a)(3)(B)(ii) so long as the state includes estimates of such class or

[26] Imperial Ozone Plan, 10–1.

[27] 77 FR 72968 (December 7, 2012).

category of stationary sources in base year emissions inventories and periodic inventories submitted under CAA sections 182(a)(1) and 182(a)(3)(A) based on EPA emission factors or other methods acceptable to the EPA. We recognize that emissions inventories developed by CARB for Imperial County routinely include actual emissions estimates for all stationary sources or classes or categories of such sources, including those less than 25 tons per year, and that such inventories provide the basis for inventories submitted to meet the requirements of CAA sections 182(a)(1) and 182(a)(3)(A). By approval of emissions inventories as meeting the requirements of CAA sections 182(a)(1) and 182(a)(3)(A), the EPA is accepting the methods and factors used by CARB to develop those emissions estimates. For example, in 2014, the EPA approved the 2002 base year emissions inventory for Imperial county for the 1997 ozone NAAQS,[28] and in this notice we are proposing to approve the Imperial Ozone Plan's 2012 base year emissions inventory for the 2008 ozone NAAQS.

Thus, for the reasons stated herein, we propose to approve the Imperial Ozone Plan's certification that Rule 116 (adopted February 23, 2010) meets the emissions statement requirements under CAA section 182(a)(3)(B) for the 2008 ozone NAAQS.[29]

E. Emissions Inventories

1. Statutory and Regulatory Requirements

Sections 172(c)(3) and 182(a)(1) of the CAA require states to submit for each ozone nonattainment area a ''base year inventory'' that is a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area. In addition, the 2008 Ozone SRR requires that the inventory year selected be consistent with the baseline year for the RFP demonstration, which is the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the Air Emissions Reporting Requirements (AERR).[30]

The EPA has issued guidance on the development of emissions inventories for ozone and other pollutants.[31] Emissions inventories for ozone must include emissions of VOC and NO_X and represent emissions for a typical ozone season weekday.[32] States should include documentation explaining the approaches used to calculate emissions data. In estimating mobile source emissions, states should use the latest emissions models and planning assumptions available at the time it develops the SIP revision.[33]

The base year inventory required by sections 172(c)(3) and 182(a)(1) serves as the starting point for attainment demonstration air quality modeling, assessing RFP, and determining the need for additional SIP control measures. Future year emissions inventories (also referred to as baseline inventories) are necessary to show the projected effectiveness of SIP control measures and must reflect the most recent population, employment, travel and congestion estimates for the area. Both base year and future year inventories are necessary for photochemical modeling to demonstrate attainment and RFP.

2. Summary of State's Submission

The Imperial Ozone Plan includes a base year inventory (using 2012 as the base year) and future year baseline inventories (2008, 2014, and 2017) [34] for NO_X and VOC.[35] Documentation for the emissions inventories appears in Chapter 4, which also contains summary inventories in Tables 4–6 through 4–9; Appendix A contains more detailed inventories.[36] The Plan explains that the inventories represent a joint effort by staff from both CARB and the District. The Plan also explains the reason for selecting 2012 as the base year as related an on-going data collection effort by the South Coast Air Quality Management District to study exposure to air toxics and a desire to maintain consistency for plans developed in the State.[37] The Plan states that the inventories reflect average summer day emissions because ozone levels in Imperial County are typically higher from May through October.[38]

The Imperial Ozone Plan presents VOC and NO_X emissions estimates in two general categories: stationary sources and mobile sources. Stationary sources are subdivided into point sources and areawide sources. The Plan first explains that point sources typically include permitted facilities that have one or more identified and fixed pieces of equipment and emissions points. The Plan's 2012 base year inventory for these types of point sources uses actual emissions for 2012 as reported by regulated entities consistent with the AERR and may be based on testing, continuous emissions monitoring, or calculations.[39] In addition, the Plan explains that the term ''point source'' includes ''stationary area sources,'' which are smaller sources such as internal combustion engines (*e.g.,* agricultural diesel irrigation pumps) and gasoline dispensing facilities (gas stations) for which emissions are estimated as a group and included in the inventories as an aggregated total.[40] The Plan provides information regarding the methodologies used to estimate base year and forecasted emissions for the various categories of stationary area sources.[41] Areawide sources are small sources that produce emissions over a wide geographic area (*e.g.,* consumer products, architectural coatings, asphalt paving/roofing, residential wood combustion, fires, and agricultural burning). Similar to the approach for stationary area sources, the Plan

[28] 79 FR 63332 (October 23, 2014).

[29] For further background on our evaluation of Rule 116, see ''Technical Support for the Imperial County Air Pollution Control District Rule 116, Emissions Statement and Certification,'' EPA Region IX, January 2012, included in the docket for today's action.

[30] 2008 Ozone SRR at 40 CFR 51.1115(a) and the Air Emissions Reporting Requirements at 40 CFR part 51, subpart A.

[31] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/B–17–002, May 2017. At the time the emission inventory for the Imperial Ozone Plan was developed, the following EPA emissions inventory guidance applied: ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454–R–05–001, August 2005.

[32] 40 CFR 51.1115(a) and (c), and 40 CFR 51.1100(bb) and (cc).

[33] 2008 Ozone SRR, 12290.

[34] The 2018 SIP Update contains a new baseline inventory, using 2011 as the baseline year, to demonstrate RFP. We discuss the baseline emission inventory in the 2018 SIP Update as part of our RFP evaluation in section II.H of this proposed rule.

[35] The Plan uses the term ''reactive organic gases'' (ROG) to refer to VOCs. Imperial Ozone Plan, 4–1. In general, ROG represent a slightly broader group of compounds than those in the EPA's list of VOCs and pertain to common chemical species (*e.g.,* benzene, xylene, etc.) as VOCs. Therefore, this proposed rulemaking refers to this set of gases as VOCs.

[36] The 2012 base year inventory included in the Imperial Ozone Plan updates a previous submittal from CARB, the ''8-Hour Ozone State Implementation Plan Emission Inventory Submittal'' (the Multi-area Emission Inventory). The Multi-area Emission Inventory was submitted by CARB on July 17, 2014, and included inventories for 16 nonattainment areas, including Imperial County. The base year inventory submitted with the Imperial Ozone Plan in November 2017 revises and updates the base year emission inventory for Imperial County included in the Multi-area Emission Inventory submitted in July 2014. Because we understand the State intended the November 2017 submittal to replace the July 2014 submittal (at least with respect to Imperial County), we plan no further action on the inventory for Imperial County submitted by CARB in July 2014.

[37] Imperial Ozone Plan, 4–2.

[38] Id. at 4–3.

[39] Id.

[40] Id. at 4–4

[41] Id. at 4–4 to 4–5.

provides information for each of the various categories of areawide sources regarding the methods used to estimate emissions.[42]

The Plan divides mobile sources into ''on-road sources'' and ''off-road sources.''[43] On-road mobile sources include automobiles, light-, medium-, and heavy-duty trucks, and motorcycles. Off-road sources include aircraft, locomotives, cargo handling equipment, farm equipment, and recreational vehicles. Emissions from on-road sources were calculated using CARB's EMFAC2014 model[44] and travel activity data from Southern California Association of Governments (SCAG) using the 2016 Regional Transportation Plan/Sustainable Communities Strategy.[45] Off-road emissions were developed using different category-specific models developed to support District regulations or the OFFROAD2007 model where specific models were not available.[46]

With respect to future year baseline inventories, the Plan explains the approaches used to forecast emissions for various categories of both stationary and mobile sources.[47] Forecasted emissions rely on assumptions regarding growth and reductions from adopted control measures, and information used to forecast emissions of stationary sources includes on data regarding economic activity, fuel usage, population and residential housing (*i.e.,* growth and control profiles), whereas projections of mobile source emissions are accomplished through the use of models that predict activity and vehicle turnover rates and also reflect adopted regulatory measures.[48]

The Plan also explains how the emissions inventories reflect emissions reduction credits (ERCs) generated by facilities that voluntarily reduced emissions or ceased operation of equipment prior to the base year of 2012.[49] District Rule 207 (''New and Modified Stationary Source Review'') allows voluntarily reduced emissions to be banked for future use as offsets to meet nonattainment permitting requirements.[50] As noted in the Plan, EPA regulations require inclusion of ERCs banked prior to the base year in the base year and forecasted emission inventories.[51]

The detailed inventories in Appendix A provide emissions of point sources (including stationary area sources) in five primary categories (Fuel Combustion, Waste Disposal, Cleaning and Surface Coatings, Petroleum Production and Marketing, and Industrial Processes) and various subcategories; emissions for areawide sources in two primary categories (Solvent Evaporation and Miscellaneous Processes) and various subcategories; and emissions for mobile sources in two categories (On-Road and Off-Road).

3. EPA Review of State's Submission

We have reviewed the 2012 base year inventory developed for the Imperial Ozone Plan and the inventory methodologies used by CARB and the District for consistency with CAA requirements and the EPA's guidance. First, as required by EPA regulation, we find that that the 2012 base year inventory includes estimates for NO_X and VOCs for a typical ozone season weekday, and that the Plan includes adequate information to determine how emissions were calculated. Second, we find that the 2012 base year inventory reflects appropriate emissions models and methodologies, and therefore represents a comprehensive, accurate, and current inventory of actual emissions for that year in Imperial County. Third, we find that the selection of 2012 for the base year emissions inventory is appropriate because it is consistent with the 2011 baseline year inventory in the 2018 SIP Update used to demonstrate RFP for Imperial County, as both inventories are derived from a common set of models and methods.

Table 1 presents a summary of ozone precursor summer emissions by source category for the 2012 base year. Based on the 2012 inventory of anthropogenic emissions, which used tons per day (tpd), mobile sources account for 89 percent (%) of NO_X emissions and 49% of VOC emissions. The next largest categories include stationary sources (6% of NO_X emissions) and area sources (44% of VOC emissions).

TABLE 1—SUMMARY OF OZONE PRECURSOR SUMMER EMISSIONS FOR THE 2012 BASE YEAR

Source category	2012	
	NO_X (tpd)	VOC (tpd)
Stationary Sources	1.73	1.33
Area Sources	0.67	8.51
On-road Mobile Sources	10.01	4.25
Non-road Mobile Sources	9.43	5.10
Total for Imperial County	21.83	19.20

Source: Imperial Ozone Plan, App. A, Table A–2. Totals may not add up due to rounding.

With respect to future baseline projections, we reviewed the approaches used and find them acceptable and conclude that the future baseline emissions projections in the Imperial Ozone Plan reflect appropriate methods and assumptions. With respect to nonattainment NSR requirements for offsets,[52] we find that the District properly included emissions reductions generated before the base year (*i.e.,* pre-base year emission reduction credits) in

[42] Id. at 4–6 to 4–8.

[43] In general, CARB uses the term ''off-road'' to refer to sources to which the EPA typically applies the term ''non-road.''

[44] EMFAC is short for EMission FACtor. The EPA announced the availability of the EMFAC2014 model for use in state implementation plan development and transportation conformity in California on December 14, 2015. 80 FR 77337. The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**. On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements. See 84 FR 41717.

[45] Imperial Ozone Plan, 4–10. SCAG is the metropolitan planning organization for six counties in Southern California, including Imperial County. Imperial Ozone Plan, 4–1.

[46] Id. at 4–11.

[47] Id. at 4–8 to 4–10 and 4–12 to 4–13.

[48] Id. at 4–2.

[49] Id. at 4–16 to 4–17.

[50] The rule governing the use of such emission reduction credits for new of modified major sources of NO_X or VOC in Imperial County is District Rule 207. The EPA has approved Rule 207, as amended on September 11, 2018, including applicable major source thresholds and offset ratios, into the California SIP. 84 FR 44545.

[51] 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*ii*).

[52] 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*ii*).

the forecasted year inventory and thus satisfied this requirement.[53]

Therefore, the EPA is proposing to approve the 2012 emissions inventory in the Imperial Ozone Plan as meeting the requirements for a base year inventory set forth in CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115.

F. Reasonably Available Control Measures Demonstration

1. Statutory and Regulatory Requirements

Section 172(c)(1) of the CAA requires that each attainment plan provide for the implementation of all RACM as expeditiously as practicable, including such reductions in emissions from existing sources in the area as may be obtained through implementation of RACT.[54] EPA regulations governing implementation of the 2008 ozone NAAQS require that, for each nonattainment area required to submit an attainment demonstration, the state concurrently submit a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.[55] The 2008 Ozone SRR provided that the determination of whether a SIP contains all RACM requires an area-specific analysis establishing that there are no additional economically and technically feasible control measures (alone or cumulatively) that will provide for expeditious attainment or advance the attainment date by one year.'' [56]

The 2008 ozone NAAQS implementation regulations require that all control measures needed for attainment must be implemented no later than the beginning of the attainment year ozone season.[57] The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date.[58]

2. Summary of State's Submission

When the EPA acted to reclassify Imperial County (and certain other areas) from Marginal to Moderate, the EPA established a deadline of January 1, 2017, for the submission of a SIP revision to address the Moderate area requirements for the 2008 ozone NAAQS, including the RACM requirement of CAA section 172. Imperial County APCD and CARB undertook a process to identify and evaluate potential RACM in Imperial County. They present their assessment of RACM in Chapter 6 of the Imperial Ozone Plan, which is further explained and supported in Appendix C (area source RACM), Appendix D (key mobile source regulations and programs), and Appendix E (compilation of CARB control measures, 1985–2016) of the Plan. This assessment describes how the state and local control measures address the RACM requirements for purposes of demonstrating RFP (in Chapter 5 of the Plan) and in support of the demonstration that the reductions from such measures would be adequate to bring Imperial County into attainment of the 2008 ozone NAAQS but for emissions from Mexico (in Chapter 8 of the Plan).[59] CARB and the District conclude in their RACM evaluations that no additional measures are necessary in accordance with EPA regulations and RACM guidance.[60]

The District also describes strategic efforts to understand and address air quality and emissions sources at the U.S.-Mexico border and in Mexico (in Chapter 9 of the Plan).[61] The Plan does not relate these efforts to specific CAA requirements for Moderate ozone nonattainment areas, and, accordingly, we are not evaluating this portion of the Plan.

The following paragraphs of this proposed rule separately describe the Plan's RACM analyses as prepared by the District for certain source categories and by CARB for other source types.

a. District's RACM Analysis

Stationary sources emitted an estimated 8% of the NO_X and 8% of the VOC in Imperial County in 2017.[62] The largest portions of stationary source emissions are from fuel combustion (*e.g.,* manufacturing and industrial, and electric utility sources) for NO_X and from cleaning and surface coatings, and petroleum marketing for VOC.

For stationary sources subject to RACT as major sources of NO_X or VOC and non-major point sources subject to CTGs under RACT, the District states that RACM can be achieved through the adoption of RACT and includes its RACT evaluation and summary.[63] The EPA has in a separate action proposed to approve in part and conditionally approve in part the portions of the Imperial Ozone Plan that relate to the RACT requirements under CAA section 182(b)(2) and 40 CFR 51.1112, and thus we do not re-summarize those portions herein.[64] The District's RACM analysis also describes its nonattainment NSR rule for stationary sources (Rule 207).[65]

CARB estimated that area sources would emit 3% of the NO_X and 46% of the VOC in Imperial County in 2017.[66] The largest portions of these emissions are from managed burning and disposal for NO_X and from farming operations, pesticides, consumer products, and managed burning and disposal for VOC. For these area sources, the District's RACM analysis indicates that the District evaluated its area source control measures against EPA's Menu of Control Measures for NO_X and VOC.[67] The District presents a summary of that evaluation in Appendix C of the Plan where, for most source categories, the District found either that the District has rules in place for such measures or that Imperial County has no sources within a source category. For the latter situation, the Plan includes negative declarations.[68]

Table 2 identifies the District's area source control measures (as listed in

[53] Imperial Ozone Plan, 4–16 to 4–17.

[54] For ozone nonattainment areas classified as Moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which EPA has issued a Control Techniques Guideline (CTG). Section 182(f) of the Act requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In a separate action, the EPA has proposed to approve in part and conditionally approve in part the portions of the Imperial Ozone Plan (Chapter 7, ''Reasonably Available Control Technology Assessment'' and App. B, ''Reasonably Available Control Technology Analysis for the 2017 Imperial County State Implementation Plan for the 2008 8-Hour Ozone Standard'') that relate to the RACT requirements under CAA section 182(b)(2) and 40 CFR 51.1112. 84 FR 49202 (September 19, 2019).

[55] 40 CFR 51.1112(c).

[56] 2008 Ozone SRR, 12286. EPA has previously provided additional guidance interpreting the RACM requirement for ozone nonattainment areas. General Preamble, 13498; Memorandum from John Seitz, Director, OAQPS, to Regional Air Directors, ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' November 30, 1999; and Memorandum from John S. Seitz, Director, OAQPS, to Regional Air Directors, ''Additional Submission on RACM From States with Severe One-Hour Ozone Nonattainment Area SIPs,'' December 14, 2000.

[57] 40 CFR 51.1108(d).

[58] 40 CFR 51.1100(h).

[59] Imperial Ozone Plan, 6–1.

[60] Id. at 6–11.

[61] Id., Chapter 9.

[62] Imperial Ozone Plan, App. A (''Ozone Precursor Emission Inventories for Imperial County''), Table A–4.

[63] Id., at 6–2.

[64] 84 FR 49202.

[65] Id. We note that the Imperial Ozone Plan refers to versions of Rule 207 that were adopted on November 10, 1980 and October 10, 2006. Imperial County APCD most recently amended Rule 207 on September 11, 2018 and the EPA has approved such amended rule into the California SIP. 84 FR 44545.

[66] Imperial Ozone Plan, App. A, Table A–4.

[67] Imperial Ozone Plan, 6–2 to 6–3 and App. C. See also, EPA Menu of Control Measures for NAAQS Implementation, *https://www.epa.gov/air-quality-implementation-plans/menu-control-measures-naaqs-implementation.*

[68] Id., App. C, Table C–1, pages 5 to 8.

Appendix C of the Imperial Ozone Plan) that contribute toward attainment of the 2008 ozone NAAQS by 2017. The EPA has approved each of these measures into the California SIP.

TABLE 2—AREA SOURCE MEASURES FOR RACM IN IMPERIAL COUNTY

Rule No.	Rule title	Date adopted/ amended	Citation for EPA approval into the California SIP
400.2	Boilers, Process Heaters, and Steam Generators	2/23/2010	78 FR 896 (1/7/2013).
424	Architectural Coatings	2/23/2010	76 FR 39303 (7/6/2011).
426	Cutback Asphalt and Emulsified Paving Materials	9/14/1999	66 FR 20084 (4/19/2001).
427	Automotive Refinishing Operations	2/23/2010	76 FR 67369 (11/1/2011).
414	Storage of Reactive Organic Compound Liquids	5/18/2004	73 FR 70883 (11/24/2008).
n/a	CARB Consumer Products Program, various rules	(*)	Various rulemakings.

Note: This table is adapted from Table C–1 of the Imperial Ozone Plan. See also, Imperial Ozone Plan, section 8.3 (''Weight of Evidence Analysis''), which provides a weight of evidence analysis that describes how the overall emission reduction trends for NO_X and VOC support reduction in ambient ozone concentrations.

* Various dates.

The Plan provides a discussion of the District's and CARB's Smoke Management Programs, under which the District and CARB may call no-burn days in Imperial County, and states that these programs are more protective of public health compared to the EPA's episodic burning control measure.[69] The District also states that it does not have a rule for municipal solid waste landfills, but instead issues permits that must comply with CARB and EPA waste management statutes and regulations.[70] Though not described in the RACM portion of the Plan, the District also refers to its Rule 217 (''Large Confined Animal Facilities'') as a stationary source control rule in the Plan's inventory.[71]

In addition to the source categories described above, the District states that it was not feasible to adopt and implement control measures for three source categories before the attainment year given the short time between the area's reclassification to Moderate, effective June 3, 2016, and the 2017 attainment year.[72] The District also states that it was determined that these measures were not necessary to demonstrate expeditious attainment or to meet RFP.[73]

The Plan also discusses regional and local transportation control measures (TCMs) that address the portion of the NO_X and VOC emissions sources under regional and local jurisdictions.[74] For regional measures, the District refers to the current quadrennial regional transportation plan applicable to Imperial County, the ''2016–2040 Regional Transportation Plan/ Sustainable Communities Strategy (2016 RTP/SCS),'' and the biennial ''Federal Transportation Improvement Plan (FTIP).'' The District states that the 2016 RTP/SCS addresses the long-term planning requirements for how transportation projects, plans, and programs will conform with applicable air quality plans, while the FTIP addresses the associated short-term planning implementation requirements. For local measures, the District refers to the Imperial County ''CEQA Air Quality Handbook'' that provides guidance to determine emissions from residential, commercial, and industrial projects and feasible measures to mitigate the effect of such emissions.

The District states that to be considered RACM, TCMs must be technologically and economically feasible in the area, and able to be implemented by the attainment year. The District notes that CAA section 108(f)(1)(A) provides a list of TCMs that could potentially qualify as RACM, and that there are currently no on-going TCMs in Imperial County. The District concludes that no new TCMs are being proposed in the Plan due to the short time between the area's reclassification to Moderate, effective June 3, 2016, and the 2017 attainment year.

b. CARB's RACM Analysis

The Plan notes that CARB provided the RACM analysis for certain sources, including consumer products, pesticides, and mobile sources.[75]

CARB states that CARB's Consumer Products Program has established regulations that limit VOC emissions from 129 consumer product categories and that each applies in Imperial County.[76] These include product categories such as antiperspirants and deodorants and aerosol coatings. The Plan also refers to a voluntary Alternative Control Plan that provides compliance flexibilities to companies. The Plan also notes that the EPA's consumer products regulation was promulgated in 1998 [77] and states that California's requirements for general consumer products and aerosol coatings are more stringent than those EPA standards.[78]

CARB states that California Department of Pesticide Regulation (DPR) is responsible for regulating the application of pesticides, and that DPR has adopted and implemented regulations to limit VOC emissions from use of agricultural pesticides in certain areas of California.[79] In May 2019, CARB provided additional technical clarifications (''CARB's Technical Clarification Letter'') with respect to the RACM conclusion for not regulating

[69] Imperial Ozone Plan, App. C, Table C–1, page 2.

[70] Id. at 4.

[71] Id., Table 4–4.

[72] Id., App. C, Table C–1, pages 1, 2, and 4. The District states that, in 2019, it will adopt new limits on NO_X emissions from (i) boilers, steam generators, and process heaters rated 0.075 to 5 MMBtu per hour (a new limit of 14 nanograms (ng) NO_X per joule of heat output or 20 ppm), and (ii) new and replacement residential water heaters rated less than 0.075 MMBtu per hour (a new limit of 10 ng NO_X per joule of heat output). The District intends to implement both new limits by January 1, 2020. Imperial Ozone Plan, App. C, 1–2. See also, sections 5.5.4 and 5.5.2, respectively, of CARB and Imperial County APCD's SIP revision for the 2012 $PM_{2.5}$ NAAQS, submitted July 18, 2018. ''Imperial County 2018 Annual Particulate Matter Less Than 2.5 Microns in Diameter State Implementation Plan,'' Imperial County APCD, April 2018 (''Imperial $PM_{2.5}$ Plan'').

[73] Imperial Ozone Plan, 6–3.

[74] Id. at 6–3 to 6–7.

[75] Imperial Ozone Plan, 6–6.

[76] Imperial Ozone Plan, 6–10 and App. C, Table C–1, page 3.

[77] 63 FR 8819 (September 11, 1998).

[78] Imperial Ozone Plan, 6–10. Regarding the EPA's more recent 2008 rule on VOC emission standards for aerosol coatings, 73 FR 15604 (March 24, 2008), the District states that the rule was aimed primarily at manufacturers of such coatings, which are not present in Imperial County. Imperial Ozone Plan, App. C, Table C–1, page 3.

[79] Imperial Ozone Plan, 6–10 and App. C, Table C–1, page 4.

pesticides in the Imperial Ozone Plan.[80] While acknowledging the ''relative significance'' of VOC emissions from pesticides, CARB presented its position that implementation of pesticide regulations in the area would not contribute to RFP and is not necessary for expeditious attainment.

CARB provides three bases for this position. First, CARB argues that implementation would not have been feasible given the short timeframe between reclassification in June 2016 and the attainment year of 2017. Second, CARB relies on data in the Imperial Ozone Plan to estimate that a 1.0 tpd reduction in NO_X or VOC emissions would result in 0.2 parts per billion (ppb) reduction in ambient ozone concentration at the modeled high site (El Centro). Based on a conservative assumption of 100% reduction of the pesticide VOC emissions in 2017 of 2.21 tpd VOC, CARB estimates that the modeled 2015–2017 design value of 79 ppb would decrease by no more than 0.44 ppb and concludes that such reductions would not result in attainment of the 2008 ozone NAAQS by the 2017 attainment year. Third, CARB also states that annual emissions data demonstrate that Imperial County has achieved a level of VOC reductions in the pesticide/fertilizer category that is comparable to VOC reduction levels in five other areas (Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura County) where pesticide regulations are in effect as a result of an earlier ozone SIP obligation.

For mobile sources, CARB discusses how California's mobile source measures for NO_X and VOC emissions meet RACM in Imperial County.[81] Given the need for substantial emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has developed stringent control measures for on-road and non-road mobile sources and the fuels that power them. California has unique authority under CAA section 209 (subject to a waiver by the EPA) to adopt and implement new emissions standards for many categories of on-road vehicles and engines and new and in-use non-road vehicles and engines. The EPA has approved such mobile source regulations for which waiver authorizations have been issued as revisions to the California SIP.[82]

CARB's mobile source program extends beyond regulations that are subject to the waiver or authorization process set forth in CAA section 209 to include standards and other requirements to control emissions from in-use heavy-duty trucks and buses, gasoline and diesel fuel specifications, and many other types of mobile sources. Generally, these regulations have been submitted and approved as revisions to the California SIP.[83]

CARB identifies the key mobile source regulations and programs that provide emissions reductions in Imperial County.[84] These key measures include requirements for light-duty vehicles,[85] heavy-duty vehicles,[86] non-road sources,[87] and incentive programs for a variety of sources [88] that applied through the Imperial County attainment year of 2017. CARB also describes its Mobile Source Strategy, which was adopted in November 2016 and included a suite of actions to address federal air quality standards and other state air quality goals, and its State SIP Strategy, which was adopted by CARB on March 23, 2017 and submitted to the EPA as a revision to the California SIP on April 27, 2017.[89]

CARB concludes that, considering the comprehensiveness and stringency of its mobile source program, all RACM for mobile sources under CARB's jurisdiction are being implemented, and that no additional measures are being proposed in the Plan due to the short time between the area's reclassification to Moderate and the attainment year.[90]

3. EPA Review of State's Submission

The process followed by CARB and the District in the Imperial Ozone Plan to identify RACM is generally consistent with the EPA's regulations and guidance. The process included compiling a comprehensive list of potential control measures for sources of NO_X and VOC in Imperial County.[91] As part of this process, CARB and the District evaluated potential controls for relevant source categories and provided justifications for the rejection of certain identified measures.

The EPA has reviewed the Imperial Ozone Plan's determination that current stationary, area, and mobile source control measures represent RACM for NO_X and VOC. For the reasons presented below, we propose that the State and District's rules provide for the implementation of RACM for sources of NO_X and VOC for the 2008 ozone NAAQS.

With respect to mobile sources, CARB has developed and implemented stringent control measures for on-road and non-road mobile sources, and its current program addresses the full range of mobile sources in Imperial County through regulatory programs for both new and in-use vehicles. With respect to transportation controls, we note that the SCAG has a program to fund cost-effective TCMs. Overall, we propose to determine that the programs developed and administered by CARB and SCAG provide for the implementation of RACM for NO_X and VOC in Imperial County.

[80] Letter dated May 20, 2019 from Michael Benjamin, Chief, Air Quality Planning and Science Division, CARB to Amy Zimpfer, Associate Director, Air Division, EPA Region 9, 3 and Attachment B.

[81] Imperial Ozone Plan, 6–6 and App. D.

[82] *E.g.,* 81 FR 39424 (June 16, 2016); 82 FR 14447 (March 21, 2017); and 83 FR 23232 (May 18, 2018).

[83] *E.g.,* EPA approval of standards and other requirements to control emissions from in-use heavy-duty diesel trucks, 77 FR 20308 (April 4, 2012), and revisions to the California on-road reformulated gasoline and diesel fuel regulations, 75 FR 26653 (May 12, 2010).

[84] Imperial Ozone Plan, App. D, 1, 2, 4, and 7.

[85] Id., App. D, 2. *E.g.,* On-Board Diagnostics and Reformulated Gasoline.

[86] Id. at 4. *E.g.,* Heavy-duty Engine Standards, Clean Diesel Fuel, and the Cleaner In-Use Heavy-Duty Trucks (Truck and Bus Regulation).

[87] Id. at 7. *E.g.,* Off-road Engine Standards, (Federal) Locomotive Engine Standards, Clean Diesel Fuel, Cleaner In-Use Off-road Regulation, and the In-Use Large Spark-Ignition Fleet Regulation.

[88] Id. at 1, 2, and 4. *E.g.,* Carl Moyer Program; Goods Movement Emission Reduction Program, funded by Prop. 1B; Lower-Emissions School Bus Program; Air Quality Improvement Program (AQIP), including the Hybrid and Zero-Emission Truck and Bus Voucher Program, and the Clean Vehicle Rebate Project; and the Truck Loan Assistance Program.

[89] ''Revised Proposed 2016 State Strategy for the State Implementation Plan,'' CARB, March 7, 2017 (''State SIP Strategy''). We note that the State SIP Strategy only briefly discusses the Imperial County nonattainment area for the 2008 ozone NAAQS (State SIP Strategy, 21–22) and includes no specific emissions reduction commitments for Imperial County.

[90] Imperial Ozone Plan, 6–7 and 6–10.

[91] Id., App. C.

For area-wide sources and stationary sources not subject to RACT, we reviewed Chapter 6 and Appendix C and found that the measures identified by the District, as reflected in Table 2 of this proposed action, meet RACM for each source category.[92] Regarding consumer products, the EPA has approved many CARB measures into the California SIP that limit VOC emissions from a wide array of products, including antiperspirants and deodorants, aerosol coating products, and other consumer products.[93]

For open burning, we reviewed the District's SIP-approved measures that address managed burning and disposal,[94] which account for 0.54 tpd of NO_X and 1.10 tpd of VOC in the Plan's 2017 emissions inventory.[95] The District has SIP-approved rules for open burning in general, open burning of wood wastes, agricultural burning, and range improvement burning.

Regarding landfills, the District stated that it does not have a rule for municipal solid waste landfills and instead permits such facilities. We found that there are no major source landfills in Imperial County, which is consistent with the Plan's 2017 emissions inventory for this source category.[96] We note that methane, which comprises a large portion of landfill organic carbon emissions, is excluded from the EPA's definition of VOCs due to its negligible photochemical reactivity.[97]

In reviewing the Plan's 2017 emissions inventory, we also found that farming operations were projected to emit 2.53 tpd of VOC, which is 15% of the total 2017 VOC emissions inventory.[98] According to CARB's California Emissions Projection Analysis Model (CEPAM), such VOC emissions in Imperial County largely come from agricultural waste from livestock husbandry, particularly feedlot cattle.[99] Imperial County Rule 217 (adopted February 9, 2016) was developed to limit such VOC emissions by requiring the use of best management practices for activities relating to livestock waste, and it is included in the Imperial Ozone Plan's table of stationary source rules in the Plan's emissions inventory.[100] The EPA approved this rule into the California SIP in June 2017, including a determination that the rule represented RACT-level controls.[101] A review of other areas shows that there is no change to the set of reasonable controls that may apply to such sources.

We also evaluated the Plan's determinations for three source categories (*i.e.,* commercial and institutional natural gas water heaters; residential, commercial, and institutional low-NO_X water heaters and low-NO_X burner space heaters; and pesticides).

For commercial and institutional natural gas water heaters and residential, commercial, and institutional low-NO_X water heaters and low-NO_X burner space heaters, we considered whether there are additional economically and technically feasible control measures that could have been adopted into the SIP by the attainment year of 2017 to meet RACM. While Imperial County APCD plans to adopt new rules for these two source categories in 2019 to limit NO_X emissions from such sources,[102] no additional measures were proposed for adoption prior to the attainment date due to the short time between the area's reclassification to Moderate and the attainment year of 2017. Based on CEPAM data, these source categories emitted a combined 0.88 tpd of NO_X in 2017,[103] which amounts to 5.4% of the 2017 total NO_X emissions in Imperial County. The combined estimated emissions reductions from both measures constitute 0.27 tpd of NO_X or 1.5% of the total 2017 NO_X emissions of 18.0 tpd.[104] The EPA notes that although not considered RACM, these anticipated new control measures could contribute to a small air quality improvement in the area in the future.

For the pesticides category VOC emissions are 2.2 tpd in 2017,[105] which amounts to 13% of the total VOC emissions of 16.9 tpd in Imperial County.[106] CARB concluded that implementation of additional pesticide emissions reduction measures would not be feasible given the short timeframe between reclassification in June 2016 and the attainment year of 2017. CARB also estimated that, even if there were a 100% reduction in pesticide VOC emissions, resulting in a maximum reduction in the ozone design value of 0.44 ppb, and even if such reductions had been achieved by 2017, those reductions would not have been sufficient to attain the standards but for international emissions.[107]

Consistent with the EPA's past guidance interpreting the RACM requirement, the EPA has considered which of the above-discussed control measures were technologically and economically feasible and could be adopted by the attainment year of 2017, and if implemented collectively, would achieve sufficient emissions reductions to provide for attainment by the attainment date but for international emissions. As described in the preceding paragraphs, we have considered potential emissions reductions from two NO_X source categories and one VOC category.

The District estimated that adoption of controls on commercial and

[92] We also note that while the EPA's Menu of Control Measures is periodically updated with examples of reasonable measures, it should not be relied on as the sole source of comparison for determining RACM for any given source category.

[93] CARB's consumer product measures are found in the California Code of Regulations, Title 17 (''Public Health''), Division 3 (''Air Resources''), Chapter 1 (''Air Resources Board''), Subchapter 8.5 (''Consumer Products''). The compilation of such measures that have been approved into the California SIP, including **Federal Register** citations, is available at: *https://www.epa.gov/sips-ca/epa-approved-regulations-california-sip.* EPA's most recent approval of amendments to California's consumer products regulations was in 2014. 79 FR 62346 (October 17, 2014).

[94] Imperial County Rule 421 (''Open Burning,'' adopted September 14, 1999), 66 FR 36170 (July 11, 2001); Rule 422 (''Open Burning of Wood Wastes,'' adopted November 19, 1985), 54 FR 5448 (February 3, 1989); Rule 701 (''Agricultural Burning,'' adopted August 13, 2002), 68 FR 4929 (January 31, 2003); and Rule 702 (''Range Improvement Burning,'' adopted September 14, 1999), 66 FR 36170 (July 11, 2001).

[95] Imperial Ozone Plan, App. A, Table A–4.

[96] Id.

[97] 40 CFR 51.100(s)(1).

[98] Imperial Ozone Plan, App. A, Table A–4.

[99] CEPAM data accessed October 12, 2018 at *https://www.arb.ca.gov/app/emsinv/fcemssumcat/fcemssumcat2016.php* and included in the docket of this proposed rule. Of the 2.53 tpd estimated for the farming operations source category, 2.22 tpd are estimated to come from agricultural waste from feedlot cattle.

[100] Imperial Ozone Plan, Table 4–4.

[101] 82 FR 26594 (June 8, 2017).

[102] Imperial Ozone Plan, App. C, 1–2, and Imperial $PM_{2.5}$ Plan, sections 5.5.2 and 5.5.4.

[103] CEPAM data accessed April 15, 2019 at *https://www.arb.ca.gov/app/emsinv/fcemssumcat/fcemssumcat2016.php* and included in the docket of this proposed rule.

[104] Imperial Ozone Plan, Table 8–1.

[105] Imperial Ozone Plan, App. A, Table A–4. We note that 2.2075 tpd of the 2.21 tpd of VOC emissions from the pesticides/fertilizer category are agricultural pesticides. CEPAM data accessed October 12, 2018 at *https://www.arb.ca.gov/app/emsinv/fcemssumcat/fcemssumcat2016.php.*

[106] Imperial Ozone Plan, Table 8–1.

[107] CARB also examined whether the conditions at each Imperial County ozone monitor in 2012 represented a NO_X-limited regime (where VOC emission reductions have minimal effect on ozone concentrations) or a transitional regime (where both NO_X and VOC emission reductions can reduce ozone concentrations). Imperial Ozone Plan, App. F, 36. CARB found that the modeled 2012 baseline ozone values showed a prevalence of NO_X-limited conditions at the Niland and El Centro sites, and that the observed 2012 values were consistent with a more transitional ozone chemistry at the Calexico site. Regarding the presentation, in CARB's Technical Clarification Letter, of reductions in pesticide VOC emissions from 1990 to 2016 in Imperial County relative to other areas of California where pesticide regulations have been imposed, CARB does not state how the similar scale of past reductions supports a RACM determination. Accordingly, the EPA is not relying on Imperial County's historic pesticide VOC emission reductions as a basis for evaluating RACM.

institutional natural gas water heaters and residential, commercial, and institutional low-NO_X water heaters and low-NO_X burner space heaters would not be feasible given the short timeframe between reclassification in June 2016 and the attainment year of 2017. However, the District estimated that rules to be adopted soon after the attainment date for these source categories would result in a combined emissions reduction of 0.27 tpd of NO_X over more than a decade. CARB's Technical Clarification Letter also evaluated a conservative reduction of 2.21 tpd of VOC emissions on the basis of zeroing out the 2017 emissions for the pesticide source category. Thus, as a conservatively high estimate, these emissions reductions sum to 0.27 tpd of NO_X and 2.21 tpd of VOC, or 2.48 tpd combined.

Based on estimates available in the Imperial Ozone Plan, we have applied the modeled relationship between ozone concentrations in Imperial County and reductions in NO_X or VOC emissions in Mexico to the combined 2.48 tpd of emission reductions, given the proximity (9 miles and 1 mile, respectively) of the El Centro and Calexico monitoring sites to the Mexican border and the Mexicali region. This relationship estimates that a 1.0 tpd reduction in NO_X or VOC emissions would result in a 0.2 ppb reduction in ambient ozone concentration at the modeled high site (El Centro). Thus, based on conservative assumptions, the combined potential emissions reductions would be estimated to result in no more than a 0.50 ppb reduction in the modeled 8-hour ozone concentration and thus would not be sufficient to provide for attainment by the attainment date.

As noted at the outset of this section, the EPA's regulations governing implementation of the 2008 ozone NAAQS require that, for each nonattainment area required to submit an attainment demonstration, the state concurrently submit a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.[108] The 2008 Ozone SRR provided that ''[t]he determination of whether a SIP contains all RACM requires an area-specific analysis establishing that there are no additional economically and technically feasible control measures (alone or cumulatively) that will advance'' attainment.[109] Based on our evaluation, we propose to determine that the two NO_X source categories and pesticides measures analyzed above are not technologically and economically feasible control measures that could have been adopted by the attainment year of 2017, and therefore would not have provided for expeditious attainment of the 2008 ozone NAAQS in Imperial County by the attainment date. Thus, we propose to find that the Imperial Ozone Plan provides for implementation of all RACM for the 2008 ozone NAAQS as required by CAA section 172(c)(1) and 40 CFR 51.1112(c).

G. Demonstration of Attainment but for International Emissions

1. Statutory and Regulatory Requirements

Section 172(c)(1) of the CAA requires that plans for nonattainment areas provide for expeditious attainment of the NAAQS, and section 182(b)(1)(A) requires that such plans for areas classified as Moderate nonattainment for an ozone NAAQS demonstrate attainment by the applicable attainment date for Moderate areas. To implement these requirements for Moderate areas, the 2008 Ozone SRR requires that states submit an attainment demonstration based on photochemical modeling or another equivalent method that is at least as effective as the method required of ozone nonattainment areas classified Serious and above.[110] The attainment demonstration predicts future ambient concentrations for comparison to the NAAQS, making use of available information on measured concentrations, meteorology, and current and projected emissions inventories of ozone precursors, including the effect of control measures in the plan.

These requirements for the 2008 ozone NAAQS are codified at 40 CFR 51.1108 (''Modeling and attainment demonstration requirements'') and, in turn, rely on the requirements of 40 CFR 51.112 (''Demonstration of adequacy''). The latter section requires such a plan to demonstrate that its measures, rules, and regulations are adequate to provide for timely attainment and maintenance of the NAAQS and includes a list of specific requirements for the content of such demonstration.

As described in section I.A of this proposed rule, the EPA designated Imperial County as nonattainment for the 2008 ozone NAAQS and classified the area as Marginal, effective July 20, 2012. On May 4, 2016, the EPA published its determination that Imperial County had not attained the 2008 ozone NAAQS by the July 20, 2015 Marginal area attainment date and reclassified the area as Moderate with an attainment date of no later than July 20, 2018. An attainment demonstration must show attainment of the standards for the ozone season immediately preceding the area's outermost attainment date.[111] As applied to areas in California, where the ozone season is the full calendar year, the State must demonstrate attainment for any Moderate nonattainment area in 2017.

As discussed in section II.B of this proposed rule, for a nonattainment area affected by emissions emanating from outside the U.S., CAA section 179B(a) provides that, notwithstanding any other provision of law, the EPA Administrator shall approve an attainment plan SIP submission if it (1) meets all of the applicable nonattainment area requirements other than the requirement to demonstrate attainment and maintenance of the relevant NAAQS by the applicable attainment date, and (2) establishes to the Administrator's satisfaction that the SIP revision would be adequate to attain and maintain the relevant NAAQS by the applicable attainment date but for emissions emanating from outside of the U.S.[112]

The 2008 Ozone SRR does not establish specific requirements for how states should demonstrate attainment but for emissions emanating from outside the U.S., and instead recommends as ''the best approach'' that states work with EPA regional offices ''on a case-by-case basis to determine the most appropriate information and analytical methods for each area's unique situation.''[113]

The EPA's recommended procedures for modeling ozone as part of an attainment demonstration are relevant to such a section 179B demonstration,

[108] 40 CFR 51.1112(c).

[109] 2008 Ozone SRR, 12286.

[110] 40 CFR 51.1108(c); 2008 Ozone SRR, 12268.

[111] 40 CFR 51.1100(h) defining ''attainment year ozone season'' as ''the ozone season immediately preceding a nonattainment area's maximum attainment date.'' Due to California's predominately temperate climate, the term ''ozone season'' is understood to mean the full calendar year. Therefore, an attainment date of July 20, 2018 requires attainment to be demonstrated by calendar year 2017.

[112] In addition, as explained below in section III of this proposed rule, CAA section 179B(b) provides that for the purposes of the ozone NAAQS, any state that establishes to the Administrator's satisfaction that the state would have attained the NAAQS by the applicable attainment date, but for emissions emanating from outside the U.S., the area shall not be subject to section 181(b)(2), which requires the EPA to determine whether an area attained the standards by its attainment date and reclassify to a higher classification those areas that fail to attain.

[113] 2008 Ozone SRR, 12293.

in terms of their modeling and adequacy criteria and their purpose in predicting future ambient concentrations for comparison to the NAAQS, making use of available information on measured concentrations, meteorology, and current and projected emissions inventories of ozone precursors, including the effect of control measures in the plan. These recommended procedures are contained in the EPA's ''Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' (''Modeling Guidance'').[114] The Modeling Guidance includes recommendations for a modeling protocol, model input preparation, model performance evaluation, use of model output for the numerical NAAQS attainment test, and modeling documentation.

As described in the Modeling Guidance, the modeling process starts with the development of base year emissions and meteorology inputs, which are then used to assess model performance by comparing predicted concentrations from this base case to air quality monitoring data. Once the model performance is determined to be acceptable, future year emissions are simulated with the model. The relative (or percent) change in modeled concentration due to future emissions reductions provides a Relative Response Factor (RRF). Each monitoring site's RRF is applied to its monitored base year design value to project the future design value, which can then be compared to the NAAQS. The Modeling Guidance also recommends supplemental air quality analyses that may corroborate the attainment demonstration by considering evidence other than the main air quality modeling attainment test, such as trends and additional monitoring and modeling analyses.

Neither the 2008 Ozone SRR nor the Modeling Guidance specify that a particular year be used as the base year to demonstrate attainment with the 2008 ozone standards.[115] The Modeling Guidance explains that the most recent year of the National Emission Inventory may be appropriate for use as the base year for modeling, but that other years may be more appropriate when considering meteorology, transport patterns, exceptional events, or other factors that may vary from year to year.[116]

2. Summary of State's Submission

The Imperial Ozone Plan includes a demonstration prepared by CARB and Imperial County APCD that Imperial County would attain the 2008 ozone NAAQS by the Moderate area attainment date, but for emissions emanating from outside the United States. Using several lines of evidence, CARB evaluated whether, and the extent to which, ambient ozone levels in Imperial County would be affected by Mexican emissions, including photochemical air quality modeling, back trajectory analysis, and emissions inventory comparisons. The modeling relies on a 2012 base year and projects that, (i) when the Mexican emissions inventory is included in the model, the highest predicted 2017 ozone design value is 79 ppb, which exceeds the 2008 8-hour ozone NAAQS of 75 ppb; and (ii) removal of the anthropogenic emissions inventory from Mexico lowers 2017 predicted ozone design values to below 75 ppb. CARB also conducted additional analyses, described in section III.B of this proposed rule, that scaled CARB's photochemical air quality modeling, scaled separate photochemical air quality modeling performed by the EPA (using monitored data from 2015–2017), and updated CARB's back trajectory modeling.

CARB's modeling and modeled attainment demonstration are described in Chapter 8 of the Imperial Ozone Plan, and in more detail in Appendices F–I. Appendix F provides a description of model input preparation procedures and various model configuration options.[117] The Plan's modeling protocol is in Appendix G[118] and contains all the elements recommended in the Modeling Guidance, including selection of model, time period to model, modeling domain, and model boundary conditions and initialization procedures; a discussion of emissions inventory development and other model input preparation procedures; model performance evaluation procedures; selection of days and other details for calculating RRFs. Appendix H explains the modeling emission inventories.[119] Appendix I discusses the use of anthropogenic emissions inventories, photochemical modeling, and other factors to assess the impact of emissions emanating from Mexico and whether the area would have attained but for Mexican emissions.[120]

For photochemical modeling for the Imperial Ozone Plan's attainment demonstration, CARB and Imperial County APCD used the Community Multiscale Air Quality (CMAQ) model developed by the EPA.[121] The overall CMAQ air quality modeling domain covering the entire State of California has a horizontal grid size resolution of 12 kilometer (km) with 107 x 97 lateral grid cells for each vertical layer and extends from the Pacific Ocean in the west to eastern Nevada in the east and from the U.S.-Mexico border in the south to the California-Oregon border in the north. The smaller nested domain used to model the Imperial County nonattainment area covers southern California (including the South Coast, San Diego, and Salton Sea air basins), has a finer scale 4 km grid resolution, and includes 156 x 102 lateral grid cells.

To prepare meteorological input for CMAQ, CARB and the District used the Weather and Research Forecasting (WRF) model version 3.6.1 from the National Center for Atmospheric Research.[122] The WRF modeling used routinely available meteorological and air quality data collected during 2012.

[114] ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' EPA–454/R–18–009, November 2018; available at: *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.* During development of the Imperial Ozone Plan, CARB relied on the draft version of this guidance update: ''Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' December 3, 2014 Draft, EPA OAQPS. Additional EPA modeling guidance can be found in 40 CFR 51 Appendix W (''Guideline on Air Quality Models''), 82 FR 5182 (January 17, 2017); available at *https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance.*

[115] See generally, 40 CFR 51.1108; 2008 Ozone SRR, 12268–12271; Modeling Guidance at Section 2.7.1.

[116] Modeling Guidance at Section 2.7.1.

[117] Imperial Ozone Plan, App. F (''Modeling Attainment Demonstration: Photochemical Modeling for the Imperial County Nonattainment Area 8-Hour Ozone State Implementation Plan'').

[118] Id., App. G (''Photochemical Modeling Protocol: Photochemical Modeling for the 8-Hour Ozone and Annual/24-hour $PM_{2.5}$ State Implementation Plans'').

[119] Id., App. H (''Modeling Emission Inventory for the 8-Hour Ozone State Implementation Plan in the Imperial Nonattainment Area'').

[120] Id., App. I (''179B Attainment Demonstration for the 2017 Imperial County State Implementation Plan for the 2008 8-Hour Ozone Standard'').

[121] CMAQ model version 5.0.2, released by the EPA in May 2014. Further information on CMAQ is available at: *https://www.cmascenter.org/cmaq/.*

[122] The overall WRF meteorological modeling domain covers California's neighboring states, and major portions of the next outer ring of states, with 36-kilometer (km) resolution (*i.e.,* grid cell size); it has nested domains with 12 km and 4 km resolution, with the latter, innermost covering the entire State of California; and it has 30 vertical layers extending up to 16 km.

The peak ozone levels in California for a given year at any monitor tend to occur between May and September. Therefore, the Imperial Ozone Plan's attainment demonstration modeled the May to September period for both 2012 and 2017 to ensure simulation for the top ozone days in Imperial County.

The ozone model (CMAQ) and meteorological model (WRF) results and performance statistics are described in Appendix F of the Imperial Ozone Plan. Tables of statistics recommended in the Modeling Guidance for 8-hour ozone are provided for each of the three Imperial ozone monitoring sites.[123] Time series plots of the hourly, 1-hour daily maximum, and 8-hour daily maximum ozone data for each of the three monitors located in the Imperial County can be found in the supplementary material.

After CARB and Imperial County APCD confirmed the model performance for the 2012 base case, they applied the model to develop RRFs for the attainment demonstration.[124] CARB and the District conducted four sets of simulations for this purpose: (1) A base year simulation for 2012 to verify that the model reasonably reproduced the observed air quality; (2) a reference year simulation for 2012, which was the same as the base year simulation but excluded event-influenced data such as wildfires;[125] (3) a future year simulation for 2017 with Mexican emissions that were the same as the reference year simulation, except that projected anthropogenic emissions for 2017 were used in lieu of 2012 emissions; and (4) a future year simulation for 2017 without Mexican emissions that was the same as the reference year simulation, except that projected anthropogenic emissions for 2017 were used in lieu of 2012 emissions and Mexican anthropogenic emissions in the modeling domain were removed.

The modeled attainment test carried out by CARB and the District is consistent with the Modeling Guidance. The RRFs were calculated as the ratio of future to base year concentrations. This calculation was done for each monitor using the top 10 ozone days over 60 ppb, *i.e.,* using the base year concentration in the highest of the three by three modeling grid cells centered on the monitor, and the future concentration from the same day and grid cell, with some exclusions, *e.g.,* if there were too few days above 60 ppb.

The resulting RRFs were then applied to 2012 weighted base year design values[126] for each monitor to arrive at 2017 future year design values.[127] The results based on CARB modeling are listed in Table 3 of this proposed rule. The highest predicted 2017 ozone design value (including the Mexican emissions inventory) is 79 ppb at the El Centro site, which exceeds the 2008 8-hour ozone NAAQS of 75 ppb. When the anthropogenic emissions inventory from Mexico (within the modeling domain) is removed, the resulting 2017 ozone design values at each of the three sites (Niland, El Centro, and Calexico) are below 75 ppb. CARB concludes that this supports a demonstration of attainment of the 2008 ozone NAAQS but for emissions from Mexico.[128]

TABLE 3—CARB'S ESTIMATED 2017 DESIGN VALUES BASED ON CARB MODELING

Monitoring site (AQS ID)	2012 base year design value (ppb)	Predicted 2017 design value with Mexican emission inventory (ppb)	Predicted 2017 design values without Mexican emission inventory (ppb)
Niland (06–025–4004)	70.3	67	64
El Centro (06–025–1003)	81.0	79	68
Calexico (06–025–0005)	76.3	75	62

The ''CARB Review of the Imperial County 2017 State Implementation Plan for the 2008 8-Hour Ozone Standard'' (''CARB's Staff Report'') for the Imperial Ozone Plan includes an analysis of back trajectories modeled using the National Oceanic and Atmospheric Administration's (NOAA) Hybrid Single Particle Lagrangian Integrated Trajectory (HYSPLIT) Model.[129] The analysis focused on exceedance days at the Calexico and El Centro sites for the years 2014, 2015, and 2016. The analysis shows that the majority of exceedance days at each site had back trajectories for at least 4 of the 6 hours leading up to the last hour that exceeded 75 ppb that originated from or went through Northern Mexico, indicating influence from sources in the Mexicali Region.[130]

Finally, the Plan contains additional analysis in Appendix I, which is summarized in section 8.3 of the Plan. The analysis presents trends from 1995–2000 in NO_X and VOC emissions, ozone concentrations, design values, exceedance days, and the top 30 daily maximum 8-hour ozone concentrations.

3. EPA Review of State's Submission

The EPA has evaluated the several lines of evidence presented by CARB and proposes that together they support the conclusion that Imperial County would attain the 2008 ozone NAAQS by the Moderate area attainment date but for emissions emanating from Mexico. We present our evaluation of CARB's photochemical modeling from the Imperial Ozone Plan in this section of this proposed rule. We present our evaluation of CARB's scaling of its own modeling and EPA modeling, back trajectory modeling, and emissions inventory comparison from CARB's additional analyses in section III of this proposed rule, as described further below.

Regarding CARB's photochemical modeling from the Imperial Ozone Plan, the EPA reviewed CARB's attainment demonstration and agrees that it supports the conclusion that the 8-hour

[123] Imperial Ozone Plan, App. F, Table 8.

[124] Id., section 8.2 (''Attainment Demonstration''), and App. F, Section 5.3 (''Relative Response Factors, Future Design Values, and the Impact from Mexico Anthropogenic Emissions'').

[125] Certain data modification and exclusion is allowed, as described in the EPA's ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze,'' November 29, 2018, section 4.1.1 (''Establishing the Base Design Value'').

[126] The Modeling Guidance recommends that RRFs be applied to the average of three 3-year design values centered on the base year. In this case the RRFs were applied to the design values for 2010–2012, 2011–2013, and 2012–2014. This amounts to a 5-year weighted average of individual year 4th high concentrations, centered on the base year of 2012, and so is referred to as a weighted design value.

[127] Imperial Ozone Plan, Table 8–2.

[128] Imperial Ozone Plan, 8–5.

[129] CARB Staff Report, September 22, 2017, App. A (''Supplemental Weight of Evidence Analysis: 2014–2016 Exceedance Day Hysplit Analysis'').

[130] According to the Imperial Ozone Plan, the Mexicali Region includes the City of Mexicali and surrounding metropolitan area, has five times the population of Imperial County, and emits about four times the NO_X and VOC of Imperial County. Imperial Ozone Plan, 1–2 and Table 8–1.

ozone design values at each ozone monitoring site in Imperial County would have predicted attainment for the 2008 ozone NAAQS of 75 ppb by 2017 but for emissions emanating from Mexico. We include a technical support document (TSD), ''Imperial County Ozone Plan and Determination Regarding Attainment,'' August 2019 (''EPA's 179B TSD for Imperial County Ozone''), which provides further information regarding our evaluation of the Imperial Ozone Plan's demonstration of attainment but for emissions from Mexico, in the docket of this proposed rule.

The Modeling Guidance recognizes both CMAQ and WRF as technically sound, state-of-the-science models. The size of the modeling domain and the horizontal and vertical grid resolution used in these models are sufficient to model ozone in Imperial County.

CARB calculated the model performance statistics using simulated data at Niland, El Centro, and Calexico, respectively, from the modeling in the Imperial Ozone Plan. The modeling performance statistical metrics for hourly, daily maximum 1-hour, and daily maximum 8-hour ozone from this work are consistent with, and in many cases superior to, values reported by other studies in the literature.[131] The mean bias for daily maximum 8-hour ozone ranged from approximately −7 ppb to +13 ppb, while the mean error ranged from around 4 ppb to 22 ppb, and the root mean squared error ranged from approximately 8 ppb to 23 ppb. The 8-hour maximum performance statistics during the 2012 ozone season for each monitor in Imperial County fall within these ranges. Each of these ranges is similar in magnitude to the statistics presented in the Imperial Ozone Plan.[132] The Modeling Guidance cautions against using comparisons to performance benchmarks as pass/fail tests and stresses their use in assessing general confidence and in guiding refinement of model inputs when statistics fall outside benchmark ranges. In summary, the Imperial Ozone Plan's modeling performance statistics appear satisfactory, and support CARB's determination that Imperial County would attain the 2008 ozone NAAQS by the 2017 attainment year but for emissions from Mexico.

In addition to the analysis in CARB's Staff Report for the Imperial Ozone Plan of back trajectories for the exceedance days that occurred during 2014–2016,[133] CARB also provided updated 8-hour trajectories for 2015–2017 in the ''Imperial County Clean Air Act Section 179B(b) Retrospective Analysis for the 75 ppb 8-hour Ozone Standard'' (''Imperial Ozone Retrospective Demonstration,''), submitted July 3, 2018.[134] This updated analysis includes the three years in the 2015–2017 attainment design value period, and also includes back trajectories for each hour of the high 8-hour ozone period (*i.e.,* 8 back trajectories per exceedance), rather than the 6 back trajectories leading to the last 1-hour that exceeded 75 ppb, as presented in the CARB Staff Report. While both the original and updated analyses serve to investigate the degree to which Mexican emissions may affect Imperial County, we focused our evaluation on CARB's updated analysis given that it addresses the attainment year design value period and a fuller complement of hours per exceedance.[135] Our evaluation of CARB's updated back trajectory analysis is included in sections III.B.3 and III.C of this proposed rule that are part of our overall presentation of the Imperial Ozone Retrospective Demonstration.

The Imperial Ozone Retrospective Demonstration also includes CARB's emissions inventory comparison, which is also relevant to our evaluation of the Imperial Ozone Plan's attainment demonstration. The emissions inventory comparison describes the small scale of Imperial County emissions relative to those from Mexico. These results support the conclusion that Imperial County would attain the 2008 ozone NAAQS by the 2017 attainment year but for emissions from Mexico. Our evaluation of CARB's emissions inventory comparison is included in sections III.B.4 and III.C below as part of our discussion of the Imperial Ozone Retrospective Demonstration.

In addition, Appendix I of the Plan contains other analyses, including trends in ambient air quality and emissions and additional emissions controls and reductions summarized in section 8.3 of the Plan. These analyses support and corroborate the modeling used in the attainment demonstration of attainment in 2017 but for emissions emanating from Mexico. For example, the trends analyses show long-term downward trends that continue through 2015, the latest year available prior to development of the Imperial Ozone Plan.[136]

Also, EPA modeling conducted in support of other actions is useful for estimating the amount of ozone resulting from ozone precursors emitted in Mexico. The EPA modeled interstate air pollution transport across the continental United States with ozone source apportionment technology for the Cross-State Air Pollution Rule (CSAPR) Update.[137] The ozone contribution at each receptor[138] was tracked from different sources, such as individual states, Mexico and Canada, as well as boundary conditions. Two sets of modeling results have been released, one for year 2017 and one for year 2023. Both cases were simulated using a 2011 base year modeling platform, which means the 2011 meteorology and boundary conditions were applied to both future years' (2017 and 2023) cases. The predicted design values with and without Mexican contribution at each Imperial County site are shown in Table 4.[139] When the contribution of Mexican anthropogenic

[131] Imperial Ozone Plan, App. F, Figure 15, 34.

[132] Id., App. F, Table 10 and App. F, page 33. See also, Simon, H., Baker, K.R., and Phillips, S., ''Compilation and interpretation of photochemical model performance statistics published between 2006 and 2012,'' *Atmospheric Environment,* 2012, Vol. 61, 124 to 139.

[133] CARB Staff Report, App. A (''Supplemental Weight of Evidence Analysis: 2014–2016 Exceedance Day Hysplit Analysis). In a general case, back trajectories may not be available as part of a section 179B(a) demonstration because they rely on having monitored data. However, due to the timing of the Imperial Ozone Plan development, monitored data for 2015 and 2016 were available and CARB included back trajectory modeling in its section 179B(a) demonstration.

[134] Imperial Ozone Retrospective Demonstration, App. A.

[135] CARB also noted that 8 hours of data better represented the hours of the day that contributed to 8-hour ozone exceedance. Imperial Ozone Retrospective Demonstration, 9.

[136] Imperial Ozone Plan, App. I, Appendix (to App. I) entitled ''Imperial County Nonattainment Area 8-hour Ozone Plan,'' section 2.3 (''Daily Maximum 8-hour Ozone Air Quality Trends'').

[137] 81 FR 74504 (October 26, 2016); ''Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Rule Update,'' OAQPS, EPA, August 2016, including 2017 modeling results (''CSAPR Update Air Quality Modeling TSD''), and associated spreadsheet with design values and contributions (''CSAPR Update 2008 Ozone Design Values and Contributions Spreadsheet''); and Memorandum from Stephen D. Page, Director, OAQPS, EPA, ''Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I),'' October 27, 2017, including 2023 modeling results (''Supplemental 2008 Ozone Transport Memo''). Further information on the CSAPR Update rule and the Supplemental 2008 Ozone Transport Memo are available at the following websites, respectively: *https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update;* and *https://www.epa.gov/airmarkets/october-2017-memo-and-supplemental-information-interstate-transport-sips-2008-ozone-naaqs.*

[138] Receptors were regulatory monitors at each ambient air quality monitoring site for ozone.

[139] The CSAPR Update 2008 Ozone Design Values and Contributions Spreadsheet lists Mexican and Canadian contribution as one value for each receptor. However, for purposes of this proposed rule, the EPA assumes that the Canadian influence is negligible at Imperial County receptors given that Imperial County is about 1,700 km from Canada whereas the County borders Mexico. Thus, we express the Mexican and Canadian contribution as ''Contribution from Mexican Emissions'' in Table 4.

emissions (within the modeling domain) is removed, the resulting 2017 ozone design values at each of the three sites (Niland, El Centro, and Calexico) are below 75 ppb, which supports the Imperial Ozone Plan's demonstration of attainment for the 2008 ozone NAAQS but for emissions from Mexico.

TABLE 4—EPA'S 2015–2017 DESIGN VALUE ESTIMATES BASED ON EPA MODELING

Site	2011 CSAPR update base year design value (ppb)	Predicted 2015–2017 design value with Mexican emissions inventory (ppb)	Contribution from Mexican emissions (ppb)	Predicted 2015–2017 design values without Mexican emission inventory (ppb)
Niland	71.3	66.7	6.95	59.8
El Centro	81.0	79.3	12.19	67.1
Calexico	74.0	73	13.9	59.1

In conclusion, the EPA finds that the various lines of evidence described above support the demonstration of attainment by 2017 but for emissions emanating from Mexico. Given the extensive discussion of modeling procedures, tests, and performance analyses called for in the Modeling Guidance and the good performance of CARB's model, the EPA agrees that CARB's modeling supports the demonstration of attainment but for Mexican emissions. CARB's model shows that, in 2017, with Mexican emissions included, the ozone design value at one monitor would exceed the 75 ppb standard, but by removing the contribution of Mexican anthropogenic emissions, the ozone design values at each of the three sites (Niland, El Centro, and Calexico) would be below 75 ppb. Therefore, the EPA agrees that CARB's modeling of the projected year 2017 both with and without anthropogenic emission inventory from Mexico (within the modeling domain) supports the conclusion that Imperial County would attain the 2008 ozone NAAQS but for Mexican emissions.

Regarding CARB's analyses of back trajectories, emissions, and EPA air quality modeling, we incorporate our evaluation and discussion presented in section III of this proposed rule into our evaluation of the State's section 179B(a) demonstration. These lines of evidence, as well as CARB's modeling discussed above, together support the conclusion that Imperial County would attain the 2008 ozone NAAQS in 2017 but for emissions emanating from Mexico.

H. Rate of Progress and Reasonable Further Progress Demonstration

1. Statutory and Regulatory Requirements

Requirements for RFP for Moderate ozone nonattainment areas are specified in CAA section 182(b)(1).[140] CAA section 182(b)(1) requires that ozone nonattainment areas that are classified as Moderate or above demonstrate a 15% reduction in VOC within the first six years of the planning period. The EPA has typically referred to section 182(b)(1) as the Rate of Progress (ROP) requirement.[141] Except as specifically provided in CAA section 182(b)(1)(C), emissions reductions from all SIP-approved, federally promulgated, or otherwise SIP-creditable measures that occur after the baseline year are creditable for purposes of demonstrating that the RFP targets are met.[142]

As noted in section II.E of this proposed rule, future year emissions inventories are necessary to show the projected effectiveness of SIP control measures and must reflect the most recent population, employment, travel, and congestion estimates for the area. EPA regulations require that the base year emissions inventory be consistent with the baseline year for the RFP demonstration.[143] Furthermore, the 2008 Ozone SRR requires the RFP baseline year to be the most recent calendar year for which a complete triennial inventory was required to be submitted to the EPA.[144] For the purposes of developing RFP demonstrations for the Imperial County nonattainment area for the 2008 ozone standards, the applicable triennial inventory year is 2011. As discussed previously, the *South Coast II* decision vacated the 2008 Ozone SRR's provision allowing states to use an alternative baseline year for RFP.[145]

2. Summary of State's Submission

CARB developed the 2018 SIP Update and submitted it to the EPA on December 5, 2018, in part to address the impacts of the *South Coast II* decision on several plans for ozone nonattainment areas in California that, like the Imperial Ozone Plan, had relied

[140] CAA section 182(b)(1) is the specific requirement regarding RFP in Part D, Subpart 2, and is applicable to ozone nonattainment areas classified Moderate and higher. CAA sections 171(1) and 172(c)(2) in Part D, Subpart 1 address RFP for all nonattainment pollutants. *E.g.,* CAA section 171(1), which defines RFP as annual incremental reductions in emissions of the relevant air pollutant as are required under part D (''Plan Requirements for Nonattainment Areas'') or may reasonably be required by the EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date.

[141] The 2008 Ozone SRR provides that, for areas classified Moderate or higher for the 2008 8-hour ozone standard, the ROP requirements of CAA section 182(b)(1) will be met if the area has a fully approved 15% ROP plan for the 1979 1-hour or 1997 8-hour ozone standards (provided the boundaries of the ozone nonattainment areas are the same). For more information about how the RFP requirement of section 172(c)(2) applies in such areas, see 84 FR 28157 (June 17, 2019). Imperial County does not have a fully approved 15% ROP plan for either the 1979 1-hour or the 1997 8-hour ozone standards. For the 1979 1-hour ozone NAAQS, the EPA classified Imperial County as a CAA section 185A (or ''transitional'') area and, thus, it was not subject to the ROP requirement. For the 1997 8-hour ozone NAAQS, the EPA initially designated Imperial County as a Marginal nonattainment area and later reclassified the area to Moderate, triggering the ROP requirement, but subsequently issued a clean data determination, which suspended attainment-related planning requirements, including the ROP requirement. 73 FR 8209 (February 13, 2008); 74 FR 63309 (December 3, 2009). Therefore, the 15% ROP requirement of section 182(b)(1) remains applicable to Imperial County.

[142] Because the EPA has determined that the passage of time has caused the effect of certain exclusions to be de minimis, the RFP demonstration is no longer required to calculate and specifically exclude reductions from measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; regulations concerning Reid vapor pressure promulgated by November 15, 1990; measures to correct previous RACT requirements; and, measures required to correct previous inspection and maintenance (I/M) programs. 40 CFR 51.1110(a)(7).

[143] 40 CFR 51.1115(a).

[144] 2008 Ozone SRR, 12272; 40 CFR 51.1110(b); and the Air Emissions Reporting Requirements at 40 CFR part 51 subpart A.

[145] *South Coast Air Quality Management District v. EPA,* 882 F.3d 1138 (D.C. Cir. 2018).

on the provision in the 2008 Ozone SRR that states could use years other than 2011 as the RFP baseline year to demonstrate RFP. The portions of 2018 SIP Update related to Imperial County include an emissions inventory consistent with the new RFP baseline year of 2011, an updated inventory for the RFP milestone year of 2017, and a revised RFP demonstration using 2011 as the RFP baseline year and the updated 2017 RFP milestone inventory.[146]

To develop the 2011 and 2017 inventories, CARB used emissions as reported by larger point sources to the District and, for smaller point sources (stationary area sources), areawide sources and mobile sources, back-casted emissions from the base year inventory of 2012.[147] CARB explains that back-casted emissions rely on the same assumptions regarding growth and emissions reductions from adopted control measures (*i.e.,* ''growth parameters and control profiles'') that are used to project emissions inventories in future years.[148] CARB also explains that the 2011 RFP baseline emissions inventory and the 2012 base year emissions inventory are consistent with one another, as required by the 2008 Ozone SRR: Both inventories use actual emissions as reported to the District by larger point sources, and emissions for other sources (stationary area sources, areawide sources, and mobile sources) in the 2011 baseline inventory are back-casted from the 2012 base year inventory.[149]

Table 5 presents a summary of the 2011 RFP baseline inventory and the updated 2017 RFP milestone inventory.

TABLE 5—SUMMARY OF OZONE PRECURSOR SUMMER EMISSIONS FOR 2011 AND 2017

Source category	2011		2017	
	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)
Stationary Sources	1.7	1.3	1.3	1.2
Area Sources	0.7	8.4	0.2	5.7
On-road Mobile Sources	11.3	4.5	6.5	3.1
Non-road Mobile Sources	9.2	5.2	7.1	3.5
Total for Imperial County	23.0	19.5	15.2	13.5

Source: 2018 SIP Update, Table II–1 (noting that numbers may not add up due to rounding) and App. A, A–3 to A–6.

The 2018 SIP Update's RFP demonstration calculates future year VOC targets from the 2011 baseline, consistent with CAA 182(b)(1), which requires a 15% reduction in VOC within six years of the RFP baseline year for a Moderate ozone nonattainment area as shown in Table 6.

TABLE 6—RATE OF PROGRESS DEMONSTRATION

	VOC (tpd, unless otherwise noted)	
	2011	2017
1. Baseline VOC	19.5	13.5
2. Transportation conformity safety margin [a]		0.8
3. Baseline VOC + safety margin (Line 1 + Line 2)		14.3
4. Required VOC emission reduction, % [b]		15%
5. Target VOC Level (Line 1 (2011) − Line 4 (2017) × Line 1 (2011))		16.6
6. Apparent Surplus in VOC emission reductions (Line 5 − Line 3) [c]		2.3
7. Apparent Surplus in VOC emission reductions, % (Line 6/Line 1 (2017)) [c]		11.7%
RFP Met?		YES

Note: This table is adapted from the 2018 SIP Update, Table II–2 and CARB's Technical Clarification Letter, Attachment A.
[a] CARB Technical Clarification Letter, Attachment A.
[b] While the 2018 SIP Update characterizes the % change as (VOC or NO_X), in fact, the required change is just for VOC, per our discussion of the ROP requirement herein.
[c] The CARB Technical Clarification Letter identifies 2.2 tpd and 11.4% as the apparent surplus in VOC emission reductions. The difference between the values in the CARB Technical Clarification Letter and this table is due to rounding. Numbers listed here in Table 6 are calculated as shown in the table.

CARB concludes that the RFP demonstration for Imperial County in the 2018 SIP Update meets the CAA's applicable requirements for RFP.

3. EPA Review of State's Submission

We have reviewed the portions of the 2018 SIP Update relating to Imperial County, including the 2011 baseline and 2017 emissions inventories and the updated RFP demonstration that uses a 2011 baseline year, and CARB's Technical Clarification Letter for consistency with CAA and regulatory requirements and EPA guidance. Based on our review of the emissions inventory documentation in the 2018 SIP Update, as well as the Imperial Ozone Plan, we find that CARB and the District used the most recent planning and activity assumptions, emissions models, and methodologies in developing the RFP baseline and milestone year inventories.

Regarding the 2008 Ozone SRR's requirement that the base year inventory be consistent with the baseline year for

[146] 2018 SIP Update, section II (''SIP Elements for Imperial County''), 11–13, and App. A (''Nonattainment Area Inventories''), A–3 to A–6.

[147] 2018 SIP Update, 5, 11.

[148] Id. at 5.

[149] Id.

the RFP demonstration, we note that 2012 is the year used for the base year inventory, while 2011 is the year used for the baseline inventory for the RFP demonstration. However, both the 2012 base year inventory and 2011 RFP baseline inventory use actual emissions reported by larger point sources, and, for other sources (*e.g.,* stationary area sources, areawide sources, and mobile sources), the 2011 RFP baseline inventory is back-casted from the 2012 base year inventory, and therefore based on the same data. Therefore, we find that selection of 2012 as the base year for the emissions inventory is consistent with the 2011 baseline year for the RFP demonstration for this nonattainment area as required by 40 CFR 51.1115(a).

In addition to the 2011 RFP baseline inventory, the 2018 SIP Update also includes an inventory for the RFP milestone year of 2017. Similar to the 2011 RFP baseline inventory, the 2017 RFP milestone inventory includes actual emissions reported for 2017 for certain stationary sources and forecasted emissions for other sources using updated activity data, where available. The 2017 RFP milestone inventory from the 2018 SIP Update (13.5 tpd of VOC) is smaller than the 2017 emissions inventory from the Imperial Ozone Plan (16.85 tpd of VOC). These emission inventory updates are directionally consistent with the observed 2015–2017 design value of 77 ppb as compared to the modeled 2015–2017 design value of 79 ppb and suggest that Imperial County made greater progress towards attaining the 2008 ozone NAAQS than was originally predicted, even though the area did not actually attain the standards.

We also reviewed the calculations in Table II–2 of the 2018 SIP Update and CARB's Technical Clarification Letter, Attachment A, as presented in Table 6 of this proposed rule, and find that CARB and the District used an appropriate calculation method to demonstrate RFP. Specifically, we reviewed the 2011 and 2017 emissions inventories included in the 2018 SIP Update, as discussed in the preceding paragraphs of this evaluation subsection; the inclusion of a safety margin in the 2017 VOC motor vehicle emission budgets and whether the area still achieves sufficient emissions reductions to demonstrate RFP with such safety margin;[150] and the comparison of the VOC emissions reductions against the 15% ROP requirement. As shown in Table 6, the RFP demonstration shows a 26.7% reduction in VOC emissions from 2011 to 2017 (*i.e.,* 15% required reduction plus 11.7% surplus reduction). Such reductions satisfy the ROP requirement for Imperial County for the 2008 ozone NAAQS.

For these reasons, we propose to determine that the State has demonstrated RFP in the applicable milestone year of 2017, consistent with CAA requirements and EPA guidance. We therefore propose to approve the RFP demonstrations under section 182(b)(1) of the CAA and 40 CFR 51.1110(a)(4)(i).

I. Motor Vehicle Emission Budgets

1. Statutory and Regulatory Requirements

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving timely attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emission budgets (MVEBs or "budgets") contained in all control strategy SIPs. Budgets are generally established for specific years and specific pollutants or precursors. Ozone plans should identify budgets for on-road emissions of ozone precursors (NO_X and VOC) in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment.[151]

For budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria in 40 CFR 93.118(e)(4). To meet these requirements, the budgets must be consistent with the attainment and RFP requirements and reflect all the motor vehicle control measures contained in the attainment and RFP demonstrations.[152]

The EPA's process for determining adequacy of a budget consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the budget during a public comment period; and, (3) making a finding of adequacy or inadequacy.[153]

2. Summary of State's Submission

The Imperial Ozone Plan includes NO_X and VOC budgets for Imperial County for 2017 and states that they are consistent with the emissions inventory used in the Plan's section 179B(a) demonstration.[154] The budgets were calculated by SCAG using updated vehicle miles traveled estimates and speed distribution data in the SCAG's 2016 RTP/SCS and updated emission rates and planning assumptions from EMFAC2014.[155] They reflect average summer weekday emissions consistent with the 2017 RFP milestone year for the 2008 ozone NAAQS. The 2017 on-road mobile source emissions are 6.53 tpd of NO_X and 3.13 tpd of VOC, and the 2017 budgets in the Imperial Ozone Plan are 7 tpd of NO_X and 4 tpd of VOC. In CARB's Technical Clarification Letter, CARB identifies the difference between the 2017 on-road mobile source emissions and the 2017 budgets as a

[150] A safety margin is "the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance." 40 CFR 93.101. A safety margin allows future transportation projects to increase on-road mobile source emissions provided they satisfy applicable requirements (*e.g.,* support a demonstration of RFP in Imperial County in 2017) and the emissions from such future projects are calculated using the same method.

[151] 40 CFR 93.102(b)(2)(i).

[152] 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity website at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[153] 40 CFR 93.118(f)(2).

[154] Imperial Ozone Plan, 10–3. We note that the 2018 SIP Update simply states that the 2017 budgets in the Imperial Ozone Plan are still applicable. 2018 SIP Update, 13.

[155] At the time the Imperial Ozone Plan was developed, EMFAC2014 was CARB's latest version of the EMFAC model for estimating emissions from on-road vehicles operating in California that had been approved into the California SIP. 80 FR 77337. It was the appropriate model to use for SIP development purposes, as noted in the EPA's implementation rule for the 2015 ozone NAAQS. 83 FR 62998, 63022, n. 54 (December 6, 2018).

safety margin of 0.4 tpd of NO_X and 0.8 tpd of VOC.[156]

CARB also asked that the EPA limit the duration of the approval of the 2017 budgets in the Imperial Ozone Plan and includes an explanation for why the budgets have become, or will become, outdated or deficient.[157] In short, CARB has requested that we limit the duration of the approval of the budgets in anticipation, in the near term, of the EPA's approval of EMFAC2017, which is an updated version of the model (EMFAC2014) used for the budgets in the Imperial Ozone Plan.[158] EMFAC2017 updates vehicle mix and emissions data of the currently approved version of the model, EMFAC2014.

CARB explains that, upon approval of EMFAC2017, the budgets from the Imperial Ozone Plan, for which we are proposing approval in today's action, will become outdated and will need to be revised using EMFAC2017 within the grace period established in our approval of EMFAC2017. This in turn would allow for the EPA to use the adequacy process to review and replace the budgets proposed for approval in this notice so that they can be used in future conformity determinations for the SCAG regional transportation plan and program, as applied to Imperial County. In addition, CARB states that, without the ability to replace the budgets using the budget adequacy process, the benefits of using the updated data may not be realized for a year or more after the updated SIP (with the EMFAC2017-derived budgets) is submitted, due to the length of the SIP approval process.

3. EPA Review of State's Submission

We have evaluated the budgets in the Imperial Ozone Plan against our adequacy criteria in 40 CFR 93.118(e)(4) as part of our review of the budgets' approvability and will complete the adequacy review concurrent with our final action on the ozone plan.[159] The EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing approval of them.[160]

As discussed in section II.H of this proposed rule, the 2011 RFP baseline and 2017 RFP emissions inventories, including the figures for mobile sources, were back-casted and forecasted, respectively, from the 2012 base year emissions inventory. For the reasons discussed in section II.H of this proposed rule, we are proposing to approve the RFP demonstration in the 2018 SIP Update, including the safety margins identified in CARB's Technical Clarification Letter. While only the VOC emissions reductions are required for ROP, the Imperial Ozone Plan's demonstration of attainment but for emissions emanating from Mexico relies on reductions of both NO_X and VOC emissions. As described in our summary of the State's submission, the 2017 budgets, including safety margins, are shown in Table 7, below.

TABLE 7—2017 MOTOR VEHICLE EMISSION BUDGETS FOR IMPERIAL COUNTY FOR THE 2008 OZONE NAAQS

	2017	
	NO_X (tpd)	VOC (tpd)
On-road Mobile Sources	6.53	3.13
Safety Margin	0.4	0.8
Motor Vehicle Emission Budget (rounded to nearest whole number)	7	4

Source: 2018 SIP Update, Table II–2 and CARB's Technical Clarification Letter, Attachment A.

The EPA has determined that these budgets are consistent with emissions control measures in the SIP and RFP for the 2008 ozone NAAQS. They are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements, including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). In addition, we conclude that CARB has identified an appropriate safety margin for the 2017 NO_X and VOC MVEBs and demonstrated how such budgets remain consistent with demonstrating RFP, as discussed in section II.F of this proposed rule. For these reasons, the EPA is proposing to approve the 2017 budgets in the Imperial Ozone Plan for transportation conformity purposes for the 2008 ozone NAAQS. Also, we anticipate completing the budget adequacy process upon our final rule.

Under our transportation conformity rule, as a general matter, once budgets are approved, they cannot be superseded by revised budgets submitted for the same CAA purpose and the same period of years addressed by the previously approved SIP until the EPA approves the revised budgets as a SIP revision. In other words, as a general matter, such approved budgets cannot be superseded by revised budgets found adequate, but rather only through approval of the revised budgets, unless the EPA specifies otherwise in its approval of a SIP by limiting the duration of the approval to last only until subsequently submitted budgets are found adequate.[161]

In this instance, CARB has requested that we limit the duration of our approval of the budgets in the Imperial Ozone Plan only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. Generally, we will consider a state's request to limit an approval of an MVEB only if the request includes the following elements:[162]

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and
- A request that the EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

We find that CARB's explanation for why the budgets will become outdated

[156] CARB's Technical Clarification Letter, Attachment A. We note that the hundredths place of the 2017 emissions amounts are rounded up to the nearest whole number (*i.e.,* 6.53 tpd + 0.4 tpd = 6.93 tpd, rounded to 7 tpd NO_X; and 3.13 tpd + 0.8 tpd = 3.93 tpd, rounded up to 4 tpd VOC).

[157] Letter dated December 5, 2018 from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, 2, and CARB's Technical Clarification Letter, 1–2.

[158] The EPA has approved EMFAC2017 for use in SIP development and transportation conformity decisions in California. 84 FR 41717.

[159] Memorandum from Karina O'Connor, Air Planning Office, EPA Region IX, ''Adequacy Documentation for Plan Motor Vehicle Emission Budgets in September 2017 Imperial Ozone Plan,'' May 24, 2019.

[160] Under the transportation conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

[161] 40 CFR 93.118(e)(1).

[162] 67 FR 69141 (November 15, 2002), limiting our prior approval of MVEB in certain California SIPs.

and why limiting the duration of the approval of the budgets is appropriate. This information provides us with a reasonable basis on which to limit the duration of the approval of the budgets.

We note that CARB has not committed to update the budgets as part of a comprehensive SIP update, but as a practical matter, CARB must submit a SIP revision that includes updated demonstrations as well as the updated budgets to meet the adequacy criteria in 40 CFR 93.118(e)(4); [163] and thus, we do not need a specific commitment for such a plan at this time. For the reasons provided above, and in light of CARB's explanation for why the budgets will become outdated and should be replaced upon an adequacy finding for updated budgets, we propose to limit the duration of our approval of the budgets in the Imperial Ozone Plan until new budgets have been found adequate.

J. Contingency Measures

1. Statutory and Regulatory Requirements

Under the CAA, ozone nonattainment areas classified under subpart 2 as Moderate must include in their SIPs contingency measures consistent with section 172(c)(9).[164] Contingency measures are additional controls or measures to be implemented in the event the area fails to meet RFP requirements or to attain the NAAQS by the attainment date. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation of the measures, and indicate that the measures will be implemented without significant further action by the state or the EPA.[165]

Neither the CAA nor the EPA's implementing regulations establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but the 2008 Ozone SRR reiterates the EPA's recommendation that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, thus amounting to reductions of 3% of the baseline emissions inventory for the nonattainment area.[166]

It has been the EPA's longstanding interpretation of section 172(c)(9) that states may rely on existing federal measures (*e.g.,* federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and state or local measures in the SIP already scheduled for implementation that provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements, such as meeting RACM/RACT, RFP, or expeditious attainment requirements. The key is that the statute requires that contingency measures provide for additional emissions reductions that are not relied on for RFP or attainment and that are not included in the RFP or attainment demonstrations as meeting part or all of the contingency measure requirements. The purpose of contingency measures is to provide continued emissions reductions while the state revises the SIP to meet the missed milestone or attainment date.

The EPA has approved numerous nonattainment area plan SIP submissions under this interpretation, *i.e.,* SIPs that use as contingency measures one or more federal or state control measures that are already in place and provide reductions that are in excess of the reductions required to meet other requirements or relied upon in the modeled attainment demonstration,[167] and there is case law supporting the EPA's interpretation in this regard.[168] However, in *Bahr* v. *EPA,* the Ninth Circuit rejected the EPA's interpretation of CAA section 172(c)(9) as allowing for approval of already implemented control measures as contingency measures.[169] The Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or to attain by the applicable attainment date, not before.[170] Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already implemented control measures to comply with the contingency measure requirements under CAA section 172(c)(9).

2. Summary of State's Submission

Imperial County APCD and CARB adopted the Imperial Ozone Plan after the *Bahr* v. *EPA* decision. Nevertheless, the Plan relies upon surplus emissions reductions from already implemented control measures in the 2017 RFP year to demonstrate compliance with the RFP contingency measure requirements of CAA sections 172(c)(9).[171] With respect to the attainment contingency measure requirements, the Imperial Ozone Plan stated that such measures are not required.[172]

In the 2018 SIP Update, CARB revised the RFP demonstration for the 2008 ozone standards for Imperial County. Based on that demonstration and the fact that 2017 had passed, CARB concludes that Imperial County successfully met applicable RFP requirements in 2017 and, therefore, the RFP contingency measure requirement in CAA section 172(c)(9) is irrelevant for Imperial County for the 2008 ozone NAAQS.[173]

3. EPA Review of State's Submission

The EPA has reviewed the Imperial Ozone Plan and the 2018 SIP Update and proposes that the contingency measure requirement of CAA section 172(c)(9) for RFP is moot, as described below. Regarding the contingency measure requirement of section 172(c)(9) for failure to attain by the applicable attainment date, we propose that such measures would no longer be required if the EPA were to finalize our proposed approval of the section 179B demonstrations for Imperial County for the 2008 ozone NAAQS, as also described below.

The contingency measure portion of the Imperial Ozone Plan, based on the Plan's RFP demonstration from a 2008 RFP baseline emission inventory through the 2017 RFP emission inventory, relies upon emissions reductions that are surplus to those needed to demonstrate RFP. As noted in our summary of the statutory and regulatory requirements for contingency measures, states in the Ninth Circuit cannot rely on already implemented control measures to comply with the contingency measure requirements under CAA sections 172(c)(9), and thus we do not propose to approve such an

[163] Under 40 CFR 93.118(e)(4), the EPA will not find a budget in a submitted SIP to be adequate unless, among other criteria, the budgets, when considered together with all other emissions sources, are consistent with applicable requirements for RFP and attainment. 40 CFR 93.118(e)(4)(iv).

[164] Contingency measures in ozone nonattainment areas classified under CAA Title I, subpart 2 as Serious or higher must also be consistent with CAA section 182(c)(9). However, this requirement does not apply to the Imperial County nonattainment area, which is classified as Moderate for the 2008 ozone NAAQS.

[165] 2008 Ozone SRR, 12285.

[166] Id.

[167] *E.g.,* 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

[168] *E.g., LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

[169] *Bahr* v. *EPA,* 836 F.3d 1218, 1235–1237 (9th Cir. 2016).

[170] Id.

[171] Imperial Ozone Plan, 5–1 to 5–2.

[172] Imperial Ozone Plan, Table 11–1.

[173] Imperial Ozone Plan, 13.

approach for Imperial County for the 2008 ozone NAAQS.

However, as described in section II.H of this proposed rule, we reviewed the revised 2017 RFP emissions inventory and RFP demonstration for Imperial County in the 2018 SIP Update. Given that the revised RFP demonstration is based upon actual emissions reported for 2017 for stationary point sources, and forecasted emissions for other sources using updated activity data, consistent with the Imperial Ozone Plan's section 179B(a) demonstration, using the appropriate metric (summer emissions of ozone precursor pollutants) and that the area achieved greater than 3% annual emissions reductions in VOC, we agree with CARB that Imperial County has met applicable RFP requirements for 2017. Because the area met RFP for 2017, and because no RFP demonstration is required for a year beyond 2017 for Imperial County for the 2008 ozone NAAQS, the event that would otherwise trigger implementation of RFP contingency measures did not occur and will not occur in the future. Accordingly, we propose that the RFP contingency measure requirement is moot as applied to Imperial County for purposes of the 2008 ozone NAAQS.

With respect to attainment contingency measures, CARB and Imperial County APCD state that attainment contingency measures are not required due to the area's attainment but for the impacts of international emissions. We agree that such measures are not required for Imperial County for the 2008 ozone NAAQS as follows.

Attainment contingency measures under CAA section 172(c)(9) are triggered upon the EPA's determination that an area failed to attain a given NAAQS by its applicable attainment date. However, section 179B(b) provides that where a state demonstrates to the EPA that the area would have attained the ozone NAAQS by the applicable attainment date but for emissions emanating from outside the U.S., the area is not subject to the reclassification provisions in section 181(b)(2) and will not be reclassified to a higher nonattainment level.[174] It is therefore consistent with section 179B(b) to conclude that the EPA's approval of a demonstration of attainment but for international emissions under section 179B(b) means that the EPA is not required to make determinations of attainment by the attainment date for that area. Therefore, contingency measures would not be triggered for the area's failure to attain by the attainment date, provided that the EPA has approved the area's demonstration that it would have attained by the applicable attainment date but for emissions emanating from outside the U.S. Given these considerations, the EPA interprets the CAA not to require contingency measures for failure to attain in an area with an approved section 179B demonstration.

As described in sections II.G and III of this proposed rule, the EPA proposes to approve the Imperial Ozone Plan, the 2018 SIP Update (with respect to Imperial County), and the Imperial Ozone Retrospective Demonstration under section 179B(b) that Imperial County would have attained the 2008 ozone NAAQS by July 20, 2018, but for emissions from Mexico. Thus, if the EPA were to finalize this proposed action, there would be no requirement for the EPA to determine whether the area attained the NAAQS, and therefore no requirement for the state to submit attainment contingency measures. Accordingly, we propose that the attainment contingency measure requirement does not apply to Imperial County for the 2008 ozone NAAQS.

K. Other Requirements

The Imperial Ozone Plan notes that the Moderate area requirements of CAA section 182(b)(3) (''Gasoline vapor recovery'') no longer apply since the promulgation of the Onboard Refueling Vapor Recovery Rule, and that the requirements of section 182(b)(4) (''Motor vehicle inspection and maintenance'') do not apply to Imperial County because its population is below the 200,000 persons threshold.[175] The EPA agrees with CARB's assessment and proposes that these two requirements do not apply in Imperial County for the 2008 ozone NAAQS.

III. Imperial County Ozone Determination of Attainment but for International Emissions

A. Statutory and Regulatory Requirements

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA Administrator shall determine whether an ozone nonattainment area attained the ozone standards based on the area's design value as of that date.[176] In the event an area fails to attain the relevant ozone NAAQS by the applicable attainment date, CAA section 181(b)(2)(A) requires the Administrator to make the determination that the area failed to attain the ozone standards and requires the area to be reclassified by operation of law to the higher of (i) the next higher classification for the area, or (ii) the classification applicable to the area's design value as of the determination of failure to attain.

Section 179B(b), however, provides that if a state demonstrates to the EPA that an area would have attained the ozone NAAQS by the applicable attainment date, but for emissions emanating from outside the U.S., the area is not subject to the reclassification provisions in section 181(b)(2) and will not be reclassified to a higher nonattainment level. The EPA interprets section 179B(b) to involve an analysis of the relationship between past exceedances (*i.e.,* those used in determining attainment) and international emissions.

B. Summary of State's Submission

CARB submitted the Imperial Ozone Retrospective Demonstration to the EPA on July 3, 2018.[177] CARB states that despite air quality improvement in Imperial County due to wide-ranging controls on NO_X and VOC sources, the area would not attain the 2008 ozone NAAQS by the July 20, 2018 attainment deadline.[178] In the Imperial Ozone Retrospective Demonstration, CARB presents an analysis that estimated the ozone levels in Imperial County, without the influence of emissions in the Mexicali Region, for 2017. The Imperial Ozone Retrospective Demonstration is based on a number of factors, including two modeling exercises: (1) Photochemical modeling in the Imperial Ozone Plan, discussed in section II.G of this proposed rule; and (2) the EPA's interstate air pollution transport modeling for the 2008 ozone NAAQS, including the CSAPR Update modeling results for 2017 and supplemental modeling results for

[174] The EPA's long held view is that CAA section 179B(b)'s reference to section 181(a)(2) was made in error, and that Congress actually intended to refer to section 181(b)(2). 83 FR 62998, 63009, n.24; ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, 13569 n.41 (April 16, 1992).

[175] Imperial Ozone Plan, 1–1, n. 4. See also, 59 FR 16262 (April 6, 1994) (known as the Onboard Refueling Vapor Recovery Rule) and 40 CFR 51.350(a)(8) (population threshold for applicability of motor vehicle inspection and maintenance requirements).

[176] We note that CAA section 181(a)(5) gives the Administrator the discretion to grant a 1-year extension of the attainment date specified in CAA section 181(a) upon application by any state if certain criteria are met. However, CARB is not seeking such an extension for Imperial County but rather invokes the provisions of section 179B(b).

[177] Letter dated July 3, 2018, from Richard Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region 9.

[178] Imperial Ozone Retrospective Demonstration, 1.

2023.[179] CARB also presented a back trajectory analysis for each day in 2015, 2016, and 2017 when the ozone level was above 75 ppb at any of the three monitoring sites. CARB presented additional supporting information, including a comparison of the emissions inventory for ozone precursors in Imperial County to the emissions inventory to the Mexicali Municipality, the ozone design value trends from 1996 to 2017, and a discussion of the conditions that influence ozone formation in Imperial County.

1. Imperial Ozone Plan Attainment Demonstration Modeling

To show the effect of emissions emanating from Northern Mexico on ozone levels in Imperial County in 2017, CARB relied in part on modeling conducted for the attainment demonstration in the Imperial Ozone Plan. Specifically, CARB performed an exercise using existing modeling results to estimate the effect of Mexican emissions within the Southern California Modeling domain (*i.e.,* a subset of the Mexican emissions sources nearest Imperial County) and applied those estimates to 2015–2017 design values.

As discussed in section II.G of this proposed rule, the attainment demonstration for the Imperial Ozone Plan includes two modeling scenarios (or cases) for the year 2017. Case one was a ''base'' run that used projected 2017 anthropogenic emissions for both the U.S. and Mexicali Municipality within the modeling domain, while all other model inputs were based on the year 2012. Case two was a ''sensitivity'' run, where the only difference from the base run was that Mexican anthropogenic emissions (within the modeling domain) were zeroed out. The sensitivity run analysis estimated the ozone contribution from Mexican emissions to Imperial County monitoring sites based on the change in the predicted design values due to the removal of the Mexican anthropogenic emissions (within the modeling domain). CARB then applied the estimated ozone reduction from the removal of the Mexican emissions as generated by the sensitivity run analysis to the measured 2015–2017 design value at each of the monitoring sites. The results are shown here in Table 8.

TABLE 8—CARB'S 2015–2017 DESIGN VALUES ESTIMATES BASED ON SCALING EXERCISE FROM CARB MODELING

Monitoring site	Measured 2015–2017 design value (ppb)	Estimated 2015–2017 design value without anthropogenic Mexican emissions (ppb)	Change in design value (percent)
Niland	63	60.7	3.7
El Centro	76	65.9	13.3
Calexico	77	64.3	16.5

Source: Imperial Ozone Retrospective Demonstration, Table 2.

2. CARB's Estimate of Ozone Transport Based on the EPA's Air Quality Modeling

As part of the CSAPR Update rule, the EPA conducted air quality modeling to project ozone concentrations at individual monitoring sites in 2017 and to estimate state-by-state contributions to those 2017 concentrations.[180] The EPA used the Comprehensive Air Quality Model with Extensions (CAMx),[181] including state-level ozone source apportionment modeling using the OSAT/APCA technique.[182] This exercise involved tracking the ozone contribution at each receptor from different sources (*e.g.,* individual states, Mexico and Canada), as well as boundary conditions. As noted in section II.G.3 of this proposed rule, the EPA has released two sets of modeling results, one for year 2017 and one for year 2023.[183] Both cases were simulated using a 2011 base year modeling platform, which means the 2011 meteorology and boundary conditions were applied to both future year cases (2017 and 2023).

CARB's Imperial Ozone Retrospective Demonstration lists the measured 8-hour ozone design value for 2015–2017 at each Imperial County site.[184] It also lists the estimated contribution to ozone in Imperial County resulting from Mexican anthropogenic emissions based on the CSAPR Update 2017.[185] The Mexican contributions to the design values at the Niland, El Centro, and Calexico sites are estimated to be 11%, 15%, and 17% respectively.[186] Then, CARB estimated the 2015–2017 design values without the influence Mexican emissions for each site by reducing the measured ozone design value by the percentage estimated by the interstate transport modeling developed as part of the CSAPR Update for that site. The results are shown in Table 9.

[179] 81 FR 74504; CSAPR Update Air Quality Modeling TSD; and CSAPR Update 2008 Ozone Design Values and Contributions Spreadsheet; and Supplemental 2008 Ozone Transport Memo.

[180] 81 FR 74504; Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Update (CSAPR Update AQM TSD); and CSAPR Update 2008 Ozone Design Values and Contributions Spreadsheet; and Supplemental 2008 Ozone Transport Memo.

[181] For the final CSAPR Update rule, the EPA used CAMx version 6.20 (Ramboll Environ, 2015), which was the latest public release version of CAMx available at the time the air quality modeling was performed. CSAPR Update AQM TSD, 2, n.5.

[182] Id. at 15.

[183] Results for 2017 are available at: *https://www.epa.gov/sites/production/files/2017-05/documents/aq_modeling_tsd_final_csapr_update.pdf.* Results for are 2023 available at: *https://www.epa.gov/airmarkets/october-2017-memo-and-supplemental-information-interstate-transport-sips-2008-ozone-naaqs.*

[184] Imperial Ozone Retrospective Demonstration, Table 4.

[185] The Canadian influence is assumed to be negligible.

[186] Imperial Ozone Retrospective Demonstration, Table 3. Due to a major update of the Mexican emission inventory used in the 2023 modeling, the modeling results show higher ozone contributions from Mexico at all Imperial County sites in 2023. This larger contribution is likely due to an increase in Mexican emissions with the update to the inventory, as well as a reduction in local Imperial County emissions between 2017 and 2023.

TABLE 9—CARB'S 2017 DESIGN VALUE ESTIMATES BASED ON SCALING EPA'S CSAPR UPDATE MODELING

Monitoring site	Measured 2015–2017 design value (ppb)	Estimated 2015–2017 design value without anthropogenic Mexican emission inventory (ppb)	Change in design value (percent)
Niland	63	56.1	11.0
El Centro	76	64.4	15.3
Calexico	77	63.7	17.3

Source: Imperial Ozone Retrospective Demonstration, Table 4.

3. CARB's Back Trajectory Model Analysis

CARB provided a trajectory analysis for each day that exceeded the ozone standards at the Calexico and El Centro monitoring sites for the years 2015, 2016, and 2017. There were no days that exceeded the 2008 Ozone NAAQS at the Niland monitoring site in that period. CARB used the NOAA HYSPLIT model for its back trajectory modeling and identified the hours of each exceedance day with the maximum 8-hour average ozone value. CARB then used the HYSPLIT model to draw an 8-hour back trajectory for each of the 8 hours of data that contributed to the maximum 8-hour ozone value where each line drawn represents the back trajectory for one hour at the air quality monitor.[187]

CARB listed each site and each exceedance day for which at least 5 out of 8 of the eight-hour back trajectories originated from or went through the Mexicali region of Mexico (''CARB's 5 of 8 Back Trajectory Test'').[188] CARB determined that for Calexico, 11 of the 14 days were likely to have an influence from sources in the Mexicali region since they each had 5 or more hours with back trajectories passed through the Mexicali region. For El Centro, CARB determined that 8 of the 12 days were likely influenced by sources in the Mexicali region. CARB then excluded the 8-hour monitoring values for the days for which there was a likely influence from Mexico (*i.e.,* 11 days for Calexico and 8 days for El Centro) and calculated new design values for each site. CARB listed the maximum 8-hour average ozone values on all exceedance days at each site, resulting in 2015–2017 design values of 73 ppb in both cases, as shown here in Table 10.

TABLE 10—CARB'S PREDICTED 2015–2017 DESIGN VALUES EXCLUDING DAYS WITH LIKELY MEXICAN INFLUENCE BASED ON CARB'S 5 OF 8 BACK TRAJECTORY TEST

Year	Calexico		El Centro	
	4th high (ppb)	4th high excluding Mexico influenced days (ppb)	4th high (ppb)	4th high excluding Mexico influenced days (ppb)
2015	77	74	77	72
2016	74	73	74	73
2017	82	74	79	75
2015–2017 Design Value	77	73	76	73

Source: Imperial Ozone Retrospective Demonstration, Table 7.

4. CARB's Additional Supporting Information

The comparison of the emissions inventory shows that the Mexicali Municipality and the NO_X emissions (summer planning inventory) are 3.8 times greater than those of Imperial County, and the ROG emissions are 3.1 times greater, as shown in Table 11.

[187] Id., App. A.

[188] Id., Table 6.

TABLE 11—CARB'S 2012 IMPERIAL COUNTY AND MEXICALI MUNICIPALITY EMISSIONS INVENTORY

Source	Imperial County				Mexicali Municipality			
	NO_X (tpd)	NO_X (%)	ROG (tpd)	ROG (%)	NO_X (tpd)	NO_X (%)	ROG (tpd)	ROG (%)
Stationary	2	8	1	7	15	18	14	24
Area-wide	1	3	9	44	10	12	27	46
On-Road Mobile	10	46	4	22	56	66	17	29
Other Mobile	9	43	5	27	4	4	0.4	1
Total	22	100	19	100	85	100	59	100

Source: Imperial Ozone Retrospective Demonstration, Table 1.[189]

CARB also included a figure displaying the 8-hour ozone design value trend, which shows a decrease from 0.112 ppm 1996 to 0.079 ppm in 2010, and fairly consistent values from 2010 to 2017, with a design value of 0.077 ppm for 2015–2017.[190]

C. EPA Review of State's Submission

The EPA has reviewed CARB's analyses and agrees that, despite CARB and Imperial County APCD's measures to reduce NO_X and VOC emissions, the 8-hour ozone design values at each ozone monitoring site in Imperial County would have been below the 2008 ozone NAAQS of 75 ppb for the 2015–2017 design value period, but for emissions emanating from Mexico. We include the EPA's 179B TSD for Imperial County Ozone, which provides further information regarding our evaluation of the Imperial Ozone Retrospective Demonstration, in the docket of this proposed rule.

First, we reviewed CARB's analysis of the contribution to ozone from Mexican emissions based on CARB's modeling for demonstrating attainment as part of the Imperial Ozone Plan. This scaling exercise first estimated the contribution of Mexican anthropogenic emissions to ozone formation on the measured 2015–2017 ozone design values by assuming that the contribution to the 2015–2017 observed design values was the same proportion as the contribution to the projected 2017 year in the attainment demonstration. The scaling exercise then subtracted this estimated contribution to ozone formation of Mexican anthropogenic emissions from the measured 2015–2017 ozone design values, which resulted in an Imperial County maximum design value of 65 ppb.[191]

The EPA believes the modeling that served as a basis for estimating the contribution was sound. As discussed in section II.G.3 of this proposed rule, CARB and the District implemented the modeling procedures, tests, and performance analyses consistent with the EPA's Modeling Guidance, discussed that modeling in detail, and found that the model performed well. Also, CARB modeled attainment of the 2008 ozone NAAQS but for emissions from Mexico by modeling the year 2017, both with and without the anthropogenic emissions inventory from Mexico (within the modeling domain); given the availability of data to perform such analyses, this is a reasonable method of assessing the degree to which Mexican emissions affect ozone concentrations in Imperial County, together with other lines of evidence.

Second, we reviewed CARB's estimation of the contribution to ozone from Mexican emissions based on modeling results from the EPA's interstate air pollution transport modeling developed to estimate ozone design values in the Moderate area attainment year of 2017 for the 2008 ozone NAAQS. We note that this is a similar yet distinct analysis from the analysis described in section II.G.3 of this proposed rule. This scaling exercise on the actual 2015–2017 design values use EPA's CSAPR Update modeling to remove the estimated effect of Mexican emissions and resulted in a maximum design value of 64 ppb for Imperial County. The EPA's CSAPR Update modeling considered multiple aspects of the transport of ozone, including consideration of measured and modeled ambient ozone concentrations; estimated NO_X and VOC emissions inventories for the continental U.S., Mexico, Canada, and boundary conditions; application of state of the science modeling tools for regional air pollution analysis and appropriate model validation; existing and planned emissions control regimes; and meteorology. While the EPA did not design that modeling specifically to assess the degree to which Mexican emissions may affect ozone concentrations in Imperial County, CARB's method of employing the CSAPR Update data among several other lines of evidence is reasonable and estimates that the effect of the Mexican emissions (11% to 17%) would be in a similar range as CARB's analysis of its own modeling (3.7% to 16.5%).

Thus, each of the two modeling exercises indicates that the measured 2015–2017 design values with the predicted impact from Mexican emissions removed would be below the 2008 ozone NAAQS for all three monitoring sites. These analyses make use of detailed and appropriate modeling techniques and data sets and support CARB's conclusion that Imperial County would have attained the 2008 Ozone NAAQS by the 2017 attainment year but for emissions emanating from Mexico.

Third, we reviewed CARB's back trajectory analyses, wherein CARB studied each day that exceeded the 2008 ozone NAAQS at the Calexico and El Centro monitoring sites for the years 2015, 2016, and 2017, and determined which days at the Calexico and El Centro sites were likely to have been influenced by sources in the Mexicali region. As a complement to Table 10 of this proposed rule, we summarized the count of exceedance days that were likely influenced by Mexican emissions based on CARB's 5 of 8 Back Trajectory Test and the count of such days likely to be influenced to a lesser degree by Mexican emissions (4 or less of 8 back trajectories). These counts are shown in Table 12.

[189] See also Imperial Ozone Plan, Table 8–1. Mexicali emissions based on the EPA's 2011 Version 6.3 Platform inventory. The 2011 Version 6.3 Platform is based on the 2011 NEI version 2 and includes projected future years of 2017, 2023, and 2028. The 2011 Version 6.3 Platform supported the CSAPR Update, a rule related to interstate transport for the 2008 ozone NAAQS.

[190] Imperial Ozone Retrospective Demonstration, Figure 3, 5.

[191] Imperial Ozone Plan, Table 8–2.

TABLE 12—EPA'S COUNT OF DAYS INFLUENCED BY MEXICAN EMISSIONS BASED ON CARB'S 5 OF 8 BACK TRAJECTORY TEST

Year	Calexico		El Centro	
	Count of days with likely influence from Mexico (5 of 8 Test)	Count of days with less likely influence from Mexico	Count of days with likely influence from Mexico (5 of 8 Test)	Count of days with less likely influence from Mexico
2015	4	0	6	0
2016	2	1	1	1
2017	8	2	5	3

The EPA finds that CARB's methodology for assessing the potential effect of Mexican emissions on recorded ozone exceedances in Imperial County is a reasonable means, among several lines of evidence, for identifying exceedance days and the highest 8-hour period within each such day and examining the origin and pathway of air traveling each hour to the Imperial County monitoring sites within that 8-hour period.

In addition to reviewing the approach and results of CARB's 5 of 8 Back Trajectory Test, the EPA considered a more stringent test that would only remove an exceedance day if 75% (6 of 8) of the back trajectories originated in or passed through Mexico (''EPA's 6 of 8 Back Trajectory Test'') as this would reflect a more conservative approach to examining how many days may have been affected by emissions from sources in the Mexicali region.

The EPA reanalyzed the data and determined that 8 of the 14 days for Calexico and 5 of the 12 days for El Centro were likely to have an influence from sources in the Mexicali region.[192] As CARB had done, the EPA excluded the days for which there was a likely influence from Mexico (*i.e.,* 8 days at Calexico and 5 days for El Centro) and calculated new design values for each site. This more stringent analysis resulted in an Imperial County design value of 75 ppb, as shown here in Table 13, supporting the conclusion that Imperial County would have attained the 2008 ozone NAAQS by the 2017 attainment year but for emissions emanating from Mexico. This estimated design value is higher than the estimated design value from the modeling exercises discussed herein because many of the days with fewer than 6 trajectories emanating from Mexico are likely to have some contribution from Mexico. This approach is also conservative because there is likely Mexico influence on all days and this method only removes days where the Mexico influence is expected to be largest.

TABLE 13—EPA'S PREDICTED 2015–2017 DESIGN VALUES EXCLUDING DAYS WITH LIKELY MEXICAN INFLUENCE BASED ON EPA'S 6 OF 8 BACK TRAJECTORY TEST

Year	Calexico		El Centro	
	4th high (ppb)	4th high excluding Mexico influenced days (ppb)	4th high (ppb)	4th high excluding Mexico influenced days (ppb)
2015	77	74	77	73
2016	74	74	74	73
2017	82	75	79	79
2015–2017 Design Value	77	74	76	75

For comparison, we also include a count of exceedance days that were likely influenced by Mexican emissions based on EPA's 6 of 8 Back Trajectory Test and the count of such days likely to be influenced to a lesser degree by Mexican emissions (5 or less of 8 back trajectories). These counts are shown in Table 14.

[192] For the days identified for El Centro with trajectories as having a likely influence from Mexico, the EPA has conducted additional trajectory analyses to further assess the influence of the Mexicali emissions. This information is provided in the EPA's 179B TSD for Imperial County Ozone.

TABLE 14—EPA'S COUNT OF DAYS INFLUENCED BY MEXICAN EMISSIONS BASED ON EPA'S 6 OF 8 BACK TRAJECTORY TEST

Year	Calexico		El Centro	
	Count of days with likely influence from Mexico (6 of 8 Test)	Count of days with less likely influence from Mexico	Count of days with likely influence from Mexico (6 of 8 Test)	Count of days with less likely influence from Mexico
2015	[193] 4	0	4	2
2016	0	3	1	1
2017	7	3	0	8

The additional information provided by the State also supports the conclusion that Imperial County would have attained the 2008 ozone NAAQS by the attainment date of July 20, 2018, but for emissions emanating from Mexico. In brief, the emission inventory data presented indicate that the Mexicali Municipality emits three times the amount of ozone precursors emitted in Imperial County, such emissions could have had a substantial effect on Imperial County ozone concentrations, and Imperial County ozone concentrations would have been lower in the absence of Mexican emissions. In addition, the proximity of the Mexican border to the monitoring sites (1 mile from Calexico and 9 miles from El Centro) and the shared topography and meteorology of Imperial Valley also support the potential of Mexican emissions having a substantial and immediate effect on ozone concentrations in Imperial County.

In conclusion, the EPA evaluated the information provided by CARB and applied a more conservative test using CARB's back trajectory method. CARB's modeling estimates of Mexican contribution based on modeling data from the Imperial Ozone Plan attainment demonstration and the EPA's CSAPR Update modeling, and the EPA's application of a more conservative test using CARB's back trajectory method to analyze exceedance days in the 2015–2017 design value period together support the conclusion that Imperial County would have attained the standards but for the impacts of emissions from Mexico. Furthermore, the emissions inventory, showing that the ozone precursor emissions for Mexicali Municipality are over three times those emitted in Imperial County, and the proximity and shared airshed of the Calexico and El Centro monitor to these emissions, also support the conclusion that the Mexican emissions affected the ozone concentrations at these sites.

Thus, based on our evaluation of these several lines of evidence and analyses that together support the same conclusion, the EPA proposes to determine, under CAA sections 179B(b) and 181(b)(2)(A), that Imperial County would have attained the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018, but for emissions emanating from Mexico.

IV. Proposed Action

For the reasons discussed in this notice, under CAA section 110(k)(3), the EPA is proposing to approve, as a revision to the California SIP, the Imperial Ozone Plan and the Imperial County portion of the 2018 SIP Update related to:

- Emissions statement certification as meeting the requirements of CAA section 182(a)(3)(B);
- Base year emissions inventory as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 with respect to attainment planning;
- RACM demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c);
- RFP demonstration as meeting the requirements of CAA section 182(b)(1) and 40 CFR 51.1110(a)(4)(i); and
- Motor vehicle emission budgets for the 2017 RFP milestone year because they are consistent with the RFP demonstration and the demonstration of attainment but for international emissions that are proposed for approval herein and meet the other criteria in 40 CFR 93.118(e).

We also propose that finalization of this action would render the RFP contingency measure requirement of CAA section 172(c)(9) moot and that attainment contingency measures would no longer be required, as discussed in section II.J of this proposed rule.

Given our proposal that the Imperial Ozone Plan meets all requirements for the Imperial County Moderate ozone nonattainment area, other than the requirement to demonstrate attainment, and our evaluation of the State's lines of evidence that together support the conclusion that Imperial County would attain the 2008 ozone NAAQS by the July 20, 2018 attainment date but for emissions emanating from Mexico, the EPA proposes to approve the Imperial Ozone Plan's section 179B attainment demonstration as meeting the requirements of CAA sections 172(c)(1), 182(b)(1)(A), and 179B(a) and 40 CFR 51.1108.

Concurrently, we are proposing to determine, consistent with our evaluation of the Imperial Ozone Plan, the 2018 Update, and Imperial Ozone Retrospective Demonstration, that the Imperial County nonattainment area would have attained the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018, but for emissions emanating from outside of the United States, under CAA sections 179B(b). Therefore, if finalized, the EPA's obligation under section 181(b)(2)(A) to determine whether the area attained by its attainment date would no longer apply and the area would not be reclassified.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

V. Statutory and Executive Order Reviews

With respect to our proposal on the Imperial Ozone Plan and the 2018 SIP Update, under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state plans

[193] September 23, 2015 has 5 of the 6 trajectories (83%) for which data was available originating in Mexico. Thus, we included this exceedance day in the count of days with likely influence from Mexico.

as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

With respect to our proposed determination that Imperial County attained the 2008 ozone NAAQS by July 20, 2018 but for emissions from Mexico, the purpose of this rule is to determine whether Imperial County attained the 2008 ozone standards by its Moderate area attainment date, which is required under the CAA for purposes of implementing the 2008 ozone standards.

For these reasons, this proposed action:

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

In addition, with respect to our proposal on the Imperial Ozone Plan and the 2018 SIP Update, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

However, with respect to our proposed determination that Imperial County attained the 2008 ozone NAAQS by July 20, 2018, but for emissions from Mexico, this action has tribal implications. Nonetheless, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Two tribes have areas of Indian country within or directly adjacent to the Imperial County: Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians. The EPA intends to communicate with potentially affected tribes located within or directly adjacent to the boundaries of Imperial County on this proposed action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 30, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–23134 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[EPA–HQ–OPP–2017–0543; FRL–9995–47]

RIN 2070–AK49

Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing changes to the Agricultural Worker Protection Standard (WPS) to simplify the application exclusion zone (AEZ) requirements. The proposed changes described in this document are the only changes EPA is currently planning to make to the WPS provisions that are now in effect.

DATES: Comments must be received on or before January 30, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0543, by one of the following methods:

- *Federal eRulemaking Portal: https://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 *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jackie Mosby, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 347–0224; email address: *OPP_NPRM_AgWorkerProtection@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you work in or employ persons working in crop production agriculture where pesticides are applied. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (NAICS code 111000).
- Nursery and Tree Production (NAICS code 111421).
- Timber Tract Operations (NAICS code 113110).
- Forest Nurseries and Gathering of Forest Products (NAICS code 113210).

• Farm Workers (NAICS codes 11511, 115112, and 115114).
• Pesticide Handling on Farms (NAICS code 115112).
• Farm Labor Contractors and Crew Leaders (NAICS code 115115).
• Pesticide Handling in Forestry (NAICS code 115310).
• Pesticide Manufacturers (NAICS code 325320).
• Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319).
• Farm Worker Labor Organizations (NAICS code 813930).
• Crop Advisors (NAICS codes 115112, 541690, 541712).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is proposing to revise one requirement of the WPS (40 CFR part 170), adopted in 2015 (80 FR 67496, November 2, 2015) (FRL–9931–81). Information supporting the 2015 final rule, including the proposed rule, public comments and EPA's responses thereto, is available at *https://www.regulations.gov* under docket number EPA–HQ–OPP–2011–0184. The Agency is proposing changes to the regulation and soliciting additional information and public comment to inform its proposed revision of the rule's Application Exclusion Zone (AEZ) requirements. EPA is proposing to clarify and simplify the AEZ requirements based in part on input received as part of EPA's outreach efforts with state lead agencies (SLAs) and various stakeholders after the 2015 rule and through the Regulatory Reform Agenda process.

C. Why is the Agency taking this action?

As further described in Unit II.B., members of the agricultural community, including the US Department of Agriculture (USDA), State pesticide regulatory agencies and organizations, and several agricultural interest groups have expressed concerns with the AEZ requirements in the 2015 WPS rule. EPA began hearing general concerns about rule implementation and more specific concerns about the rule's AEZ requirements from some State pesticide regulatory agencies responsible for WPS and pesticide enforcement (*i.e.,* SLAs) during the Agency's extensive outreach and training efforts for those agencies after promulgation of the 2015 WPS rule. Comments about the AEZ included concerns about the complexity and enforceability. Similar concerns were expressed through the Regulatory Reform Agenda outreach process and are found in docket number EPA–HQ–OA–2017–0190 at *https://www.regulations.gov.*

EPA has also solicited comments on the AEZ requirements from the Pesticide Program Dialogue Committee (PPDC). The PPDC is a federal advisory committee that is broadly representative of EPA's stakeholders with members from environmental and public interest groups, pesticide manufacturers, trade associations, commodity groups, public health and academic institutions, federal and state agencies, and the general public. The PPDC meets biannually with the EPA's Office of Pesticide Programs to discuss regulatory, policy, and program implementation issues. PPDC members discussed the WPS requirements for the application exclusion zone in public meetings with EPA on November 2, 2017 and expressed both support and some concerns with the AEZ requirements of the WPS rule at the May 4, 2017 meeting. The transcripts for PPDC meetings can be found at *https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc.*

Clarifying and simplifying the WPS AEZ requirements was one of the most repeated requests from SLAs. These requests, together with comments received through the Regulatory Reform Agenda process and input from the PPDC, prompted EPA's decision to develop this proposed rule.

D. What is the Agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, particularly sections 136a(d), 136i, and 136w. Additionally, in accordance with the Pesticide Registration Improvement Extension Act of 2018 (Pub. L. 116–8), EPA is only proposing revisions to the AEZ requirements in the WPS.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential incremental economic impacts and determined that these proposed changes will reduce existing burden. Cost savings from the changes are largely in terms of reducing management complexity both on and off establishment. However, EPA has not quantified the anticipated cost savings. EPA remains committed to ensuring the protection of workers and persons in areas where pesticide applications are taking place. The AEZ and no contact provisions aim to ensure such protections. EPA also has a strong interest in promulgating regulations that are enforceable, clear, and effective. See Units II.C. through II.F.

F. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit confidential business information (CBI) to EPA through *http://www.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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Proposed Changes to the WPS

A. Background and Existing Requirements

Under the WPS established in 1992 (57 FR 38101; August 21, 1992) (FRL–3374–6), the pesticide handler's employer and the pesticide handler are required to ensure that no pesticide is applied so as to contact, either directly or through drift, any agricultural worker or other person, other than an appropriately trained and equipped pesticide handler involved in the application. These requirements prohibit application in a way that contacts agricultural workers or other persons both on and off the agricultural establishment where the pesticide is being applied.

The 2015 WPS rule added requirements to reinforce existing requirements and enhance compliance with safe application practices to protect agricultural workers and bystanders from pesticide exposure through drift. The 2015 WPS rule established application exclusion zone requirements (AEZ) for outdoor production, defined as the area extending horizontally around application equipment from which persons generally must be excluded during pesticide applications. The AEZ moves with the application equipment. For aerial, airblast, and ground applications with fine or very fine droplet size, as well as fumigations, mists, and foggers, the area encompasses 100 feet from the application equipment in all directions. For ground applications with medium or larger droplet size and a spray height of more than 12 inches from the ground, the area encompasses 25 feet from the application equipment in all directions. For all other applications, there is no AEZ.

The 1992 WPS prohibited agricultural employers from allowing or directing any agricultural worker or other person other than a trained and equipped pesticide handler involved in the application to enter or remain in the treated area until after the pesticide application is complete. The 2015 WPS further prohibits the employer from allowing anyone in the part of the AEZ (which can extend beyond the treated area) that is within the boundaries of the establishment. For example, employers and applicators have to ensure that workers in adjacent fields or buildings within their establishment move out of an AEZ as the pesticide application equipment passes; workers could return once the equipment has moved on and the Restricted Entry Interval is no longer in effect, if applicable. The 2015 WPS also requires a handler to ''immediately suspend a pesticide application'' if anyone other than a trained and equipped handler is within the AEZ, including any part of the AEZ beyond the boundaries of the agricultural establishment.

These restrictions were intended to reduce incidents, or the probability of incidents, in which people in areas adjacent to pesticide applications are affected by drift. The purpose of the AEZ was to reinforce the prohibition against applying pesticides in a manner that results in contact to others by establishing a well-defined area from which persons generally must be excluded during applications.

B. Stakeholder Engagement

EPA finalized revisions to the WPS in 2015 (80 FR 67496, November 2, 2015). During the Agency's extensive outreach and training efforts for SLAs after promulgation of the 2015 rule, some SLAs raised concerns about the AEZ requirements. Comments about the AEZ included concerns about its complexity and enforceability.

In accordance with Executive Order 13777, *Enforcing the Regulatory Reform Agenda* (82 FR 12285, March 1, 2017), EPA solicited comments in the spring of 2017 on regulations that may be appropriate for repeal, replacement or modification as part of the Agency's Regulatory Reform Agenda efforts. EPA encouraged entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations, to provide input and other assistance, as permitted by law. EPA received comments from stakeholders on the WPS rule as part of the public's response to Executive Order 13777.

These revisions are also in the spirit of Executive Order 13790, *Promoting Agriculture and Rural Prosperity in America* (82 FR 20237, April 25, 2017), which was designed to help ensure that regulatory burdens do not unnecessarily encumber agricultural production or harm rural communities. The Executive Order required USDA to assemble an interagency taskforce, including EPA, to identify legislative, regulatory, and policy changes to promote in rural America agriculture, economic development, job growth, infrastructure improvements, technological innovation, energy security, and quality of life.

Information pertaining specifically to EPA's evaluation of existing regulations under Executive Order 13777, including the comments received, can be found at *https://www.regulations.gov* under docket number EPA–HQ–OA–2017–0190. Approximately 25 commenters provided input specific to the 2015 WPS AEZ requirements. Commenters included USDA, State pesticide regulatory agencies, State organizations, an organization representing Tribal pesticide regulators, a local government advisory committee, an agricultural coalition, farm bureau federations, growers, grower organizations, farmworker advocacy organizations, a public health association, a retailer organization and private individuals (Ref. 1).

Commenters discussed the need for changes to several WPS requirements, including the AEZ. Comments on the AEZ from organizations representing state regulatory agencies and agricultural interests raised concerns about the ability of states to enforce the requirement, expressed a need for clarity about how the requirement was intended to work, described problems with worker housing near treated areas, and the perception of increased burden on the regulated community. EPA is proposing revisions to these requirements in light of the comments received from agricultural interests and State pesticide regulatory officials.

In addition to comments received through the Regulatory Reform Agenda process, EPA solicited feedback on the WPS and AEZ requirements from the Pesticide Program Dialogue Committee (PPDC). In May 2017, the PPDC discussed the implementation of the WPS (*https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-meeting-4*). On November 2, 2017, PPDC members discussed the WPS requirements for the application exclusion zone in a public meeting with EPA. (*https://www.epa.gov/sites/production/files/2018-01/documents/november-2-2017-ppdc-meeting-transcript.pdf*).

Requests from SLAs to clarify and simplify WPS AEZ requirements, together with comments received through the Regulatory Reform Agenda process and input from the PPDC, prompted EPA's decision to develop this proposed rule.

C. Summary of Proposed Amendments

EPA is proposing to amend the AEZ requirements in the 2015 WPS rule to limit the AEZ to the boundaries of the agricultural establishment. EPA is also proposing to revise the provisions related to handlers suspending and resuming applications, and the presence of persons on the agricultural establishment during application who are not under the control of the owner or agricultural employer. EPA is proposing to simplify the criteria for determining the AEZ distances for outdoor applications based on application method. EPA is also proposing to amend the AEZ requirements for owners of agricultural establishments and their immediate family members by expanding the exemption at 40 CFR 170.601(a) to include the AEZ requirements at 40 CFR 170.405(a). EPA is not proposing any changes to the existing ''do not contact'' provision in the WPS that prohibits a handler/applicator and the handler employer from applying a pesticide in such a way that it contacts workers or other persons directly or through drift (other than appropriately trained and PPE equipped handlers involved in the application).

D. Revisions To Address Issues Raised About the AEZ Extending Beyond the Boundary of the Establishment

1. *Proposed Changes.* EPA is proposing several changes to the AEZ, which are intended to work together to address concerns about the AEZ and improve the understanding and implementation of the AEZ requirements. The different AEZ

proposals are discussed in Unit II.E. through Unit II.G.

EPA is proposing to revise the AEZ provision at 170.505(b) that requires handlers to ''suspend the application'' if a worker or other person is in the AEZ, which as currently described can extend beyond the boundaries of the agricultural establishment. The proposal would limit the AEZ to within the boundaries of the agricultural establishment. This change would bring the pesticide handlers' duty to suspend applications in 170.505(b) in line with the agricultural employers' duty to exclude persons from the AEZ in 170.405(a)(2) so the two requirements are more consistent.

The AEZ is an area surrounding pesticide application equipment that exists only during outdoor pesticide applications. The 2015 WPS added the AEZ requirements to supplement the ''do not contact'' requirements of the label and the old WPS to reduce the number of exposure incidents during agricultural applications. The existing requirement at 170.505(b) requires pesticide handlers (applicators) making a pesticide application to temporarily suspend the application if any worker or other person (besides trained/equipped handlers assisting in the application) is in the AEZ. The handler's obligation to suspend applications applies if a worker or other person is in any portion of the AEZ—on or off the establishment. EPA is proposing to revise 170.505(b) so the handler/applicator would not be responsible for implementing AEZ requirements off the establishment, where he/she lacks control over persons in the AEZ. However, EPA is not proposing any changes to the existing provision in the 2015 WPS that prohibits a handler/applicator and the handler employer from applying a pesticide in such a way that it contacts workers or other persons directly or through drift (other than appropriately trained and PPE equipped handlers involved in the application). This provision will remain the key mechanism for ensuring the protections of individuals off the establishment from the potential exposures to pesticides from nearby agricultural pesticide applications.

After reviewing public input on the AEZ issues and concerns, EPA has concluded that the ''do not contact'' provision provides the more appropriate and enforceable regulatory mechanism to protect workers on nearby establishments and other people/bystanders that may be off the agricultural establishment but in close proximity to agricultural pesticide applications. EPA has determined that the current WPS provision extending the AEZ boundary beyond the agricultural establishment is confusing and unnecessary. EPA concludes the costs of including off the establishment areas in the AEZ do not outweigh the minimal benefits of including the additional area in the AEZ, so EPA is proposing to revise the WPS rule to limit the AEZ to the boundaries of the establishment.

These proposed revisions are intended to address the AEZ concerns noted in the Regulatory Reform Agenda docket (Ref. 1). EPA received approximately 25 individual comments on the AEZ requirements in the Regulatory Reform Agenda docket from the U.S. Department of Agriculture, States, State organizations, a Tribal organization, farm bureau federations, grower associations, retailer organizations, an applicator organization, an agricultural coalition, farmworker advocate organizations, public health organizations and individuals. Some of these concerns were also expressed by State regulatory agencies during training and outreach sessions that EPA conducted in 2016 and 2017. Most comments about the AEZ in the Regulatory Reform Agenda docket expressed concerns about the handler requirement to suspend applications for situations when the AEZ extends beyond the boundaries of the agricultural establishment and people are in the AEZ. A few commenters supported revising the AEZ requirements while other commenters urged EPA to completely eliminate the AEZ requirements in the 2015 WPS rule (Ref. 1). Some points made by the commenters included:

- The concept of a regulatory requirement to keep individuals out of varying widths of areas surrounding treated areas seems difficult for an agricultural employer to implement and next to impossible for a State trying to ensure compliance. The logic behind the requirement is understandable and supportable but making this a regulatory requirement with an expectation of compliance monitoring and enforcement is not.
- The AEZ concept was presented in the 2014 WPS proposal as an ''entry restricted area.'' In the final 2015 WPS rule (80 FR 67495), EPA replaced the term ''entry restricted area'' with ''application exclusion zone'' to make it more distinct from the requirements regarding Restricted Entry Interval. However, this change was not clear to the commenters. The commenters suggested that the concept of the AEZ was not proposed; and neither was the idea of the AEZ extending beyond the boundary of the establishment. They suggested that this approach was not well thought out, was not open for public comment, and was not in the spirit of co-regulating with States and Tribes.
- Burdens and economic impacts upon agricultural operations and employers were not considered or addressed. One commenter likened this provision of the rule to an unlawful taking of private property.
- The AEZ requirement to cease application if a passing vehicle is within 25 or 100 feet of the property could be problematic.
- EPA guidance addressing the implementation concerns does not carry the weight of regulation and is not sufficiently clear for growers and the state regulatory agencies to implement the requirement.

The main revision being proposed is to revise the handler's responsibility to suspend applications in 170.505(b)(1). In addition, EPA is proposing to revise the handler training content in 170.501(c)(3)(xi) to reflect that proposed change.

2. *Anticipated Effects.* The primary benefit of changing the AEZ requirements is a reduction in the complexity of applying a pesticide. The monetized benefits are difficult to quantify due to the variability of off establishment activities that could be within the AEZ (Ref. 2).

3. *Options Considered but Not Proposed.* The Agency considered keeping the WPS AEZ provision at 170.505(b) that requires handlers to ''suspend the application'' as it is in the current rule but adding provisions to the rule to better clarify the scope of the AEZ, as well as issuing additional outreach material, and guidance if necessary, about the handler AEZ requirements. However, such an approach would not fully address all concerns with the applicability of the AEZ off the establishment and would require more resources from EPA without necessarily providing any additional benefits or protection. EPA issued AEZ guidance in April 2016 (Ref. 3) which was revised in February 2018 (Ref. 4) in an attempt to address concerns raised by stakeholders, but this guidance has not fully resolved all concerns. The intent of the AEZ guidance was to provide further explanation of the AEZ requirements in the WPS and to confirm that the AEZ requirements supplement the ''do not contact'' requirement by defining specific areas from which people generally must be excluded during a pesticide application. However, an exception of the AEZ beyond the

boundary of the establishment where handlers do not have the ability to control the movement of people off the establishment or within easements (*e.g.,* utility workers), which commenters argued can effectively suspend an application activity, can only be accomplished through regulation.

EPA also considered the option of making no changes to the AEZ provision at 170.505(b). However, that option would not address concerns with the AEZ or the concerns from State and Tribal pesticide regulators with compliance and enforcement issues related to the AEZ applying off the establishment. Some State and Tribal pesticide regulators have stated that the AEZ requirements applicable to situations where people are in the AEZ but off the establishment are unenforceable because the AEZ provisions do not apply if the applicator does not see the persons off the establishment, and it would be difficult if not impossible to prove the applicator saw persons in the AEZ. State and Tribal pesticide regulators state that it is easier for them to prove that a person has been contacted by pesticides from an application and take action to enforce the do not contact provision. This option would still leave EPA needing to address existing AEZ issues through additional guidance and to address future issues needing clarification through guidance related to the ''off establishment'' provisions. Therefore, EPA has elected to propose the revision to 170.505(b) as described above.

E. Revisions To Address Issues Raised About When Handlers May Resume an Application That Has Been Suspended

1. *Proposed Changes.* EPA is proposing to revise the AEZ provision at 170.505(b) to add a paragraph clarifying conditions under which a handler may resume the application after having to suspend an application if people are in the AEZ on the agricultural establishment. The proposed revision of 170.505(b) would also clarify how the AEZ applies to persons not employed by the agricultural establishment who may be working on or in easements (*e.g.,* gas, mineral, utility, wind/solar energy) that may be within the boundaries of the establishment. These people are generally not within the control of the owner or agricultural employer so their presence could disrupt and prevent pesticide applications. EPA is not proposing any changes to the existing ''do not contact'' provision in the WPS.

The 2015 WPS rule was silent on if and when a handler could resume an application after it has been suspended because workers or other people were present in the AEZ. EPA never envisioned that the AEZ requirement would lead to an application being suspended permanently, and the proposed change makes EPA's expectations explicit. EPA is proposing to revise the WPS to clarify that handlers may resume a suspended application when no workers or other persons (other than appropriately trained and equipped handlers involved in the application) remain in an AEZ within the boundaries of the establishment.

EPA also is proposing language to allow applications to be made or resume while persons not employed by the establishment are present on easements that may exist within the boundaries of agricultural establishments because, depending on the terms of the easement, the owner or agricultural employer may be unable to control the movement of people (*e.g.,* utility workers) within an easement. The existing AEZ requirement at 170.405(a) precludes an application from being made on an agricultural establishment while workers or other people are in the AEZ within the boundaries of the establishment. In developing the original AEZ requirement, EPA presumed that all persons on an agricultural establishment would be subject to the control of the owner or agricultural employer, not recognizing the prevalence of easements which deprive the landowner of the ability, in whole or in part, to control the movements of persons within the easement. The proposed revisions at 170.505(b) would address this situation by allowing handlers to make or resume an application despite the presence within the AEZ of persons not employed by the establishment in an area subject to an easement that would otherwise prevent the agricultural employer from temporarily excluding those persons. These individuals will still be protected by the ''do not contact'' provision, so even though they could remain in an easement in the AEZ, the handler and the handler employer would be prohibited from allowing the pesticide application to result in any contact to these persons. The proposed revision to the regulatory text would be codified at 170.505(b).

These proposed revisions are intended to address the AEZ concerns raised by stakeholders during WPS implementation efforts and those noted above from the Regulatory Reform Agenda docket (Ref. 1).

2. *Anticipated Effects.* The primary benefit of clarifying the AEZ requirements about resuming a suspended application is providing certainty about when and how a pesticide application can occur. EPA does not anticipate the proposed revision about when a handler can resume an application when people are in the AEZ on the establishment to increase costs to handlers or employers or to change the intended protections to workers or other persons because this revision simply clarifies how the requirement was intended to be implemented in the 2015 WPS. The proposal to address people not employed by the establishment who are in an area subject to an easement (*e.g.,* utility workers) provides regulatory relief to handlers and agricultural employers and may prevent pesticide applications from being disrupted. However, EPA does not anticipate a change in the protections provided by WPS to the people in the easements because the handler must still apply the pesticide in a way that does not contact them, either directly or through drift.

3. *Options Considered but Not Proposed.* The Agency considered the option of making no changes to the AEZ provision at 170.505(b). However, that option would not address concerns about when a suspended application may be resumed and could prevent pesticide applications from being made when people are in areas subject to an easement. Therefore, EPA has elected to propose the revision to 170.505(b) as described above.

F. Revisions To Clarify and Simplify the AEZ Requirements for Outdoor Production

1. *Proposed Changes.* EPA is proposing to revise the criteria and factors for determining AEZ distances at 170.405(a). EPA is proposing the following revisions to simplify the AEZ requirements while maintaining the protections intended under the 2015 WPS:

- Eliminating the language and criteria pertaining to spray quality and droplet size and volume median diameter and using only ''sprayed applications'' as the criterion for determining the appropriate AEZ distance for outdoor production.
- Limiting the criteria for 100-foot AEZ distances for outdoor production to pesticide applications made by any of the following methods: (1) Aerially; (2) by air blast or air-propelled applications; or (3) as a fumigant, smoke, mist, or fog.
- Establishing a 25-foot AEZ for all sprayed applications made from a height greater than 12 inches from the soil surface or planting medium, and no longer differentiating between sprayed

applications based on the spray quality or other factors for setting different AEZ distances for outdoor production.

During repeated outreach and training events during WPS implementation efforts, it became clear to EPA that there was a great deal of confusion and misunderstanding regarding the AEZ requirements and the criteria for determining the appropriate AEZ distance. This was also reflected in comments to EPA from some members of the PPDC and submitted through the Regulatory Reform Agenda process. Some of the specific points made by the commenters on the complexity of the AEZ distance criteria included the following:

- It would be very difficult to enforce the AEZ requirements in many circumstances because it would be challenging to determine what the AEZ should have been during an application in many situations unless it is simplified or there were additional recordkeeping requirements (not recommended).
- The current rule refers to factors and criteria for determining the AEZ (*i.e.,* droplet size and ''volume median diameters'') that are no longer appropriate based on new information from the American Society of Agricultural and Biological Engineers (ASABE). In July 2018, ASABE revised the standards regarding the criteria for the droplet size classification system (Ref. 5). With this proposed rule, EPA seeks to make it easier for the regulated community to comply with the requirement while still maintaining protections for bystanders and other persons. The current rule and criteria for determining the AEZ are no longer appropriate based on information from ASABE. The AEZ distances are currently based on factors that make it difficult for some applicators to determine their required AEZ. This has resulted in confusion and difficulty in complying with the AEZ requirement.
- The AEZ distances are currently based on factors that make it difficult for some applicators to determine their required AEZ, making it difficult to comply with the requirement. The complexity has resulted in many calling for the elimination of the AEZ altogether.
- Although there is a good rationale and basis for the AEZ requirement, it needs to be simplified to make it more practical, understandable, and easier to implement.

EPA acknowledges that some pesticide labels will have restrictions for applications that are different than the existing or proposed AEZs. For example, the restrictions on soil fumigant labels are more restrictive than the AEZ of 100 feet. In situations like this, pesticide users must follow the product-specific instructions on the labeling. As stated in 170.303(c) and 170.317(a), when 40 CFR part 170 is referenced on a pesticide label, pesticide users must comply with all the requirements in 40 CFR part 170, except those that are inconsistent with product-specific instructions on the pesticide product labeling.

After reviewing public input on the AEZ issues and concerns, EPA concludes these proposed revisions will maintain essentially the same level of protection as provided by the AEZ provisions in the current rule, while addressing the concerns raised about the complexity of the AEZ requirements and criteria. EPA expects that this proposal would address the major concerns of stakeholders (when combined with other options from issues discussed above) and could increase compliance by making the AEZ requirements easier to understand and implement. The proposed revision to the regulatory text would be codified at 170.405(a).

Some of these proposed revisions are intended to address the AEZ concerns noted in the Regulatory Reform Agenda docket. Commenters raised concerns related to the general and/or overall complexity of the AEZ requirements in 170.405(a) (*i.e.,* that establish the criteria and factors for determining AEZ distances) and the difficulty this creates in being able to comply with these requirements and enforce them.

2. *Anticipated Effects.* In 2015, EPA estimated that the cost to the agricultural employer for implementing an AEZ around application equipment would be negligible. These proposed revisions are simplifying the existing provisions and not adding any new requirements or burden. Therefore, the proposed changes would not result in any added costs for the agricultural employer based on EPA's cost estimate of the 2015 WPS rule.

EPA concludes these proposed revisions will maintain essentially the same level of protection as provided by the AEZ provisions in the current rule because they maintain the same general distances. These changes could increase compliance by making the AEZ requirements easier to understand and implement. Also, the requirement for the handler (applicator) to apply in a manner that does not contact workers or other people continues to apply.

3. *Options Considered but Not Proposed.* The Agency considered making no changes to the AEZ provision at 170.405(a) or issuing guidance to clarify and potentially simplify these AEZ requirements for outdoor production. One member of the PPDC expressed concern that the size of the AEZ was already minimal for aerial, air-blast, fumigation, smoke, mist, and fog applications, and stated that the existing AEZ should be upheld so that workers and their families do not lose any level of protection. However, making no changes would not address concerns from State and Tribal pesticide regulators related to the complexity of the AEZ requirements and the confusion and consternation in the regulated community caused by that complexity. Making no changes to the AEZ provisions would not address concerns raised about WPS compliance and would require more extensive training and outreach, without added benefits or protection. EPA requests comments and supporting data to inform EPA's proposed changes to the AEZ requirements, on other options considered and any other suggested changes that could simplify the regulatory requirements around the AEZ, help SLAs improve their compliance monitoring and enforcement efforts, and maintain appropriate protections for workers, handlers, and other persons during applications.

EPA issued interpretive guidance on February 15, 2018 addressing the AEZ (Ref. 4) that explains what the AEZ is, describes the responsibilities of agricultural employers and pesticide handlers for the AEZ, identifies the actions that should be taken by the pesticide applicator when someone enters the AEZ both when on and when off the establishment, explains the circumstances under which a pesticide applicator may resume a pesticide application after suspending application as a result of a person entering the AEZ, and provides instruction on how to determine the size of the AEZ. While helpful, the EPA guidance has not fully resolved all concerns, does not carry the weight and authority of a codified federal regulation, and may not provide the necessary clarity to assist state regulatory agencies with compliance activities for all AEZ issues. Therefore, EPA has elected to propose the revision to 170.405(a) as described above.

G. Proposed Revisions To Expand the Exemption for Owners of Agricultural Establishments and Their Immediate Families To Exempt Them From the Requirements of 170.405(a)

1. Proposed Changes. EPA is proposing to amend the AEZ requirement or owners of agricultural establishments and their immediate families by expanding the exemption at 170.601 to include entry restrictions during outdoor production pesticide applications (170.405(a)), to relieve burdens on family owned agricultural establishments during pesticide applications.

EPA is proposing this revision to address issues that arose during implementation of the 2015 revisions resulting from the unforeseen impacts of the AEZ requirements in certain situations. Stakeholders raised concerns related to the AEZ requirement in 170.405(a) (*i.e.,* that employers must not allow workers/people to remain in the AEZ on the establishment other than properly trained and equipped handlers involved in the application) applying to workers or other persons that are in buildings, housing, or shelters on the establishment. When workers or other people are in closed buildings, housing, or shelters that are within the boundaries of the establishment, the employer cannot legally apply the pesticide if those people are within the boundary area of the AEZ—it is a violation of the WPS. There is no choice under the current rule but to remove them from the AEZ before the application can take place, regardless of whether the buildings are closed or the handler can ensure the pesticide will not contact the people. This raises specific concerns for owners of agricultural establishments and their immediate families.

In the case of owners of agricultural establishments and their immediate families, family members cannot stay in their own home during pesticide applications if the home is within the AEZ. Even though the owner/applicator may be taking all the appropriate steps to ensure he or she will not contact other family members in their home during applications, it would still be a violation for them to stay in their home within the AEZ during applications if this exemption is not expanded. Although EPA acknowledges that there is an exposure risk for owners and immediate family members present within the AEZ during pesticide applications, EPA anticipates that family members will take appropriate steps to protect other family members to ensure they will not be contacted during pesticide applications, and that the AEZ requirement therefore subjects owners of agricultural establishments and their immediate families to unnecessary burdens. Accordingly, EPA proposes to revise 170.601 so that owners and applicators would be exempt from the provisions of 170.405(a) in regard to members of their immediate families who are inside closed buildings, housing, or shelters on the establishment. This should not impact WPS protections for workers and handlers because owners would still have to observe AEZ requirements for non-family member employees on the establishment. Because the proposed exemption is limited to 170.405(a), family members will still be subject to all other AEZ requirements.

After reviewing public input on the AEZ issues and concerns, EPA concludes this proposed revision will maintain essentially the same AEZ protections provided in the current rule for owners and immediate family members because of their interest in protecting each other. The proposed revision to the regulatory text would be codified at 170.601(a).

2. *Anticipated Effects.* This proposed revision is considered regulatory relief and should decrease costs and burden associated with the rule while maintaining essentially the same benefits by exempting owners of agricultural establishments and their immediate families from some regulatory requirements. The benefits of this change are not necessarily monetary. However, some owners of agricultural establishments and their immediate families may see more tangible benefits if they are able to avoid costs of moving families from housing or the costs of new equipment to change application methods.

3. *Options Considered but Not Proposed.* EPA considered addressing the AEZ issues by developing an exception to the AEZ requirement that would identify appropriate conditions for allowing people to remain in a building or structure in the AEZ. EPA also considered the option of making no changes to the owner exemption at 170.601(a). However, the Agency decided that it would be complicated to develop a national regulatory approach in the WPS that would address the many variables across the country where people might be in a building or structure in the AEZ on the agricultural establishment. Making no changes would not substantively address concerns identified by stakeholders (Ref. 1). Therefore, EPA has elected to propose the revision to 170.601(a) as described above.

III. Request for Comment

EPA requests comments and supporting data to inform EPA's proposed changes to the AEZ requirements, on other options considered and any other suggested changes that could simplify the regulatory requirements around the AEZ while maintaining appropriate protections for workers, handlers, and other persons during applications. To ensure that EPA is able to give your comments the fullest consideration, please provide the rationale and data or information that support your position.

IV. Severability

The Agency intends that the provisions of this rule be severable. In the event that any individual provision or part of this rule is invalidated, the Agency intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. *Reference List of Public Comments Regarding the Worker Protection Standard Submitted to Docket EPA–HQ–OA–2017–0190.*
2. EPA. *Cost Analysis for Revisions to the Application Exclusion Zone in the Worker Protection Standard,* 2019.
3. EPA. WPS Guidance on the Application Exclusion Zone. *Q&A Fact Sheet on the Worker Protection Standard (WPS) Application Exclusion Zone (AEZ) Requirements.* April 14, 2016.
4. EPA. *Worker Protection Standard Application Exclusion Zone Requirements: Updated Questions and Answers.* Available at *https://www.epa.gov/sites/production/files/2018-02/documents/aez-qa-fact-sheet-final.pdf.* February 15, 2018.
5. American National Standards Institute (ANSI)/American Society of Agricultural Engineers (ASAE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASAE S572.2. July 2018.

VI. FIFRA Review Requirements

Under FIFRA section 25(a), EPA has submitted a draft of the proposed rule to the Secretary of the Department of Agriculture, the FIFRA Scientific Advisory Panel (SAP), and the appropriate Congressional Committees. USDA completed review of the draft proposed rule during the interagency review mentioned in Unit VII.A., and the SAP waived its review.

VII. 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 a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared a cost analysis associated with this action, which is available in the docket (Ref. 2).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be a deregulatory action as specified in Executive Order 13771 (82 FR 9339, February 3, 2017). The EPA cost analysis associated with this action is available in the docket (Ref. 2).

C. Paperwork Reduction Act (PRA)

This action does not impose any new or modify information collection activities under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations under OMB control number 2070–0190 (EPA ICR No. 2491.02). This proposal does not impose an information collection burden because the application exclusion zone requirements are not associated with any of the existing burdens in the approved information collection request.

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 RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves burden or has no net burden on the small entities subject to the rule. These proposed changes would reduce the impacts on all small entities subject to the rule, so there are no significant impacts to any small entities. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

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 proposed rule requirements would primarily affect agricultural employers and commercial pesticide handler employers. This action is also expected to be a burden-reducing action and does not result in net costs exceeding $100 million. EPA does not estimate the cost savings of the burden reduction in this proposed rule. However, removing the requirements should reduce the complexity of arranging and conducting a pesticide application. If anything, these corrections should improve understanding of the requirements, which would facilitate compliance. The cost analysis associated with this action is available in the docket (Ref. 2).

F. Executive Order 13132: Federalism

This action does not have ''federalism implications'' as that term is defined in Executive Order 13132 (64 FR 43255, August 10, 1999). It would 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, as specified in Executive Order 13132.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule would change the requirements around AEZs. There are no costs to Tribes associated with the proposed changes because the WPS is implemented through the pesticide label, so changes to the regulation do not impose any new obligations on the part of Tribes. 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 proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866. This rulemaking will not result in increased risk to children. The minimum age requirements in WPS will ensure that children are not allowed to handle pesticides or engage in early-entry work, helping to prevent children's exposure to pesticides as handlers or early-entry workers.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rule is not likely to have any adverse energy effects because it does not require any action related to the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

List of Subjects in 40 CFR Part 170

Environmental protection, pesticides, agricultural worker, pesticide handler, employer, farms, forests, nurseries, greenhouses, worker protection standard.

Dated: October 24, 2019.

Andrew R. Wheeler,

Administrator.

Therefore, EPA proposes to amend 40 CFR chapter I, subchapter R, as follows:

PART 170—[AMENDED]

■ 1. The authority citation for part 170 continues to read:

Authority: 7 U.S.C. 136–136w.

■ 2. Amend § 170.305 by revising the definition of *Application Exclusion Zone* to read as follows:

§ 170.305 Definitions.

* * * * *

Application exclusion zone means the area surrounding the application equipment from which persons generally must be excluded during pesticide applications.

* * * * *

■ 3. Amend § 170.405 by removing paragraph (a)(1)(i)(D), and revising paragraphs (a)(1)(i)(B), (a)(1)(i)(C), (a)(1)(ii), and (a)(2) to read as follows:

§ 170.405 Entry restrictions associated with pesticide applications.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(A) * * *

(B) Air blast or air-propelled applications.

(C) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends 25 feet horizontally from the application equipment in all directions during application when the pesticide is applied as a spray from a height greater than 12 inches from the soil surface or planting medium and not as in paragraph (a)(1)(i) of this section.

* * * * *

(2) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete, except for:

(i) An appropriately trained and equipped handler involved in the application, and

(ii) A person not employed by the establishment who is in an area subject to an easement that prevents the agricultural employer from temporarily excluding the person from that area.

* * * * *

■ 3. Amend § 170.501 by revising paragraph (c)(3)(xi) to read as follows:

§ 170.501 Training requirements for handlers.

* * * * *

(c) * * *

(3) * * *

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone within the boundaries of the agricultural establishment and must not resume the application while workers or other persons remain in the application exclusion zone within the boundaries of the agricultural establishment, except for an appropriately trained and equipped handler involved in the application, and a person not employed by the establishment who is in an area subject to an easement that prevents the agricultural employer from temporarily excluding the person from that area.

* * * * *

■ 4. Amend § 170.505 by revising paragraph (b) to read as follows:

§ 170.505 Requirements during applications to protect handlers, workers, and other persons.

* * * * *

(b) *Suspending applications.* (1) Any handler performing a pesticide application must immediately suspend the pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in an application exclusion zone described in § 170.405(a)(1) that is within the boundaries of the agricultural establishment or the area specified in column B of the Table in § 170.405(b)(4), except for:

(i) An appropriately trained and equipped handler involved in the application, and

(ii) A person not employed by the establishment who is in an area subject to an easement that prevents the agricultural employer from temporarily excluding the person from that area.

(2) A handler must not resume a suspended pesticide application while any workers or other persons (other than appropriately trained and equipped handlers involved in the application) remain in an application exclusion zone described in § 170.405(a)(1) that is within the boundaries of the agricultural establishment or the area specified in column B of the Table in § 170.405(b)(4), except for persons not employed by the establishment in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area.

* * * * *

■ 5. Amend § 170.601 by revising paragraph (a)(1) to read as follows:

§ 170.601 Exemptions.

(a) * * *

(1) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment are not required to provide the protections of the following provisions to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this part on their own agricultural establishment.

(i) Section 170.309(c).

(ii) Section 170.309(f) through (j).

(iii) Section 170.311.

(iv) Section 170.401.

(v) Section 170.403.

(vi) Section 170.405(a).

(vii) Section 170.409.

(viii) Sections 170.411 and 170.509.

(ix) Section 170.501.

(x) Section 170.503.

(xi) Section 170.505(c) and (d).

(xii) Section 170.507(c) through (e).

(xiii) Section 170.605(a) through (c), and (e) through (j).

* * * * *

[FR Doc. 2019–23718 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL SERVICES AGENCY

40 CFR Part 282

[EPA–R01–UST–2019–0421; FRL–10001–59–Region 1]

New Hampshire: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Services Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Services Agency (EPA) is proposing to approve revisions to the State of New Hampshire's Underground Storage Tank (UST) program submitted by the New Hampshire Department of Environmental Services (NHDES). This action is based on EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of New Hampshire's state program and to incorporate by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

DATES: Send written comments by December 2, 2019.

ADDRESSES: Submit any comments, identified by EPA–R01–UST–2019–0421, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *Email: hanamoto.susan@epa.gov*.

3. *Mail:* Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912.

4. *Hand Delivery or Courier:* Deliver your comments to Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912.

Instructions: Direct your comments to Docket ID No. EPA–R01–UST–2019–0421. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *http://www.regulations.gov*. including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.,* or email. The Federal *http://www.regulations.gov*. Website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following location: EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment only; tel: (617) 918–1990. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, (617) 918–1219; email address: *hanamoto.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: This rule is issued under the authority of Sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: October 7, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2019–23708 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

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Friday, November 1, 2019

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0071]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Veterinary Services Field Operations Export Services Customer Service Survey Project

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection to evaluate service delivery by the Veterinary Services Field Operations Export Service Centers to the public.

DATES: We will consider all comments that we receive on or before December 31, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019*-0071.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0071, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0071* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Veterinary Services Field Operations Export Services customer service survey project, contact Ms. Melinda Springer, Chief of Staff, VS, APHIS, Field Operations, 2150 Centre Avenue, Building B, Fort Collins, CO; (970) 494–7351. For more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Veterinary Services Field Operations Export Services Customer Service Survey Project.

OMB Control Number: 0579–0334.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, among other things, regulates and provides services related to the importation, interstate movement, and exportation of animals, animal products, and other articles to prevent the spread of pests and diseases of livestock. APHIS' Veterinary Services' (VS') Field Operations is the program unit that carries out these activities at the field level (through service centers, airports, and seaports) to protect animal health.

After performing a service for an individual or business, the Field Operations Export Service Centers conduct a survey to evaluate customer service. The survey consists of a short questionnaire in which respondents are asked to identify the type of customer they are (*e.g.,* pet owners, animal importers/exporters, animal product and byproduct importers/exporters, users of quarantine facilities, and accredited veterinarians), and to rate the services received in terms of courtesy, timeliness, helpfulness, etc. Respondents are also asked to rate and provide comments concerning their overall experience. Completion of the questionnaire is voluntary and responses do not identify the individual respondent.

Field Operations uses the surveys to gain a general view of the public's perception of customer service at the service centers, airports, and seaports and identify areas in which VS can improve service delivery to the public and more efficiently meet the needs and expectations of customers.

Since the last approval of this collection by the Office of Management and Budget (OMB), we have changed the name from Veterinary Services Export Service Center Customer Service Survey to Veterinary Services Field Operations Export Services Customer Service Survey Project.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.0402 hours per response.

Respondents: Members of the public who receive services from Veterinary Services (*e.g.,* pet owners, animal importers/exporters, animal product and byproduct importers/exporters, users of quarantine facilities, and accredited veterinarians).

Estimated annual number of respondents: 15,050.

Estimated annual number of responses per respondent: 1.32.

Estimated annual number of responses: 19,850.

Estimated total annual burden on respondents: 797 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of October 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–23904 Filed 10–31–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0073]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Domestic Quarantine Regulations

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the domestic quarantine regulations for preventing the spread of plant pests and diseases within the United States.

DATES: We will consider all comments that we receive on or before December 31, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0073.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0073, Regulatory Analysis and Development, PPD, APHIS, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0073* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for preventing the spread of plant pests and diseases within the United States, contact Mr. Andrew Wilds, National Policy Manager, Plant Protection and Quarantine, APHIS, 4700 River Road, Unit 160, Riverdale, MD 20737; (301) 851–3051. For more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Domestic Quarantine Regulations.

OMB Control Number: 0579–0088.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest into the United States.

The Animal and Plant Health Inspection Service's (APHIS') regulations in 7 CFR part 301, "Domestic Quarantine Notices," are necessary to regulate the movement of certain articles from infested areas to noninfested areas to prevent the spread of plant pests. These measures help prevent the pests from spreading from quarantined areas to noninfested areas of the United States.

Administering these regulations requires APHIS to collect information from a variety of individuals who are involved in growing, packing, handling, and transporting plants and plant products. The information serves as supporting documentation required for the issuance of forms and documents that authorize the movement of regulated plants and plant products and is vital to help prevent the spread of injurious plant pests within the United States. Collecting this information requires APHIS to use a number of forms and documents, including permits and certificates; compliance and cooperative agreements; workplans and petitions; requests for inspection; labeling, notices, and reports; emergency action notifications and reports of violation; warnings, cancellations, and appeals; and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: State, local, and Tribal government agricultural representatives, agricultural business representatives, and private citizens.

Estimated annual number of respondents: 8,185.

Estimated annual number of responses per respondent: 211.

Estimated annual number of responses: 1,723,768.

Estimated total annual burden on respondents: 345,949 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of October 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–23905 Filed 10–31–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice supersedes the notice published in the August 7, 2019 issue of the **Federal Register** entitled National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates (FR Doc. 84–38590). It establishes new reimbursement rates for Guam and Virgin Islands to match the reimbursement rate provided to Puerto Rico, and corrects an incorrect date. Similar to FR Doc. 84–38590, this Notice announces the annual adjustments to the national average payments, the amount of money the Federal Government provides States for lunches, afterschool snacks, and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; to the maximum reimbursement rates, the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and to the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. As stated above, Food and Nutrition Service is establishing new reimbursement rates for Guam and the Virgin Islands: It has approved a 17-percent increase in school meal reimbursement rates for Guam and the Virgin Islands to reflect their higher cost of providing school meals. The rate adjustment will take effect beginning July 1, 2019, for school year 2019–2020. This increase is based on data indicating that the cost of producing school lunches, breakfasts, and snacks are higher than those in the continental United States, as well as other factors impacting both Guam and the Virgin Islands school meal programs. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. The payments and rates are prescribed on an annual basis each July.

Overall, reimbursement rates this year for the National School Lunch, Breakfast Programs and the Special Milk Program either remained the same or increased compared to last year. Of note, the performance-based reimbursement for lunches certified as meeting the meal pattern increased from 6 cents to 7 cents.

DATES: These rates are effective from July 1, 2019 through June 30, 2020

FOR FURTHER INFORMATION CONTACT: Jessica Saracino, Branch Chief, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, VA 22302–1594.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

National School Lunch and School Breakfast Programs—Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Levels—Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The Richard B. Russell National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759(a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Performanced-based Reimbursement—In addition to the funding mentioned above, school food authorized certified as meeting the meal pattern and nutrition standard requirements set forth in 7 CFR parts 210 and 220 are eligible to receive performance-based cash assistance for each reimbursable lunch served (an additional seven cents per lunch available beginning July 1, 2019, increased by inflation from six cents to seven cents, and will continue to be adjusted and rounded down to the nearest whole cent).

Afterschool Snack Payments in Afterschool Care Programs—Section 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price, and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in ‘‘severe need’’ because they serve a high percentage of needy children.

Adjusted Payments

The following specific section 4, section 11, and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2019 through June 30, 2020. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands are higher than those for all other States. The District of Columbia uses figures specified for the contiguous States. These rates do not include the value of USDA Foods or cash-in-lieu of USDA Foods which schools receive as additional assistance for each meal served to participants under the Program. A notice announcing the value of USDA Foods and cash-in-lieu of USDA Foods is published separately in the **Federal Register**.

Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Special Milk Program Payments

For the period July 1, 2019 through June 30, 2020, the rate of reimbursement for a half-pint of milk served to a non-needy child in a school or institution that participates in the Special Milk Program is 21.50 cents reflecting an increase of 1 cent from the School Year (SY) 2018–2019 level. This change is based on the 3.92 percent increase in the Producer Price Index for Fluid Milk Products from May 2018 to May 2019.

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch Program Payments

Overall, payments for the National School Lunch Program and the Afterschool Snack Program either remained the same or increased from last years payments due to a 2.94 percent increase in the national average payment rates for schools and residential child care institutions for the period July 1, 2019 through June 30, 2020 in the Consumer Price Index for All Urban Consumers for the food away from home series during the 12-month period May 2018 to May 2019 (from a level of 275.307 in May 2018, as previously published in the **Federal Register** to 283.394 in May 2019).

These changes are reflected below.

Section 4 National Average Payment Factors—In school food authorities that served less than 60 percent free and reduced price lunches in School Year (SY) 2017–2018, the payments for meals served are: *Contiguous States*—paid rate—32 cents (1 cent increase from the SY 2018–2019 level), free and reduced price rate—32 cents (1 cent increase), maximum rate—40 cents (1 cent increase); *Alaska*—paid rate—53 cents (2 cents increase), free and reduced price rate—53 cents (2 cents increase), maximum rate—63 cents (2 cents increase); *Guam, Hawaii, Puerto Rico, and the Virgin Islands*—paid rate—38 cents (1 cent increase), free and reduced price rate—38 cents (1 cent increase), maximum rate—46 cents (1 cent increase).

In school food authorities that served 60 percent or more free and reduced price lunches in School Year 2017–2018, payments are: *Contiguous States*—paid rate—34 cents (1 cent increase from the SY 2018–2019 level), free and reduced price rate—34 cents (1 cent increase), maximum rate—40 cents (1 cent increase); *Alaska*—paid rate—55 cents (2 cents increase), free and reduced price rate—55 cents (2 cents increase), maximum rate—63 cents (2 cents increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—paid rate—40 cents (1 cent increase), free and reduced price rate—40 cents (1 cent increase), maximum rate—46 cents (1 cent increase).

Beginning this year, School food authorities certified to receive the performance-based cash assistance will receive an additional 7 cents (adjusted annually) added to the above amounts as part of their section 4 payments.

Section 11 National Average Payment Factors—*Contiguous States*—free lunch—3 dollars and 9 cents (9 cents increase from the SY 2018–2019 level), reduced price lunch—2 dollars and 69 cents (9 cents increase); *Alaska*—free lunch—5 dollars and 1 cent (14 cents increase), reduced price lunch—4 dollars and 61 cents (14 cents increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free lunch—3 dollars and 62 cents (11 cents increase), reduced price lunch—3 dollars and 22 cents (11 cents increase).

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—94 cents (3 cents increase from the SY 2018–2019 level), reduced price snack—47 cents (2 cents increase), paid snack—8 cents (no change); *Alaska*—free snack –1 dollar and 52 cents (4 cents increase), reduced price snack—76 cents (2 cents increase), paid snack—13 cents (no change); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free snack—1 dollar and 10 cents (4 cents increase), reduced price snack—55 cents (2 cent increase), paid snack—10 cents (1 cent increase).

School Breakfast Program Payments

Overall, payments for the National School Breakfast Program either remained the same or increased from last years payments due to a 2.94 percent increase in the national average payment rates for schools and residential child care institutions for the period July 1, 2019 through June 30, 2020 in the Consumer Price Index for All Urban Consumers in the Food Away from Home series during the 12-month period May 2018 to May 2019 (from a level of 275.307 in May 2018, as previously published in the **Federal Register** to 283.394 in May 2019).

These changes are reflected below.

For schools ''not in severe need'' the payments are: *Contiguous States*—free breakfast—1 dollar and 84 cents (5 cents increase from the SY 2018–2019 level), reduced price breakfast—1 dollar and 54 cents (5 cents increase), paid breakfast—31 cents (no change); *Alaska*—free breakfast—2 dollars and 95 cents (8 cents increase), reduced price breakfast—2 dollars and 65 cents (8 cents increase), paid breakfast—47 cents (1 cent increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free breakfast—2 dollars and 15 cents (6 cents increase), reduced price breakfast—1 dollar and 85 cents (6 cents increase), paid breakfast—36 cents (1 cent increase).

For schools in ''severe need'' the payments are: *Contiguous States*—free breakfast—2 dollars and 20 cents (6 cents increase from the SY 2018–2019 level), reduced price breakfast—1 dollar and 90 cents (6 cents increase), paid breakfast—31 cents (no change); *Alaska*—free breakfast—3 dollars and 53 cents (10 cents increase), reduced price breakfast—3 dollars and 23 cents (10 cents increase), paid breakfast—47 cents (1 cent increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free breakfast—2 dollars and 57 cents (7 cents increase), reduced price breakfast—2 dollars and 27 cents (7 cents increase), paid breakfast—36 cents (1 cent increase).

Payment Chart

The following chart illustrates the lunch National Average Payment

Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including severe need schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia are those specified for the contiguous States.

BILLING CODE 3410–30–P

SCHOOL PROGRAMS
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
Expressed in Dollars or Fractions Thereof
Effective from: July 1, 2019 - June 30, 2020

NATIONAL SCHOOL LUNCH PROGRAM[1]		LESS THAN 60%	LESS THAN 60% + 7 cents[2]	60% OR MORE	60% or MORE + 7 cents[2]	MAXIMUM RATE	MAXIMUM RATE + 7 cents[2]
CONTIGUOUS STATES	PAID	0.32	0.39	0.34	0.41	0.40	0.47
	REDUCED PRICE	3.01	3.08	3.03	3.10	3.18	3.25
	FREE	3.41	3.48	3.43	3.50	3.58	3.65
ALASKA	PAID	0.53	0.60	0.55	0.62	0.63	0.70
	REDUCED PRICE	5.14	5.21	5.16	5.23	5.38	5.45
	FREE	5.54	5.61	5.56	5.63	5.78	5.85
GUAM, HAWAII, PUERTO RICO and VIRGIN ISLANDS	PAID	0.38	0.45	0.40	0.47	0.46	0.53
	REDUCED PRICE	3.60	3.67	3.62	3.69	3.78	3.85
	FREE	4.00	4.07	4.02	4.09	4.18	4.25

SCHOOL BREAKFAST PROGRAM		NON-SEVERE NEED	SEVERE NEED
CONTIGUOUS STATES	PAID	0.31	0.31
	REDUCED PRICE	1.54	1.90
	FREE	1.84	2.20
ALASKA	PAID	0.47	0.47
	REDUCED PRICE	2.65	3.23
	FREE	2.95	3.53
GUAM, HAWAII, PUERTO RICO and VIRGIN ISLANDS	PAID	0.36	0.36
	REDUCED PRICE	1.85	2.27
	FREE	2.15	2.57

SPECIAL MILK PROGRAM	ALL MILK	PAID MILK	FREE MILK
PRICING PROGRAMS WITHOUT FREE OPTION	0.2150	N/A	N/A
PRICING PROGRAMS WITH FREE OPTION	N/A	0.2150	Average Cost Per 1/2 Pint of Milk
NONPRICING PROGRAMS	0.2150	N/A	N/A

AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS		
CONTIGUOUS STATES	PAID	0.08
	REDUCED PRICE	0.47
	FREE	0.94
ALASKA	PAID	0.13
	REDUCED PRICE	0.76
	FREE	1.52
GUAM, HAWAII, PUERTO RICO and VIRGIN ISLANDS	PAID	0.10
	REDUCED PRICE	0.55
	FREE	1.10

[1] Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds

[2] Performance-based cash reimbursement (adjusted annually for inflation)

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This rule has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as note a major rule, as defined by 5 U.S.C. 804(2).

National School Lunch, School Breakfast, and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553, and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR 415.3–415.6).

Authority: Sections 4, 8, 11, and 17A of the Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: September 10, 2019.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–23946 Filed 10–31–19; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Information Collection Activity; Comment Request

AGENCY: Rural Business-Cooperative Service, Department of Agriculture.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995), this Notice announces the Rural Business-Cooperative Service intention to request an extension for a currently approved information collection for the Rural Microentrepreneur Assistance Program (RMAP).

DATES: Comments on this notice must be received by December 31, 2019 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Director, Specialty Programs Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–3226, Telephone (202) 720–1400

SUPPLEMENTARY INFORMATION:

Title: Rural Microentrepreneur Assistance Program.

OMB Number: 0570–0062.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The purpose of the RMAP program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. Direct loans and grants are made to selected Microenterprise Development Organizations (MDOs).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.17 hours per response.

Respondents: Nonprofits, Indian Tribes, and Public Institutions of Higher Education.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 11.

Estimated Number of Responses: 804.

Estimated Total Annual Burden Hours on Respondents: 1,748.

Comments are invited on: (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 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. Comments may be sent to Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *thomas.dickson@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019–23921 Filed 10–31–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) will hold a meeting on Friday November 15, 2019 at 2:00 p.m. Central time. The Committee will review testimony received and discuss a partial draft report on civil rights and prison conditions for incarcerated individuals who are also living with mental illness in Nebraska.

DATES: The meeting will take place on Friday November 15, 2019 at 2 p.m. Central.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 800–367–2403, Conference ID: 6135675.

Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Nebraska: Prisons and Mental Health
Future Plans and Actions
Public Comment
Adjournment

Dated: October 28, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–23854 Filed 10–31–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Monthly Wholesale Trade Survey

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension of the Monthly Wholesale Trade Survey (0607–0190), as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before December 31, 2019.

ADDRESSES: Direct all written comments to Thomas Smith, PRA Liaison, U.S. Census Bureau, 4600 Silver Hill Road, Room 7K250A, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2019–0015, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Aidan Smith, U.S. Census Bureau, Room 6K081, Washington, DC 20233–6500, (301) 763–2972 (or via the internet at *aidan.d.smith@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Monthly Wholesale Trade Survey (MWTS) provides a continuous measure of monthly sales, end-of-month inventories, and inventories/sales ratios in the United States by selected kinds of business for merchant wholesalers, excluding manufacturers' sales branches and offices. Estimates from the MWTS are released in three different reports each month. High level aggregate estimates for end-of-month inventories are first released as part of the Advance Economic Indicators Report approximately 25 to 29 calendar days after the close of the reference month. The full Monthly Wholesale Trade Report containing both sales and inventories estimates is released approximately 6 weeks after the close of the reference month. Sales and inventories estimates from the MWTS are also released as part of the Manufacturing and Trade Inventories and Sales (MTIS) report issued approximately 6 weeks after the close of the reference month. The Bureau of Economic Analysis uses this information to improve the inventory valuation adjustments applied to estimates of the Gross Domestic Product. The Bureau of Labor Statistics uses the data as input to develop Producer Price Indexes and productivity measurements.

Estimates produced from the MWTS are based on a probability sample and are published on the North American Industry Classification System (NAICS) basis. The sample of 4,200 small, medium, and large wholesale businesses reports monthly on sales and inventories. The sample is drawn from the Business Register, which contains all Employer Identification Numbers (EINs) and listed establishment locations. The sample is updated quarterly to reflect employer business ''births'' and ''deaths.'' New employer businesses identified in the Business and Professional Classification Survey are added and employer businesses determined to be no longer active are removed.

II. Method of Collection

We contact respondents initially by mailing them the MWTS form. Respondents have the option of reporting their data online, returning the paper form by fax or mail, or giving data by telephone. After initial contact, respondents have a choice to receive future correspondence by mailed form, faxed notice, or email. The email and faxed notices inform respondents that the online system is open for reporting for the specified reference month.

III. Data

OMB Control Number: 0607–0190.

Form Number(s): SM4217–A and SM4217–E.

Type of Review: Regular submission.

Affected Public: U.S. merchant wholesale firms, excluding manufacturers' sales branches and offices.

Estimated Number of Respondents: 4,200.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 5,880 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–23881 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership of the Departmental Performance Review Board.

SUMMARY: The Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Departmental Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Departmental Performance Review Board begins on November 1, 2019.

FOR FURTHER INFORMATION CONTACT: Joan Nagielski, U.S. Department of Commerce, Office of Human Resources Management, Department of Commerce Human Capital Client Services, Office of Employment and Compensation, 14th and Constitution Avenue NW, Room 50013, Washington, DC 20230, at (202) 482–6342.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Departmental Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months. The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. *Department of Commerce, Office of the Secretary (OS)*
   Renee Macklin, Director of Information Technology for Enterprise Services, Career SES
2. *Department of Commerce, Office of the General Counsel, Office of the Secretary (OGC/OS)*
   John Guenther, Chief, Employment and Labor Law Division, Career SES
3. *Department of Commerce, Economic Development Agency (EDA)*
   Gregory Brown, Chief Financial Officer and Chief Administrative Officer, Career SES
4. *Department of Commerce, U.S. Bureau of the Census*
   Lisa Blumerman, Chief, Office of Survey and Census Analytics, Career SES

Dated: October 29, 2019.

Joan Nagielski,

Human Resources Specialist, Office of Employment and Compensation, Department of Commerce Human Capital Client Services, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2019–23887 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: American Community Survey Methods Panel Tests, 2020 Specialized Mail Materials Test.

OMB Control Number: 0607–0936.

Form Number(s): ACS–1(X) (2020), ACS internet.

Type of Request: Non-Substantive Change Request.

Number of Respondents: 2,016,000.

Average Hours per Response: 40 minutes for the average household questionnaire.

Burden Hours: No additional burden hours are requested under this non-substantive change request.

Needs and Uses: The American Community Survey (ACS) collects detailed socioeconomic data from about 3.5 million housing units in the United States and 36,000 in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in Group Quarter (GQ) facilities. An ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing, and evaluations aimed at reducing respondent burden, improving data quality, achieving survey cost efficiencies, and improving ACS questionnaire content and related data collection materials. The ACS Methods Panel is a research program designed to address and respond to issues and survey needs.

Households in sample for the ACS in 2020 are legally required to respond to both the ACS and the decennial census. Receiving two sets of mailings in one calendar year can be confusing to respondents, which can increase the perception that the ACS is burdensome and intrusive and decrease the rate of self-response. During the 2010 Census, ACS response rates were higher than usual in the first few months of the year but were lower than usual in the spring and summer months (Chesnut and Davis 2011, Baumgardner 2013). The increased response rates early in the year were attributed to the decennial census communications campaign while the decrease later in the year was attributed to respondent confusion or burden, as respondents had already filled out the decennial census form.

To mitigate these issues, a set of modified mail materials were developed with language that directly addresses the difference between the ACS and the 2020 Census, in order to differentiate the two. These materials will be used during the main response period for the 2020 Census, March through September. The language modifications in the 2020 ACS materials are based on an evaluation conducted by the Census Bureau in 2010 to examine the use of modified language, color, and branding to create a distinct identity for the ACS (Chesnut and Davis 2011). Additionally, cognitive interviews of the 2020 ACS modified materials were conducted in the fall of 2018.

In order to assess the effect of the modified messaging in the ACS materials the Census Bureau is proposing to conduct the 2020 Specialized Mail Materials Test. From March through September, the ACS will use mail materials that help clarify that these mailings are not for the 2020 Census. This will be the control treatment for the experiment and will be sent to approximately 264,000 sampled addresses each month. The experimental treatment will not contain the modified language but otherwise will be the same as the control materials. These materials will be sent to approximately 24,000 sampled addresses each month from March through September and will also be used for ACS production for the remainder of the year (January, February, and October through December).

Affected Public: Individuals or households.

Frequency: One-time test, over seven months.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–23880 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket Number 191028–0071]

RIN 0691–XC107

Request for Comment; Notice of Development of Economic Statistics for Puerto Rico

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Bureau of Economic Analysis (BEA) is soliciting comments from the public on its new prototype Economic Statistics for Puerto Rico, which cover consumer spending, business investment, and trade in goods for Puerto Rico. BEA seeks comments on the statistics' methodology, presentation, level of detail, and scope. Following the public comment period, BEA will incorporate feedback, update the methodology and related materials for these economic statistics, and incorporate the revised prototype economic statistics into research to develop estimates of Puerto Rico GDP.

DATES: Comments must be received no later than December 2, 2019.

ADDRESSES: You may submit comments by the following methods:

• *Email: territories@bea.gov.*

• *Mail:* Sabrina Montes, Office of the Director, Bureau of Economic Analysis, Department of Commerce, 4600 Silver Hill Road (BE–40), Washington, DC 20233.

Comments sent by any other method or after the comment period may not be considered. All comments are a part of the public record.

FOR FURTHER INFORMATION CONTACT: Sabrina Montes, Office of the Director, Bureau of Economic Analysis, Department of Commerce, 4600 Silver Hill Road (BE–40), Washington, DC 20233; phone: (301) 278–9268 or email *Sabrina.Montes@bea.gov.*

SUPPLEMENTARY INFORMATION: In 2018, BEA initiated a project to calculate GDP for Puerto Rico in order to support Puerto Rico's economic recovery following devastating hurricanes in 2017. This project follows technical collaborations between BEA and the Commonwealth of Puerto Rico dating back to 2010. The project also responds to recommendations from the Congressional Task Force on Economic Growth in Puerto Rico and Government Accountability Office that BEA calculate GDP for Puerto Rico.

The present project—a collaborative effort between the Commonwealth of Puerto Rico and BEA—combines the best available Puerto Rico source data with BEA's current national accounting methodologies. The project seeks to produce accurate and objective economic statistics for Puerto Rico comparable to data for other U.S. territories, states, and the nation.

Methodological updates incorporated in the prototype statistics include:

• Using chain-type Fisher indexes to calculate changes in aggregate output and prices;

• Expanding the use of economic census data from the U.S. Census Bureau; and

• Treating expenditures on intangible assets as investment to allow users to understand how these intangible assets drive economic growth.

In October 2019, BEA published prototype estimates that incorporate these methodological updates for select GDP components for 2012–2017.

BEA is seeking feedback on its prototype statistics of consumer spending, business investment, and trade in goods for Puerto Rico. BEA will consider this feedback as it continues to refine source data, methodology, and data presentations before incorporating these measures into future prototype Puerto Rico GDP statistics.

BEA invites comments from the public; private industry; state, local, and territorial governments; non-profit organizations; and other interested parties to assist in improving the prototype statistics. In particular, BEA is interested in feedback regarding the following:

1. How will the statistics on consumer spending, business investment, and trade in goods for Puerto Rico be used?

2. Would an annual publication in May be useful? If not, what time of the year would be most valuable to inform planning and other uses?

3. Are the prototype estimates consistent with the data and local information that are available elsewhere on Puerto Rico? If not, please describe the differences.

4. Do you have any feedback about the methodology used to create the prototype Economic Statistics for Puerto Rico described in the October 2019 *Summary of Methodologies: Puerto Rico Personal Consumption Expenditures, Private Fixed Investment, and Net Exports of Goods* (available at *BEA.gov*)*?*

5. Are there additional or alternative source data that you believe could be used to generate and corroborate these statistics beyond those described in the October 2019 *Summary of Methodologies: Puerto Rico Personal Consumption Expenditures, Private Fixed Investment, and Net Exports of Goods* (available at *BEA.gov*)?

6. Which would be more useful: Less-detailed industry breakdowns, which will result in fewer data suppressions to protect confidentiality, or more-detailed industry breakdowns, with the necessary suppressions?

Authority: Chapter 5, Title 15 U.S.C.; 15 U.S.C. Section 1516; 13 U.S.C. Section 401 and 402.

Sabrina Montes,

Economist, Bureau of Economic Analysis.

[FR Doc. 2019–23866 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) From Romania: Partial 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 the administrative review, in part, of the antidumping duty order on carbon and alloy seamless standard, line and pressure pipe (under 4.5 inches) (small diameter seamless pipe) from Romania for the period August 1, 2018 through July 31, 2019.

DATES: Applicable November 1, 2019.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or 202–482–2285 respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2019, based on a timely request for review of four companies by United States Steel Corporation (the petitioner),[1] Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on small diameter seamless pipe from Romania covering the period August 1, 2018, through July 31, 2019.[2]

On October 15, 2019, the petitioner withdrew its request for administrative review of SC TMK-Artrom S.A. (TMK-Artrom)[3] and SC Tubinox S.A. (Tubinox).[4] No other interested parties requested an administrative review.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review.

Because the petitioner's request for administrative review of TMK-Artrom and Tubinox was withdrawn within 90 days of the date of publication of the *Initiation Notice,* and no other interested party requested a review of these companies, Commerce is rescinding this review with respect to TMK-Artrom and Tubinox, in accordance with 19 CFR 351.213(d)(1). The administrative review remains active with respect to the two remaining companies for which a review was initiated, *i.e.,* ArcelorMittal Tubular Products Roman S.A. and Silcotub S.A.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period August 1, 2018, through July 31, 2019, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 28, 2019.

James Maeder,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23818 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* the Petitioner's Letter, ''Carbon and Alloy Seamless Standard Line, and Pressure Pipe (Under 4.5 Inches) from Romania: Request for Administrative Review,'' dated August 30, 2019.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

[3] The partial withdrawal of request for administrative review listed this company as SC TMK-Artom S.A. However, the correct spelling of the company name for which a review was initiated is SC TMK-Artrom S.A.

[4] *See* Petitioner's Letter, ''Carbon and Alloy Seamless Standard Line, and Pressure Pipe (Under 4.5 Inches) from Romania: Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order,'' dated October 15, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–017]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Countervailing Duty Administrative Review, Correction of Notification of Rescission, in Part, 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the rescission, in part, of the countervailing duty administrative review of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) for the period of review (POR) January 1, 2017, through December 31, 2017.

DATES: Applicable November 1, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, 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) 482–4261.

SUPPLEMENTARY INFORMATION: On October 18, 2019, Commerce published the *Preliminary Results* of the 2017 countervailing duty administrative review of passenger tires from China.[1] In the **Federal Register** notice, Commerce inadvertently included eight companies which had timely withdrawn their requests for review,[2] in accordance with 19 CFR 351.213(d)(1), in the list of non-selected companies under review. These companies are: Riversun Industry Limited, Haohua Orient International Trade Ltd., Windforce Tyre Co., Limited, Tyrechamp Group Co., Limited, Macho Tire Corporation Limited, Qingdao Lakesea Tyre Co., Ltd., Fleming Limited, and Safe & Well (HK) International Trading Limited. This notice serves as a correction that

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part, 2017,* 84 FR 55913 (October 18, 2019) and accompanying Preliminary Decision Memorandum.

[2] *See* Letter from Riversun Industry Limited, Haohua Orient International Trade Ltd., Windforce Tyre Co., Limited, Tyrechamp Group Co., Limited, Macho Tire Corporation Limited, Qingdao Lakesea Tyre Co., Ltd., Fleming Limited, and Safe & Well (HK) International Trading Limited, ''Passenger Vehicle and Light Truck Tires from the People's Republic of China-Withdrawal of Request for Review,'' dated November 2, 2018. We did not receive any other requests for review of the above referenced companies.

we have rescinded the review of these eight companies. For the corrected list of non-selected companies under review, see the Appendix to this notice.

This correction to the **Federal Register** notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Non-Selected Companies Under Review

1. Anhui Jichi Tire Co., Ltd.
2. Bridgestone (Tianjin) Tire Co., Ltd.
3. Bridgestone Corporation
4. Dynamic Tire Corp.
5. Hankook Tire China Co., Ltd.
6. Husky Tire Corp.
7. Jiangsu Hankook Tire Co., Ltd.
8. Mayrun Tyre (Hong Kong) Limited
9. Qingdao Fullrun Tyre Corp., Ltd.
10. Qingdao Sunfulcess Trye Co., Ltd.
11. Sailun Jinyu Group Co., Ltd.
12. Sailun Jinyu Group (Hong Kong) Co., Limited
13. Sailun Tire International Corp.
14. Seatex International Inc.
15. Seatex PTE. Ltd.
16. Shandong Achi Tyres Co., Ltd.
17. Shandong Anchi Tyres Co., Ltd.
18. Shandong Duratti Rubber Corporation Co., Ltd.
19. Shandong Haohua Tire Co., Ltd.
20. Shandong Hengyu Science & Technology Co., Ltd.
21. Shandong Jinyu Industrial Co., Ltd.
22. Shandong Province Sanli Tire Manufactured Co., Ltd.
23. Shandong Wanda Boto Tyre Co., Ltd.
24. Triangle Tyre Co., Ltd.
25. Winrun Tyre Co., Ltd.

[FR Doc. 2019–23899 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Certain Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain malleable cast iron pipe fittings from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the dumping margins identified in the ''Final Results of Review'' section of this notice.

DATES: Applicable November 1, 2019].

FOR FURTHER INFORMATION CONTACT: Laura Griffith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6430.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published the notice of initiation of the third sunset review of the *Order* on malleable pipe fittings from China, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[1] On July 9, 2019, Commerce received a notice of intent to participate from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i).[2]

On July 31, 2019, Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We did not receive any responses from respondent interested parties in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The products covered by the *Order* are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is currently classifiable under item numbers 7307.19.30.60, 7307.19.30.85, 7307.19.90.30, 7307.19.90.60, 7307.19.90.80, and 7326.90.86.88 of the Harmonized Tariff Schedule of the United States (HTSUS). Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from ½ inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and customs purposes, Commerce's written description of the scope of the order is dispositive.

Analysis of Comments Received

Commerce addressed all issues raised in this sunset review in the Issues and Decision Memorandum, which is hereby adopted by this notice.[4] A list of the issues discussed in the Issues and Decision Memorandum is attached at Appendix. 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 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 at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 111.36 percent.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act and 19 CFR 351.218.

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[1] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 31304 (July 1, 2019).

[2] *See* Domestic Interested Parties' Letter, ''Malleable Cast Iron Pipe Fittings from China, Third Sunset Review: Notice of Intent to Participate,'' dated July 9, 2019.

[3] *See* Domestic Interested Parties' Letter, ''Malleable Cast Iron Pipe Fittings from China, Third Sunset Review: Substantive Response to Notice of Initiation,'' dated July 31, 2019.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Malleable Cast Iron Pipe Fittings from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Dated: October 28, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. History of the Order
V. Legal Framework
VI. Discussion of the Issues
 1. Likelihood of Continuation of Recurrence of Dumping
 2. Magnitude of the Margin Likely to Prevail
VII. Final Results of Third Expedited Sunset Review
VIII. Recommendation

[FR Doc. 2019–23902 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable (November 1, 2019).

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Commerce Contact
A–570–996	731–TA–1238	China	Non-Oriented Electrical Steel (1st Review)	Matthew Renkey, (202) 482–2312.
C–570–997	701–TA–506	China	Non-Oriented Electrical Steel (1st Review)	Joshua Poole, (202) 482–1293.
A–428–843	731–TA–1239	Germany	Non-Oriented Electrical Steel (1st Review)	Matthew Renkey, (202) 482–2312.
A–588–872	731–TA–1240	Japan	Non-Oriented Electrical Steel (1st Review)	Matthew Renkey, (202) 482–2312.
A–580–872	731–TA–1241	Republic of Korea	Non-Oriented Electrical Steel (1st Review)	Matthew Renkey, (202) 482–2312.
A–401–809	731–TA–1242	Sweden	Non-Oriented Electrical Steel (1st Review)	Matthew Renkey, (202) 482–2312.
A–583–851	731–TA–1243	Taiwan	Non-Oriented Electrical Steel (1st Review)	Matthew Renkey, (202) 482–2312.
C–583–852	701–TA–508	Taiwan	Non-Oriented Electrical Steel (1st Review)	Joshua Poole, (202) 482–1293.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 22, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23900 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings From the People's Republic of China: 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 (AD) order on tapered roller bearings (TRBs) from the People's Republic of China (China) for the period June 1, 2018, through May 31, 2019, based on the timely withdrawal of all requests for review.

DATES: Applicable November 1, 2019.

FOR FURTHER INFORMATION CONTACT: Alex Wood, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2019, Commerce published in the **Federal Register** a notice of opportunity to request administrative review of the AD order on TRBs from China for the period June 1, 2018, through May 31, 2019.[1]

From June 27, 2019, to July 1, 2019, we received timely requests for review from Taizhou Zson Bearing Technology Co., Ltd. (Zson), Hangzhou Feiwang Auto Parts Co., Ltd. (Feiwang), Ningbo Xinglun Bearings Import & Export Co., Ltd. (Ningbo Xinglun), GGB Bearing Technology (Suzhou) Co., Ltd. (GGB), BRTEC Wheel Hub Bearing Co., Ltd. (BRTEC), Zhejiang Sihe Machine Co., Ltd. (Sihe), Zhejiang Sling Automobile Bearing Co., Ltd. (Sling), Changshan Peer Bearing Company, Ltd. (CPZ), and Shanghai General Bearing Co., Ltd. (SGBC).[2]

On July 29, 2019, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of initiation of an administrative review of the AD order.[3] The administrative review was initiated with respect to nine companies and covers the period June 1, 2018 through May 31, 2019. Subsequent to the initiation of the administrative review, each of the exporters in this proceeding timely withdrew their review requests, as discussed below.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of notice of initiation of the requested review. In August 2019, Chinese exporters GGB, CPZ, SGBC, Sihe, Sling, and Ningbo Xinglun withdrew their requests for review within 90 days of the date of publication of the *Initiation Notice.*[4] In

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 25521 (June 3, 2019).

[2] *See* Letter from Zson, ''Tapered Roller Bearings from the People's Republic of China—Request for Administrative Review,'' dated June 27, 2019; Letter from Feiwang, ''Request for AD Administrative Review Tapered Roller Bearings from China; A–570–601,'' dated June 28, 2019; Letter from Ningbo Xinglun, ''Tapered Roller Bearings from China: Request for Administrative Review,'' dated June 28, 2019; Letter from GGB, ''*Request for the Administrative Review* of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China, A–570–601 (POR: 6/1/18–5/31/19),'' dated July 1, 2019; Letter from BRTEC, ''Tapered Roller Bearings from the People's Republic of China—Request for Administrative Review,'' dated July 1, 2019; Letter from Sihe and Sling, ''Tapered Roller Bearings from the People's Republic of China—Request for Administrative Review,'' dated July 1, 2019; Letter from CPZ, ''Tapered Roller Bearing from the People's Republic of China: Request for Administrative Review,'' dated July 1, 2019; and Letter from SGBC, ''Tapered Roller Bearing from the People's Republic of China: Request for Administrative Review,'' dated July 1, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 36572 (July 29, 2019) (*Initiation Notice*).

[4] *See* GGB's Letter, ''Withdrawal of Request for Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China, A–570–601 (POR: 6/1/18–5/31/19),'' dated August 20, 2019; CPZ's Letter, ''Certain

September 2019, Chinese exporters BRTEC and Zson withdrew their requests for review within 90 days of the date of publication of the *Initiation Notice.*[5] Finally, in October 2019, Feiwang withdrew its request for review within 90 days of the publication of the *Initiation Notice.*[6] Accordingly, Commerce is rescinding this review in accordance with 19 CFR 353.213(d)(1), 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 directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers whose entries will be liquidated as a result of this rescission notice, 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 doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with sections 751(a)(1) and 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. 2019–23897 Filed 10–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for December 2019

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in December 2019 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Calcium Hypochlorite from China (A–570–008) (1st Review)	Matthew Renkey, (202) 482–2312
Carbon and Certain Alloy Steel Wire Rod from China (A–570–012) (1st Review)	Joshua Poole, (202) 482–1293
Electrolytic Manganese Dioxide from China (A–570–919) (2nd Review)	Matthew Renkey, (202) 482–2312
Lightweight Thermal Paper from China (A–580–872) (2nd Review)	Joshua Poole, (202) 482–1293
Countervailing Duty Proceedings	
Calcium Hypochlorite from China (C–570–009) (1st Review)	Matthew Renkey, (202) 482–2312
Carbon and Certain Alloy Steel Wire Rod from China (C–570–013) (1st Review)	Joshua Poole, (202) 482–1293
Lightweight Thermal Paper from China (A–580–872) (2nd Review)	Joshua Poole, (202) 482–1293
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in December 2019.	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within

Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated August 26, 2019; and SGBC's Letter, ''Certain Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated August 26, 2019; Sihe and Sling's Letter, ''Tapered Roller Bearings from the People's Republic of China—Withdrawal of Requests for Administrative Review, dated August 28, 2019; Ningbo Xinglun's Letter, ''Tapered Roller Bearings from China: 2018–2019 Review; Withdrawal of Request for Administrative Review,'' dated August 30, 2019.

[5] *See* BRTEC's Letter, ''Tapered Roller Bearings from the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated September 16, 2019; and Zson's Letter, ''Tapered Roller Bearings from the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated September 17, 2019.

[6] *See* Feiwang's Letter, ''Tapered Roller Bearings from the People's Republic of China; A–570–601 Withdrawal of Request of Review,'' dated October 9, 2019.

15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 22, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23895 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of November 2019,[2] interested parties may request

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period of review
Antidumping Duty Proceedings	
BRAZIL: Circular Welded Non-Alloy Steel Pipe, A–351–809	11/1/18–10/31/19
INDIA: Welded Stainless Pressure Pipe, A–533–867	11/1/18–10/31/19
INDONESIA:	
Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses, A–560–823	11/1/18–10/31/19
Monosodium Glutamate, A–560–826	11/1/18–10/31/19
ITALY: Forged Steel Fittings, A–475–839	5/17/18–10/31/19
MEXICO:	
Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/18–10/31/19
Seamless Refined Copper Pipe and Tube, A–201–838	11/1/18–10/31/19
Steel Concrete Reinforcing Bar, A–201–844	11/1/18–10/31/19
REPUBLIC OF KOREA: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/18–10/31/19
TAIWAN:	
Certain Circular Welded Non-Alloy Steel Pipe, A–583–814	11/1/18–10/31/19
Certain Hot-Rolled Carbon Steel Flat Products, A–583–835	11/1/18–10/31/19
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products, A–549–817	11/1/18–10/31/19
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Hot Rolled Carbon Steel Flat Products, A–570–865	11/1/18–10/31/19
Certain Coated Paper Suitable For High-Quality Print Graphic Using Sheet-Fed Presses, A–570–958	11/1/18–10/31/19
Certain Cut-To-Carbon Steel, A–570–849	11/1/18–10/31/19
Diamond Sawblades and Parts Thereof, A–570–900	11/1/18–10/31/19
Fresh Garlic, A–570–831	11/1/18–10/31/19
Forged Steel Fittings, A–570–067	5/17/18–10/31/19
Lightweight Thermal Paper, A–570–920	11/1/18–10/31/19
Monosodium Glutamate, A–570–992	11/1/18–10/31/19
Paper Clips, A–570–826	11/1/18–10/31/19
Polyethylene Terephthalate (Pet) Film, A–570–924	11/1/18–10/31/19
Pure Magnesium in Granular Form, A–570–864	11/1/18–10/31/19
Refined Brown Aluminum Oxide, A–570–882	11/1/18–10/31/19
Seamless Carbon and Alloy Steel Standard, Line And Pressure Pipe, A–570–956	11/1/18–10/31/19
Seamless Refined Copper Pipe and Tube, A–570–964	11/1/18–10/31/19
Sodium Gluconate, Gluconic Acid, and Derivative Products, A–570–071	7/10/18–10/31/19
UKRAINE: Certain Hot-Rolled Carbon Steel Flat Products, A–823–811	11/1/18–10/31/19
UNITED ARAB EMIRATES: Polyethylene Terephthalate (Pet) Film, A–520–803	11/1/18–10/31/19
Countervailing Duty Proceedings	
INDIA: Welded Stainless Pressure Pipe, C–533–868	1/1/18–12/31/18
INDONESIA: Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses, C–560–824	1/1/18–12/31/18
THE PEOPLE'S REPUBLIC OF CHINA:	
Chlorinated Isocyanurates, C–570–991	1/1/18–12/31/18
Certain Coated Paper Suitable For High-Quality Print Graphic Using Sheet-Fed Presses, C–570–959	1/1/18–12/31/18
Forged Steel Fittings, C–570–068	3/14/18–12/31/18
Lightweight Thermal Paper, C–570–921	1/1/18–12/31/18
Seamless Carbon and Alloy Steel Standard, Line, And Pressure Pipe, C–570–957	1/1/18–12/31/18
Sodium Gluconate, Gluconic Acid, and Derivative Products, C–570–072	5/23/18–12/31/18
TURKEY: Steel Concrete Reinforcing Bar, A–489–819	1/1/18–12/31/18
Suspension Agreements	
UKRAINE: Certain Cut-To-Length Carbon Steel Plate, A–823–808	11/1/18–10/31/19

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping*

Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative review.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *http://access.trade.gov.*[6]

[3] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2019. If Commerce does not receive, by the last day of November 2019, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 24, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23903 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, December 4, 2019 from 9:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, December 5, 2019 from 9:00 a.m. until 4:30 p.m., Eastern Time. All sessions will be open to the public, with no pre-registration required.

DATES: The meeting will be held on Wednesday, December 4, 2019, from 9:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, December 5, 2019, from 9:00 a.m. until 4:30 p.m., Eastern Time.

ADDRESSES: The meeting will be held at American University College of Law, 4300 Nebraska Ave NW, Washington, DC 20016.

FOR FURTHER INFORMATION CONTACT: Jeff Brewer, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, Telephone: (301) 975–2489, email address: *jeffrey.brewer@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ISPAB will meet Wednesday, December 4, 2019, from 9:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, December 5, 2019 from 9:00 a.m. until 4:30 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including thorough review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *https://csrc.nist.gov/projects/ispab.*

The agenda is expected to include the following items:

—Briefing on Testing and Conformance Programs used by the Federal Government,
—Briefing on work in Election Infrastructure Cybersecurity,
—Briefing on the Cybersecurity Solarium Report,
—Discussion by the Board on Cybersecurity and Privacy Issues in the Federal Government,
—Discussions by the Board on recent Legislative Proposals and GAO findings in Cybersecurity and Privacy.

Note that agenda items may change without notice. The final agenda will be posted on the website indicated above. Seating will be available for the public and media. Pre-registration is not required to attend this meeting.

Public Participation: The ISPAB agenda will include a period, not to exceed thirty minutes, for oral comments from the public (Wednesday, December 4, 2019, between 4:30 p.m. and 5:00 p.m.). Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–23869 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV120]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Bluefish Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's Bluefish Advisory Panel.

DATES: The meeting will be held on Tuesday, November 19, 2019, from 10 a.m. until 12 p.m.

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/bfapnov19/.* Meeting audio can also be accessed via telephone by dialing 1–800–832–0736 and entering room number 5068609.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Bluefish Advisory Panel, together with the Atlantic States Marine Fisheries Commission's Bluefish Advisory Panel, will meet on Tuesday, November 19, 2019. The purpose of this meeting is to provide comments and recommendations on recreational management measures for bluefish for the 2020 fishing year. A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

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 29, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–23910 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV121]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, November 20, 2019 at 8:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; phone: (401) 831–3900.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will review Framework 32 (FW 32): specifically, a review of specifications alternatives in FW 32 and make final recommendations. FW 32 will set specifications including acceptable biological catch/annual catch limit (ABC/ACLs), days-at-sea (DAS), access area allocations for Limited Access (LA) and Limited Access General Category (LAGC), Total Allowable Catch (TAC) for Northern Gulf of Maine (NGOM) management area, target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2020 and default specifications for fishing year 2021. They will also review options for mitigating impacts on Georges Bank yellowtail flounder and make final recommendations. The committee plans to discuss Amendment 21 and the group may be asked to review progress from the Plan Development Team on Committee tasking from the September 2019 Committee meeting. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 29, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–23911 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX017]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits; Correction

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

ACTION: Notice; request for comments; correction.

SUMMARY: NMFS is correcting a notice that informed the public that the Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an application submitted by the Cape Cod Commercial Fishermen's Alliance for an exempted fishing permit contains all of the required information and warrants further consideration. The proposed active date of the exempted fishing permit was incorrect.

DATES: Comments must be received on or before November 5, 2019.

ADDRESSES: You may submit written comments by either of the following methods:

• *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''6–INCH MESH CODEND EM EFP.''

• *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''6–INCH MESH CODEND EM EFP.''

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232.

SUPPLEMENTARY INFORMATION: On October 21, 2019, NMFS published a notification that informed the public that the Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, made a preliminary determination that an application submitted by the Cape Cod Commercial Fishermen's Alliance for an exempted fishing permit (EFP) contains all of the required information and warrants further consideration. The document incorrectly listed the active period for the EFP as January 1, 2019, through April 30, 2019, instead of the correct active period of January 1, 2020, through April 30, 2020. This correction does not change the scope or impact of the proposed EFP. This correction is necessary to provide interested parties the opportunity to comment on the application with correct and complete information.

Correction

In the **Federal Register** of October 21, 2019, in FR Doc 2019–22854, on page 56181, column 3, in the first full paragraph, the third sentence is corrected to read as follows: ''The EFP would be active from January 1, 2020, through April 30, 2020.''

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

Dated: October 29, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–23913 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV119]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Research Steering Committee will hold a meeting.

DATES: The meeting will be held on Friday, November 22, 2019, from 10 a.m. to 12 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Research Steering Committee to review and provide feedback on the Council's draft Five-Year (2020–24) Research Priorities document. The draft document has been re-organized and prioritized based on feedback and input from the Council's Scientific and Statistical Committee (SSC), Monitoring Committees and Advisory Panels. Research Steering Committee recommendations will be incorporated into the draft document and provided to the Council prior to the December 2019 Council meeting when final review and approval is scheduled to take place.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

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 29, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–23909 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–PR–A003 X

Marine Mammals; File No. 22629

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

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the NMFS Office of Protected Resources will hold a public hearing related to a permit application (File No. 22629) submitted by Mystic Aquarium (Responsible Party: Stephen M. Coan, Ph.D.) to import five beluga whales (*Delphinapterus leucas*) for scientific research purposes.

DATES: The public hearing will be held from 1 p.m. to 3 p.m. (local time) on November 18, 2019.

ADDRESSES: The public hearing will be held in the Great Hall (1st Floor) at the Silver Spring Civic Center, 1 Veterans Place, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Amy Sloan, Courtney Smith, or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2019, NMFS published notice of receipt of a permit application submitted by Mystic Aquarium to import five captive-born beluga whales for scientific research purposes (84 FR 52072). The permit application, **Federal Register** notice of receipt of the application, and information on how to submit written comments are available online at *https://www.fisheries.noaa.gov/action/permit-application-import-5-beluga-whales-scientific-research-file-no-22629-mystic-aquarium.* The public comment period ends on December 2, 2019.

Public Hearing

The public hearing will begin with a brief presentation by NMFS describing the permit application and decision process. Following the presentation, members of the public will have the opportunity to provide oral comments regarding the permit application and may also submit written comments at the hearing. Any interested person may appear in person, or through representatives, and may submit any relevant material, data, views, or comments. A record of the hearing will be kept. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible.

Reasonable Accommodations

People needing accommodations so that they may attend and participate at the public hearings should submit a request for reasonable accommodations as soon as possible, and no later than 7 business days prior to the hearing date, by contacting Jennifer Skidmore at (301) 427–8401.

Authority: 16 U.S.C. 1374.

Dated: October 29, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–23889 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV122]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, November 19, 2019 at 8:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; phone: (401) 831–3900.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel will review Framework 32 (FW 32): Specifically, a review of specifications alternatives in FW 32 and make final recommendations. FW 32 will set specifications including acceptable biological catch/annual catch limit (ABC/ACLs), days-at-sea (DAS), access area allocations for Limited Access (LA) and Limited Access General Category (LAGC), Total Allowable Catch (TAC) for Northern Gulf of Maine (NGOM) management area, target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2020 and default specifications for fishing year 2021. They will also review options for mitigating impacts on Georges Bank yellowtail flounder and make final recommendations. The panel plans to discuss Amendment 21 and the group may be asked to review progress from the Plan Development Team on Committee tasking from the September 2019 Committee meeting. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 29, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–23912 Filed 10–31–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* December 1, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 8/23/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type: Janitorial Service
Mandatory for: US Coast Guard, USCG Training Center, Petaluma, CA
Mandatory for: US Coast Guard, USCG Pacific Strike Team, Novato, CA
Mandatory Source of Supply: North Bay Rehabilitation Services, Inc., Rohnert Park, CA
Contracting Activity: U.S. COAST GUARD, SILC BSS(00084)
Service Type: Transportation Maintenance and Operations Services
Mandatory for: US Navy, MCIEast, MCB Camp Lejeune (including MCAS New River), Camp Lejeune, NC
Mandatory Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: Dept of the Navy, Commanding General

Deletions

On 9/27/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSNs—Product Names:
7510–01–435–9775—Micro-Cell Stamp Pad, Size #1 2¾ × 4½, Red
7510–01–435–9776—Micro-Cell Stamp Pad, Size #1, 2¾ × 4½, Black
7510–01–435–9777—Micro-Cell Stamp Pad, Size #2, 3¼ × 6¼, Red
7510–01–435–9778—Micro-Cell Stamp Pad, Size #2, 3¼ × 6¼, Black
Mandatory Source of Supply: Cattaraugus County Chapter, NYSARC, Olean, NY
Contracting Activity: GSA/FAS Admin SVCS Acquisition BR(2, New York, NY

Services

Service Type: Janitorial/Custodial
Mandatory for: Veterans Affairs Outpatient Clinic, Sacramento, CA
Mandatory Source of Supply: Easter Seal Society of Superior California, Sacramento, CA
Contracting Activity: Veterans Affairs, Department of, NAC
Service Type: Mailroom Operation
Mandatory for: Immigration and Naturalization Service: Administrative Center & Western Operations Region, Laguna Niguel, CA
Contracting Activity: Office of Policy, Management, and Budget, NBC Acquisition Services Division

Service Type: Operation of Postal Service Center
Mandatory for: Bolling Air Force Base, Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: Dept of the Air Force, FA7012 11 CONS LGC

Service Type: Grounds Maintenance
Mandatory for: USACE Bayou Boeuf & Berwick Locks-East/West Calumet & Charenton Floodgates, Morgan City Vicinity, LA
Mandatory Source of Supply: Goodworks, Inc., New Orleans, LA
Contracting Activity: Dept of the Army, W07V ENDIST N Orleans

Service Type: Reception Service Support
Mandatory for: Fort Bragg, Fort Bragg, NC
Mandatory Source of Supply: Employment Source, Inc., Fayetteville, NC
Contracting Activity: Dept of the Army, W6QM MICC FDO FT Bragg

Service Type: Reception Service Support
Mandatory for: Fort Campbell, Fort Campbell, KY
Mandatory Source of Supply: Employment Source, Inc., Fayetteville, NC
Contracting Activity: Dept of the Army, W6QM MICC FDO FT Bragg

Service Type: Reception Service Support
Mandatory for: Fort Hood, Fort Hood, TX
Mandatory Source of Supply: Professional Contract Services, Inc., Austin, TX
Contracting Activity: Dept of the Army, W6QM MICC FDO FT Bragg

Service Type: Reception Service Support
Mandatory for: Fort Bliss, Fort Bliss, TX
Mandatory Source of Supply: Tresco, Inc., Las Cruces, NM
Contracting Activity: Dept of the Army, W6QM MICC FDO FT Bragg

Service Type: Reception Service Support
Mandatory for: Fort Sill, Fort Sill, OK
Mandatory Source of Supply: Work Services Corporation, Wichita Falls, TX
Contracting Activity: Dept of the Army, W6QM MICC FDO FT Bragg

Service Type: Reception Service Support
Mandatory for: Fort Lewis, Fort Lewis, WA
Mandatory Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: Dept of the Army, W6QM MICC FDO FT Bragg

Service Type: Custodial Services
Mandatory for: Illinois Military Academy: 1301 North MacArthur Road, Springfield, IL
Mandatory Source of Supply: United Cerebral Palsy of the Land of Lincoln, Springfield, IL
Contracting Activity: Dept of Defense, DOD/OFF of Secretary of DEF (EXC MIL DEPTS)

Service Type: Grounds Maintenance
Mandatory for: Corpus Christi Resident Office, USACE (SAO), 1920 N Chaparral St., Corpus Christi, TX
Mandatory Source of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: Dept of the Army, W076 ENDIST Galveston

Service Type: Custodial Services
Mandatory for: USDA, Animal and Plant Health Inspection Service: 67 Thomas Johnson Drive, Frederick, MD
Mandatory for: USDA, Animal and Plant Health Inspection Service: 69 Thomas Johnson Drive, Frederick, MD
Mandatory Source of Supply: NW Works, Inc., Winchester, VA
Contracting Activity: Animal and Plant Health Inspection Service, USDA APHIS MRPBS

Service Type: Janitorial/Custodial
Mandatory for: Douglas Station Post Office: 904 Third Street, Douglas, AK
Mandatory Source of Supply: REACH, Inc., Juneau, AK
Contracting Activity: U.S. Postal Service, Washington, DC

Service Type: Janitorial/Custodial
Mandatory for: U.S. Coast Guard Cutter Aspen: Yerba Buena Island, San Francisco, CA
Mandatory Source of Supply: Toolworks, Inc., San Francisco, CA
Contracting Activity: U.S. Coast Guard, Base Alameda

Service Type: Custodial Services
Mandatory for: Caribou-Targhee National Forest, St. Anthony Supervisor's Office, USFS, St. Anthony, ID
Mandatory Source of Supply: Development Workshop, Inc., Idaho Falls, ID
Contracting Activity: Forest Service, Caribou-Targhee National Forest

Service Type: Grounds Maintenance
Mandatory for: USDA, Southern Plains Agriculture Research Center: 2881 F&B Road, College Station, TX
Mandatory Source of Supply: World Technical Services, Inc., San Antonio, TX
Contracting Activity: Agricultural Research Service, Dept of AGRIC/Agricultural Research Service

Service Type: Vehicle Retrofitting Srvc limited to FPI surplus
Mandatory for: Retrofit Facility (Prime Contract): Bremerton, WA
Mandatory Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: Bureau of Customs and Border Protection, SBI Acquisition Office

Service Type: Janitorial/Grounds Maintenance
Mandatory for: Oxnard Border Patrol Station, Camarillo, CA
Mandatory Source of Supply: The ARC of Ventura County, Inc., Ventura, CA
Contracting Activity: U.S. Immigration and Customs Enforcement, Detention Management—Laguna Office

Service Type: Custodial Services
Mandatory for: U.S. Coast Guard Marine Safety Office: 9640 Clinton Drive, Galena, TX
Mandatory Source of Supply: On Our Own Services, Inc., Houston, TX
Contracting Activity: U.S. Coast Guard, U.S. Coast Guard

Service Type: Guard Services
Mandatory for: U.S. Coast Guard-Mayport, Mayport, FL
Mandatory Source of Supply: GINFL Services, Inc., Jacksonville, FL
Contracting Activity: U.S. Coast Guard, U.S. Coast Guard

Service Type: Disposal Support Services
Mandatory for: Hill Air Force Base: Defense Reutilization and Marketing Office, Hill Air Force Base, UT
Mandatory Source of Supply: EnableUtah, Ogden, UT
Contracting Activity: Dept of Defense, DOD/OFF of Secretary of DEF (EXC MIL Depts)

Service Type: Laundry Service
Mandatory for: Whidbey Island Naval Air Station: Naval Hospital, Oak Harbor, WA
Mandatory Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: Dept of the Navy, NAVSUP FLT LOG CTR Puget Sound

Service Type: Grounds Maintenance
Mandatory for: Marine Corps Support Activity: Richards-Gebaur Memorial Airport, Kansas City, MO
Mandatory Source of Supply: JobOne, Independence, MO
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Custodial service
Mandatory for: Eastern ARNG Aviation Training Site, Capital City Airport Hanger 2, New Cumberland, PA
Mandatory Source of Supply: Opportunity Center, Incorporated, Wilmington, DE
Contracting Activity: Dept of the Army, W7NX USPFO Activity PA ARNG

Service Type: Janitorial/Custodial
Mandatory for: Segura U.S. Army Reserve Center: 301 Ascarate Park Road, El Paso, TX
Mandatory Source of Supply: Let's Go To Work, El Paso, TX
Contracting Activity: Dept of the Army, W6QM MICC–PRESIDIO (RC–W)

Service Type: Administrative Services
Mandatory for: U.S. Customs Service Academy, Glynco, GA
Mandatory Source of Supply: Challenge Enterprises of North Florida, Inc., Green Cove Springs, FL
Contracting Activity: Bureau of Customs and Border Protection, National Acquisition Center

Service Type: Custodial and Grounds Maintenance
Mandatory for: Salmon Airbase, 8 Industrial Lane, USFS, Salmon, ID
Mandatory Source of Supply: Development Workshop, Inc., Idaho Falls, ID
Contracting Activity: Forest Service, Caribou-Targhee National Forest

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–23939 Filed 10–31–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed deletion from the Procurement List.

SUMMARY: The Committee is proposing to delete a product from the Procurement List that was furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: December 01, 2019.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product is proposed for deletion from the Procurement List:

Product

NSN—Product Name: 1560–01–153–9682—Wear Strip, Cargo Door, Sikorsky Helicopter Models S–70I & UH–60M
Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DLA AVIATION, RICHMOND, VA

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–23893 Filed 10–31–19; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors for the Western Hemisphere Institute for Security Cooperation Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board of Visitors for the Western Hemisphere Institute for Security Cooperation (WHINSEC). This meeting is open to the public.

DATES: The WHINSEC Board of Visitors will meet from 9:00 a.m. to 4:00 p.m. on Thursday, November 7, 2019.

ADDRESSES: Western Hemisphere Institute for Security Cooperation, Bradley Hall, 7301 Baltzell Avenue, Building 396, Fort Benning, GA 31905.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Procell, Acting Executive Secretary for the Committee, in writing at USACGSC, 100 Stimson Avenue, Fort Leavenworth, KS 66027–2301, by email at *richard.d.procell2.civ@mail.mil,* or by telephone at (913) 684–2963.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory

Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), 41 CFR 102–3.140(c), and 41 CFR 102–3.150. Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Western Hemisphere Institute for Security Cooperation Board of Visitors was unable to provide sufficient public notification required by 41 CFR 102–3.150(a) concerning its annual meeting scheduled for November 7, 2019. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BoV) is a non-discretionary Federal Advisory Committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the institute; other matters relating to the institute that the board decides to consider; and other items that the Secretary of Defense determines appropriate. The board reviews curriculum to determine whether it adheres to current U.S. doctrine, complies with applicable U.S. laws and regulations, and is consistent with U.S. policy goals toward Latin America and the Caribbean. The board also determines whether the instruction under the curriculum of the institute appropriately emphasizes human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society. The Secretary of Defense may act on the committee's advice and recommendations.

Agenda: Status briefing from the institute's commandant; updates from the Department of State, U.S. Northern Command and U.S. Southern Command; a public comments period; and presentation of other information appropriate to the board's interests.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. A 15-minute period between 11:15 to 11:45 will be available for verbal public comments. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the committee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter the base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Bradley Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Procell at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least two business days prior to the meeting to be considered by the committee. The Designated Federal Officer will review all timely submitted written comments or statements with the committee chairperson, and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date will be filed and presented to the committee during its next meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–23886 Filed 10–31–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences, will take place.

DATES: Tuesday, November 5, 2019 open to the public from 8:00 a.m. to 11:05 a.m. The closed session will follow from approximately 11:15 a.m. to 12:00 p.m.

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Sarah Marshall, Designated Federal Officer, at (301) 295–3955 or *sarah.marshall@usuhs.edu.* Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: *https://www.usuhs.edu/vpe/bor.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Board of Regents, Uniformed Services University of the Health Sciences, was unable to provide public notification required by 41 CFR 102–3.150(a), concerning the meeting on November 5, 2019 of the Board of Regents, Uniformed Services University of the Health Sciences. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of USU. These actions are necessary for USU to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The actions scheduled to occur include the review of any administrative matters of general consent (*e.g.,* degree conferrals, faculty appointments and promotions, award recommendations, etc.) that may have been electronically voted on since the previous Board meeting on August 6, 2019; Board actions, to include recommendations for degree conferrals, faculty appointments and promotions, and faculty awards presented by the deans of USU's schools and colleges; a report by the USU President on recent actions affecting academic and operational aspects of USU; a member report covering an academics summary (consisting of reports from the University Registrar, the Office of Accreditation and Organizational Assessment, and the Faculty Senate); a member report covering a finance and administration summary (consisting of reports from the Office of Finance and Administration, the Office of Information and Education Technology, the Office of General Counsel, and the Henry M. Jackson Foundation for the Advancement of Military Medicine); and additional reports from the Hébert School of Medicine, the Inouye Graduate School of Nursing, the Postgraduate Dental College, and the College of Allied Health Sciences. A closed session will be held following the open session to discuss active investigations and personnel actions.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 8:00 a.m. to 11:05 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Ms. Marshall no later than five business days prior to the meeting at the address and phone number noted in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 5 U.S.C. 552b(c)(2, 5–7), the DoD has determined that the portion of the meeting from 11:15 a.m. to 12:00 p.m. shall be closed to the public. The USD(P&R), in consultation with the DoD Office of General Counsel, has determined in writing that this portion of the Board's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations of a person having committed a crime or censuring an individual, and may disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to Designated Federal Officer at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five calendar days prior to the meeting. Otherwise, the comments may not be provided to or considered by the Board until a later date. The Designated Federal Officer will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: October 29, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–23948 Filed 10–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

2019–2020 Award Year Deadline Dates for Reports and Other Records Associated With the Free Application for Federal Student Aid (FAFSA), the Federal Supplemental Educational Opportunity Grant Program (FSEOG), the Federal Work-Study (FWS) Programs, the Federal Pell Grant (Pell Grant) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, and the Iraq and Afghanistan Service Grant Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2019–2020 award year. These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs. The Federal student aid programs (title IV, HEA programs) covered by this deadline date notice are the Pell Grant, Direct Loan, TEACH Grant, Iraq and Afghanistan Service Grant, and campus-based (FSEOG and FWS) programs.

DATES:

Deadline and Submission Dates: See Tables A and B at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Bruce Hughes, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, 11th Floor, Washington, DC 20202–5345. Telephone: (202) 377–3882. Email: *Bruce.Hughes@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.007 FSEOG Program; 84.033 FWS Program; 84.063 Pell Grant Program; 84.268 Direct Loan Program; 84.379 TEACH Grant Program; 84.408 Iraq and Afghanistan Service Grant Program.

Table A—2019–2020 Award Year Deadline Dates by Which a Student Must Submit the FAFSA, by Which the Institution Must Receive the Student's Institutional Student Information Record (ISIR) or Student Aid Report (SAR), and by Which the Institution Must Submit Verification Outcomes for Certain Students.

Table A provides information and deadline dates for receipt of the FAFSA, corrections to and signatures for the FAFSA, ISIRs, and SARs, and verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System is June 30, 2020, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), corrections, notices of change of address or institution, or requests for a duplicate SAR is September 12, 2020.

For all title IV, HEA programs, an ISIR or SAR for the student must be received by the institution no later than the student's last date of enrollment for the 2019–2020 award year or September 19, 2020, whichever is earlier. Note that a FAFSA must be submitted and an ISIR or SAR received for the dependent student for whom a parent is applying for a Direct PLUS Loan.

Except for students selected for Verification Tracking Groups V4 and

V5, verification documents must be received by the institution no later than 120 days after the student's last date of enrollment for the 2019–2020 award year or September 19, 2020, whichever is earlier. For students selected for Verification Tracking Groups V4 and V5, institutions must submit identity and high school completion status verification results no later than 60 days following the institution's first request to the student to submit the documentation.

For all title IV, HEA programs except for (1) Direct PLUS Loans that will be made to parent borrowers, and (2) Direct Unsubsidized Loans that will be made to dependent students who have been determined by the institution, pursuant to section 479A(a) of the HEA, to be eligible for such a loan without providing parental information on the FAFSA, the ISIR or SAR must have an official expected family contribution (EFC) and the ISIR or SAR must be received by the institution no later than the earlier of the student's last date of enrollment for the 2019–2020 award year or September 19, 2020. For the two exceptions mentioned above, the ISIR or SAR must be received by the institution by the same dates noted in this paragraph but the ISIR or SAR is not required to have an official EFC.

For a student who is requesting aid through the Pell Grant, FSEOG, or FWS programs or for a student requesting Direct Subsidized Loans, who does not meet the conditions for a late disbursement under 34 CFR 668.164(j), a valid ISIR or valid SAR must be received by the institution by the student's last date of enrollment for the 2019–2020 award year or September 19, 2020, whichever is earlier.

In accordance with 34 CFR 668.164(j)(4)(i), an institution may not make a late disbursement of title IV, HEA program funds later than 180 days after the date of the institution's determination that the student was no longer enrolled. Table A provides that, to make a late disbursement of title IV, HEA program funds, an institution must receive a valid ISIR or valid SAR no later than 180 days after its determination that the student was no longer enrolled, but not later than September 19, 2020.

Table B—2019–2020 Award Year Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant Programs Deadline Dates for Disbursement by Institutions.

For the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs, Table B provides the earliest disbursement date, the earliest dates for institutions to submit disbursement records to the Department's Common Origination and Disbursement (COD) System, and deadline dates by which institutions must submit disbursement and origination records.

An institution must submit Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records to COD, no later than 15 days after making the disbursement or becoming aware of the need to adjust a previously reported disbursement. In accordance with 34 CFR 668.164(a), title IV, HEA program funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger; or (b) pays those funds to a student directly. Title IV, HEA program funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department.

An institution's failure to submit disbursement records within the required timeframe may result in the Department rejecting all or part of the reported disbursement. Such failure may also result in an audit or program review finding or the initiation of an adverse action, such as a fine or other penalty for such failure, in accordance with subpart G of the General Provisions regulations in 34 CFR part 668.

Deadline Dates for Enrollment Reporting by Institutions.

In accordance with 34 CFR 674.19(f), 682.610(c), 685.309(b), and 690.83(b)(2), upon receipt of an enrollment report from the Secretary, institutions must update all information included in the report and return the report to the Secretary in a manner and format prescribed by the Secretary and within the timeframe prescribed by the Secretary. Consistent with the *National Student Loan Data System (NSLDS) Enrollment Reporting Guide,* the Secretary has determined that institutions must report at least every two months. Institutions may find the *NSLDS Enrollment Reporting Guide* on the Information for Financial Aid Professionals website at *https://ifap.ed.gov.*

Other Sources for Detailed Information.

We publish a detailed discussion of the FAFSA application process in the Application and Verification Guide volume of the 2019–2020 *Federal Student Aid Handbook* and in the 2019–2020 *ISIR Guide.*

Information on the institutional reporting requirements for the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs is included in the 2019–2020 *Common Origination and Disbursement (COD) Technical Reference.* Also, see the *NSLDS Enrollment Reporting Guide.*

You may access these publications by visiting the ''iLibrary'' at the Information for Financial Aid Professionals website at: *https://ifap.ed.gov/ifap/iLibrary.jsp.*

Additionally, the 2019–2020 award year reporting deadline dates for the Federal Perkins Loan, FWS, and FSEOG programs were published in the **Federal Register** on January 24, 2019 (84 FR 351).

Applicable Regulations: The following regulations apply:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Pell Grant Program, 34 CFR part 690.

(3) William D. Ford Direct Loan Program, 34 CFR part 685.

(4) Teacher Education Assistance for College and Higher Education Grant Program, 34 CFR part 686.

(5) Federal Work-Study Program, 34 CFR part 675.

(6) Federal Supplemental Education Opportunity Grant, 34 CFR part 676.

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

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

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

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070g, 1070h, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: October 25, 2019.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

TABLE A—2019–2020 AWARD YEAR DEADLINE DATES BY WHICH A STUDENT MUST SUBMIT THE FAFSA, BY WHICH THE INSTITUTION MUST RECEIVE THE STUDENT'S INSTITUTIONAL STUDENT INFORMATION RECORD (ISIR) OR STUDENT AID REPORT (SAR), AND BY WHICH THE INSTITUTION MUST SUBMIT VERIFICATION OUTCOMES FOR CERTAIN STUDENTS

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	FAFSA—''FAFSA on the Web'' (original or renewal).	Electronically to the Department's Central Processing System (CPS).	June 30, 2020 [1].
	Signature page (if required)	To the address printed on the signature page	September 12, 2020.
Student through an Institution.	An electronic FAFSA (original or renewal)	Electronically to the Department's CPS using ''Electronic Data Exchange'' (EDE) or ''FAA Access to CPS Online''.	June 30, 2020 [1].
Student	A paper original FAFSA	To the address printed on the FAFSA	June 30, 2020.
Student	Electronic corrections to the FAFSA using ''Corrections on the Web''.	Electronically to the Department's CPS	September 12, 2020 [1].
	Signature page (if required)	To the address printed on the signature page	September 12, 2020.
Student through an Institution.	Electronic corrections to the FAFSA	Electronically to the Department's CPS using EDE or ''FAA Access to CPS Online''.	September 12, 2020 [1].
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and email addresses and change of institutions.	To the address printed on the SAR	September 12, 2020.
Student	Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 12, 2020.
Student	A SAR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the SAR does not need to have an official EFC.	To the institution	The earlier of: —The student's last date of enrollment for the 2019–2020 award year; or —September 19, 2020 [2].
Student through CPS	An ISIR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the ISIR does not need to have an official EFC.	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(j), the earlier of: —The student's last date of enrollment for the 2019–2020 award year; or —September 19, 2020 [2].
Student through CPS	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	For a student receiving a late disbursement under 34 CFR 668.164(j)(4)(i), the earlier of: —180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or —September 19, 2020 [2].
Student through CPS	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Verification documents	To the institution	The earlier of: [3] —120 days after the student's last date of enrollment for the 2019–2020 award year; or —September 19, 2020 [2].
Institution	Identity and high school completion verification results for a student selected for verification by the Department and placed in Verification Tracking Group V4 or V5.	Electronically to the Department's CPS using ''FAA Access to CPS Online''.	60 days following the institution's first request to the student to submit the required V4 or V5 identity and high school completion documentation [4].

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its Student Aid Internet Gateway (SAIG) mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for Pell Grant applicants and applicants selected for verification, deadline dates for the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs and the Direct Loan Program, but it cannot be later than this deadline date.

[4] Note that changes to previously submitted Identity Verification Results must be updated within 30 days of the institution becoming aware that a change has occurred.

TABLE B—PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS DEADLINE DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2019–2020 AWARD YEAR OR PROCESSING YEAR [1]

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	The institution has made or intends to make a disbursement.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG); or to the COD System using the COD website at: *https://cod.ed.gov*.	The earliest disbursement date is January 23, 2019. The earliest submission date for anticipated disbursement information is April 7, 2019. The earliest submission date for actual disbursement information is April 7, 2019, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method or the Heightened Cash Monitoring Payment Method 1 (HCM1); or (b) The disbursement date under the reimbursement or the Heightened Cash Monitoring Payment Method 2 (HCM2).
Pell Grant, Iraq and Afghanistan Service Grant, and TEACH Grant programs.	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records for disbursements made between January 23, 2019 and April 7, 2019 must be submitted no later than April 22, 2019; or (b) September 30, 2020.
Direct Loan Program	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records of disbursements made between October 1, 2018 and April 7, 2019, may be submitted no later than April 22, 2019; or (b) July 30, 2021.
Pell Grant and Iraq and Afghanistan Service Grant programs.	A downward adjustment to an origination or disbursement record.	It is after the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	No later than September 30, 2025.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date.	Via the COD website at: *https://cod.ed.gov*.	The earlier of: (a) When the institution is fully reconciled and is ready to submit all additional data for the program and the award year; or (b) September 30, 2025.
TEACH Grant and Direct Loan programs.		Requests for extensions to the established submission deadlines may be made for reasons including, but not limited to: (a) A program review or initial audit finding under 34 CFR 690.83; (b) A late disbursement under 34 CFR 668.164(j); or (c) Disbursements previously blocked as a result of another institution failing to post a downward adjustment.		When the institution is fully reconciled and is ready to submit all additional data for the program and the award year.

TABLE B—PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS DEADLINE DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2019–2020 AWARD YEAR OR PROCESSING YEAR [1]—Continued

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date based on a natural disaster, other unusual circumstances, or an administrative error made by the Department.	Via the COD website at: *https://cod.ed.gov*.	The earlier of: (a) A date designated by the Secretary after consultation with the institution; or (b) February 1, 2021.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for administrative relief to extend the deadline submission date based on a student's reentry to the institution within 180 days after initially withdrawing [3].	Via the COD website at: *https://cod.ed.gov*.	The earlier of: (a) 15 days after the student reenrolls; or (b) May 3, 2021.

[1] A COD Processing Year is a period of time in which institutions are permitted to submit Direct Loan records to the COD System that are related to a given award year. For a Direct Loan, the period of time includes loans that have a loan period covering any day in the 2019–2020 award year.

[2] Transmissions must be completed and accepted before the designated processing time on the deadline submission date. The designated processing time is published annually via an electronic announcement posted to the Information for Financial Aid Professionals website (*https://ifap.ed.gov*). If transmissions are started at the designated time, but are not completed until after the designated time, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[3] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

Note: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2019–23767 Filed 10–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0097]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; RISE Award

AGENCY: Office of Communications and Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 2, 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–0097. 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, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrea Falken, 202–503–8985.

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: RISE Award.

OMB Control Number: 1860–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 120.

Total Estimated Number of Annual Burden Hours: 4,920.

Abstract: The purpose of the Recognizing Inspirational School Employees (RISE) Award is to recognize and promote the commitment and excellence exhibited by classified school employees who provide exemplary service to students in pre-kindergarten through high school and to inspire innovation and excellence among all classified school employees. A classified school employee is an employee of a state or any political subdivision of a state, or an employee of a nonprofit entity, who works in any grade from pre-kindergarten through high school in any of the following occupational specialties: Paraprofessional, clerical and administrative services, transportation services, food and nutrition services, custodial and maintenance services, security services, health and student services, technical services, and skilled trades. The terms used have the meaning given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801). The U.S. Department of Education (Department) invites the governor of each state to nominate up to two classified school employees by November 30, 2020. The Secretary of Education will select a single classified school employee to receive the RISE Award for that school year by spring 2021. The Department will communicate the selectee's story in order to inspire other innovative practices and excellence among classified school employees.

Dated: October 29, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–23898 Filed 10–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0138]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fast Response Survey System (FRSS) 110: Use of Educational Technology for Instruction in Public Schools

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 new generic information collection.

DATES: Interested persons are invited to submit comments on or before December 2, 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–0138. 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 Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fast Response Survey System (FRSS) 110: Use of Educational Technology for Instruction in Public Schools.

OMB Control Number: 1850–0733.

Type of Review: A new generic information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 3,380.

Total Estimated Number of Annual Burden Hours: 742.

Abstract: This request is to conduct preliminary activities for the Fast Response Survey System (FRSS) survey #110 on use of educational technology for instruction in public schools. The Office of Educational Technology (OET) requested that NCES conduct this FRSS survey. The expanding use of technology affects the lives of students both inside and outside the classroom. For this reason, the role of technology in education is an increasingly important area of research. While access to technology can provide valuable learning opportunities to students, technology by itself does not guarantee successful outcomes. Schools and teachers play an important role in successfully integrating technology into teaching and learning. The purpose of this FRSS 110 survey is to collect nationally representative data from public schools about their use of educational technology for instruction. The request to conduct the FRSS 110 preliminary activities, which involved securing research approval from special contact school districts, was approved by OMB in May 2019 (OMB #1850–0733 v.35). This request is to conduct the full-scale survey data collection, beginning in January 2020 and scheduled to end in June 2020.

Dated: October 29, 2019.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–23927 Filed 10–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0092]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Upward Bound (UB) Upward Bound Math Science (UBMS) 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 December 2, 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–0092. 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, 400 Maryland Ave., SW, LBJ, Room 6W208, D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kenneth Waters, 202–453–6273.

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: Upward Bound (UB) Upward Bound Math Science (UBMS) Annual Performance Report.

OMB Control Number: 1840–0831.

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: 1,179.

Total Estimated Number of Annual Burden Hours: 20,515.

Abstract: The purpose of the Upward Bound (UB) and Upward Bound Math Science (UBMS) Programs is to generate in program participants the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education.

Authority for this program is contained in Title IV, Part A, Subpart 2, Chapter 1, Section 402C of the Higher Education Opportunity Act of 2008. Eligible applicants include institutions of higher education, public or private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of institutions, agencies, organizations and secondary schools.

UB Program participants must be potential first-generation college students, low-income individuals, or individuals who have a high risk of academic failure and have a need for academic support in order to pursue successfully a program of education beyond high school. Required Program services include: (1) Academic tutoring; (2) advice and assistance in secondary and postsecondary course selection; (3) preparation for college entrance exams and completing college admission applications; (4) information on federal student financial aid programs including (a) Federal Pell grant awards, (b) loan forgiveness, and (c) scholarships; (5) assistance completing financial aid applications; (6) guidance and assistance in: (a) secondary school reentry, (b) alternative programs for secondary school drop outs that lead to the receipt of a regular secondary school diploma, (c) entry into general educational development (GED) programs or (d) entry into postsecondary education; (7) education or counseling services designed to improve the financial and economic literacy of students or the students' parents, including financial planning for postsecondary education; and (8) projects funded for at least two years under the program must provide instruction in mathematics through pre-calculus; laboratory science; foreign language; composition; and literature.

Dated: October 29, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–23933 Filed 10–31–19; 8:45 am]

BILLING CODE 4000–01–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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–23916 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–136–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Reading Wind Energy, LLC

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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–23919 Filed 10–31–19; 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: ER19–2785–001.

Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to ER19–2785–000 RE: AE2–061 ISA No. 2142 to be effective 8/12/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5027.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–189–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 96 to be effective 12/23/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5127.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–190–000.
Applicants: Crowned Ridge Interconnection, LLC.
Description: Baseline eTariff Filing: Crowned Ridge Interconnection, LLC & Crowned Ridge Wind, LLC SFA to be effective 11/25/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5130.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–191–000.
Applicants: Southwest Power Pool, Inc.
Description: Notice of Termination of Market Participant Service Agreement (No. 3360) of Southwest Power Pool, Inc. under ER20–191.
Filed Date: 10/24/19.
Accession Number: 20191024–5135.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–192–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: LGIA Niagara Mohawk and Black River Hydroelectric (SA 2485) to be effective 9/30/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5023.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–193–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–25_SA 3366 Calhoun Solar Energy-Consumers Energy FCA (J758) to be effective 10/11/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5024.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–194–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Amended/Restated IA SA 2472 NYISO, NMPC, HQUS re: Cedar Rapids TIP to be effective 10/16/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5026.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–195–000.
Applicants: Diamond Leaf Energy, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 12/23/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5028.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–196–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–25_SA 3365 METC-Calhoun Solar Energy GIA (J758) to be effective 10/11/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5030.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–197–000.
Applicants: Nevada Power Company.
Description: Tariff Cancellation: Rate Schedule No. 95 Notice of Termination to be effective 12/23/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5071.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–198–000.
Applicants: Nevada Power Company.
Description: Tariff Cancellation: Rate Schedule No. 156 Notice of Termination to be effective 12/23/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5105.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–199–000.
Applicants: Nevada Power Company.
Description: Tariff Cancellation: Rate Schedule No. 157 Notice of Termination to be effective 12/23/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5113.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–200–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule 165 Concurrence to APS to be effective 12/23/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5129.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–201–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 166 Concurrence to APS to be effective 12/23/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5143.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–202–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 167 Concurrence to APS to be effective 12/23/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5152.
Comments Due: 5 p.m. ET 11/15/19.

Docket Numbers: ER20–203–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205: Reliability Coordination Agreement between NYISO and Alcoa to be effective 10/25/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5153.
Comments Due: 5 p.m. ET 11/15/19.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–1–000.
Applicants: Énergir Inc.
Description: Énergir Inc. submits FERC 65–B Waiver Notification.
Filed Date: 10/25/19.
Accession Number: 20191025–5147.
Comments Due: 5 p.m. ET 11/15/19.

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 25, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23839 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–4–000]

Notice of Request Under Blanket Authorization; Vector Pipeline, L.P.

Take notice that on October 15, 2019, Vector Pipeline, L.P. (Vector) Post Office Box 1087, Colorado Springs, Colorado 80944, filed a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act and its blanket certificate issued in Docket No.

CP98–135–000 for authorization to construct and operate a delivery lateral consisting of approximately 1.24 miles of 24-inch diameter pipeline located in St. Clair County, Michigan. Specifically, Vector proposes to construct the lateral to connect its existing system to a new 1,100 Megawatts natural gas-fired electric generating facility being constructed by DTE Electric Company in St. Clair County, Michigan. Vector states that is has designed the proposed facilities with up to a maximum capacity of 525,000 Dth/d to accommodate this load and a possible future expansion of the plant. The total cost of this Project is approximately $21.5 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed Ms. Amy S. Bruhn, Manager, Regulatory and Administration, Vector Pipeline, LLC, the General Partner of Vector Pipeline L.P.; 38705 Seven Mile Road, Suite 490, Livonia, Michigan 48152, phone (734) 462–0237, fax (734) 462–0231, or email: *amy.bruhn@vector-pipeline.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's website (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: October 25, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23841 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1590–002.
Applicants: Honeoye Storage Corporation.
Description: Compliance filing Compliance Filing Adoption of NAESB Version 3.1 to be effective 8/1/2019.
Filed Date: 10/22/19.
Accession Number: 20191022–5007.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–80–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Remove expired agreements eff 11–1–2019 to be effective 11/1/2019.
Filed Date: 10/22/19.
Accession Number: 20191022–5000.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–81–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Remove expired agmts effective 11/1/2019 to be effective 11/1/2019.
Filed Date: 10/22/19.
Accession Number: 20191022–5031.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–82–000.
Applicants: Southern LNG Company, L.L.C.
Description: § 4(d) Rate Filing: SLNG Electric Power Cost Adjustment—2019 to be effective 12/1/2019.
Filed Date: 10/23/19.
Accession Number: 20191023–5001.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–83–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102319 Negotiated Rates—Macquarie Energy LLC H–4090–89 to be effective 11/1/2019.
Filed Date: 10/23/19.
Accession Number: 20191023–5002.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–84–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102319 Negotiated Rates—Mercuria Energy America, Inc. R–7540–02 to be effective 11/1/2019.
Filed Date: 10/23/19.
Accession Number: 20191023–5003.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–85–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102319 Negotiated Rates—Sequent Energy Management, L.P. H–3075–89 to be effective 11/1/2019.
Filed Date: 10/23/19.
Accession Number: 20191023–5004.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–86–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—October 23, 2019 Negotiated Rate Agreements to be effective 11/1/2019.

Filed Date: 10/23/19.
Accession Number: 20191023–5124.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–87–000.
Applicants: Dominion Energy Cove Point LNG, LP.
Description: § 4(d) Rate Filing: DECP—Rate Schedule LTS Revisions to be effective 11/22/2019.
Filed Date: 10/23/19.
Accession Number: 20191023–5131.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–89–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: FOS—FTP—Early Termination Provision to be effective 11/24/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5109.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: RP20–90–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Filing (XTO Energy) to be effective 11/25/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5131.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: RP20–91–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendments to Negotiated Rate Filing—Macquarie Energy LLC to be effective 11/1/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5000.
Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: RP20–92–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendments to Negotiated Rate Filing—Tenaska Marketing Ventures to be effective 11/1/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5001.
Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: RP20–93–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing Annual Interruptible Storage Revenue Credit filed on 10–25–19.
Filed Date: 10/25/19.
Accession Number: 20191025–5004.
Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: RP20–94–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Chevron 911109 Releases eff 11–1–2019 to be effective 11/1/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5051.
Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: RP20–95–000.
Applicants: Peninsula Energy Services Company, Inc.,United Energy Trading, LLC.
Description: Joint Petition for Temporary Waiver of Commission Capacity Release Regulations and Policies, et al. of Peninsula Energy Services Company, Inc., et al under RP20–95.
Filed Date: 10/25/19.
Accession Number: 20191025–5178.
Comments Due: 5 p.m. ET 11/4/19.

Docket Numbers: RP20–96–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20191025 Negotiated Rate to be effective 10/26/2019.
Filed Date: 10/25/19.
Accession Number: 20191025–5203.
Comments Due: 5 p.m. ET 11/6/19.

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 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–23918 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2960–006]

City of Gonzales, Texas; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Gonzales Project, and has prepared an Environmental Assessment (EA) for the project. The project is located on the Guadalupe River in Gonzales County, Texas. The project occupies no federal land.

The EA contains Commission staff's analysis of the potential environmental effects of the project. The EA concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's website at *http://www.ferc.gov,* 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).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2960–006.

For further information, contact Rachel McNamara at 202–502–8340, or by email at *rachel.mcnamara@ferc.gov.*

Dated: October 25, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23838 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6661–006]

Falls Creek HP Limited Partnership; Eagle Creek Renewable Energy, LLC; Notice of Transfer of Exemption

1. On September 17, 2019, Falls Creek HP Limited Partnership, exemptee for the Falls Creek Hydroelectric Project No. 6661, filed a letter notifying the Commission that the project was transferred from Falls Creek HP Limited Partnership to Eagle Creek Renewable Energy, LLC. The exemption from licensing was originally issued on March 4, 1983.[1] The project is located on the Falls Creek, South Santiam River, Linn County, OR. The transfer of an exemption does not require Commission approval.

2. Eagle Creek Renewable Energy, LLC is now the exemptee of the Falls Creek Hydroelectric Project No. 6661. All correspondence must be forwarded to: Mr. Robert Gates, Eagle Creek Renewable Energy, LLC, 116 N State Street, P.O Box 167, Neshkoro, WI 54960–0167, Phone: 973–998–8403, Email: *bob.gates@eaglecreekre.com.*

Dated: October 25, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23837 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

[1] *Frontier Technology, Inc.,* 22 FERC ¶ 61,267 (1983). The project was transferred to Falls Creek HP Limited Partnership in 1989.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1469–001.
Applicants: DTE Midstream Appalachia, LLC.
Description: Request for a Limited Extension of Time to Implement Certain NAESB WGQ Version 3.1 Standards of DTE Midstream Appalachia, LLC.
Filed Date: 10/15/19.
Accession Number: 20191015–5369.
Comments Due: 5 p.m. ET 10/29/19.

Docket Numbers: RP20–88–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing 2019 Transco Penalty Revenue Sharing Report.
Filed Date: 10/24/19.
Accession Number: 20191024–5041.
Comments Due: 5 p.m. ET 11/5/19.

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 25, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23836 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–195–000]

Diamond Leaf 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 Diamond Leaf 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 18, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–23920 Filed 10–31–19; 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: EG20–17–000.
Applicants: Skookumchuck Wind Energy Project, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/25/19.
Accession Number: 20191025–5169.
Comments Due: 5 p.m. ET 11/15/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–204–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: NCMPA1 RS No. 318 Amendment (2020) to be effective 1/1/2020.
Filed Date: 10/28/19.
Accession Number: 20191028–5017.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER20–205–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–28_SA 3367 NSP–NSP–GRE–MRES–OTP–CMMP FCA (J460) to be effective 10/14/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5025.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER20–206–000.
Applicants: Gilroy Energy Center, LLC.
Description: Tariff Cancellation: Gilroy Energy Termination of Rate Schedule FERC No. 4 to be effective 12/31/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5048.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER20–208–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Tri-State Solar Project LGIA Filing to be effective 10/17/2019.
Filed Date: 10/28/19.
Accession Number: 20191028–5065.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: ER20–209–000.
Applicants: San Diego Gas & Electric Company.
Description: Informational Filing of Transmission Owner Rate Appendix XII [Cycle 2] of San Diego Gas & Electric Company.
Filed Date: 10/28/19.
Accession Number: 20191028–5141.
Comments Due: 5 p.m. ET 11/18/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–28–000.
Applicants: Entergy New Orleans, LLC.
Description: Supplement to April 30, 2019 Application under Section 204 of the Federal Power Act for Authorization to Issue Securities, et al. of Entergy New Orleans, LLC.
Filed Date: 10/25/19.
Accession Number: 20191025–5253.
Comments Due: 5 p.m. ET 10/30/19.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–2–000.
Applicants: Valener Inc.
Description: Valener Inc. submits FERC 65–B Waiver Notification.
Filed Date: 10/25/19.
Accession Number: 20191025–5154.
Comments Due: 5 p.m. ET 11/15/19.

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 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–23917 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD19–20–000 and ER02–2001–000]

Electric Quarterly Report Users Group Meeting and Electric Quarterly Reports

On September 17, 2019, the Federal Energy Regulatory Commission (Commission) issued a notice that Commission staff will hold an Electric Quarterly Report (EQR) Users Group meeting on December 4, 2019. The meeting will take place from 1:00 p.m. to 5:00 p.m. (EST) in the Commission Meeting Room at 888 First Street NE, Washington, DC 20426. All interested persons are invited to attend. For those unable to attend in person, access to the meeting will be available via webcast.

Commission staff is hereby supplementing the September 17, 2019 notice with the agenda for discussion. During the meeting, Commission staff and EQR users will discuss potential improvements to the EQR program and the EQR filing process. While discussion topics are outlined in the agenda, suggestions for additional discussion topics may be emailed to *EQRUsersGroup@ferc.gov.*

Please note that matters pending before the Commission and subject to ex parte limitations cannot be discussed at this meeting.

Due to the nature of the discussion, those interested in participating are encouraged to attend in person. All interested persons (whether attending in person, via webcast, or telephone) are asked to register *http://www.ferc.gov/whats-new/registration/12-04-19-form.asp.* There is no registration fee. Anyone with internet access can listen to the meeting by navigating to the FERC website Calendar of Events (*https://www.ferc.gov/EventCalendar/EventsList.aspx?View=listview*), locating the EQR Users Group Meeting on the Calendar, and clicking on the link to the Event Details and selecting webcast. The webcast will allow persons to listen to the meeting. In the event you would also like to participate in the meeting dialogue by phone, please select the telephone option when registering.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the EQR Users Group meeting, please contact Jeff Sanders of the Commission's Office of Enforcement at (202) 502–6455 or send an email to *EQRUsersGroup@ferc.gov.*

Dated: October 25, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23840 Filed 10–31–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2018–0279; FRL–10001–31–OAR]

Release of Draft Policy Assessment for the Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On or about October 31, 2019, the Environmental Protection Agency (EPA) will make available the document, *Policy Assessment for the Ozone National Ambient Air Quality Standards, External Review Draft* (draft PA). This draft document was prepared as part of the current review of the national ambient air quality standards

(NAAQS) for photochemical oxidants including ozone (O_3). The PA, when final, serves to ''bridge the gap'' between the currently available scientific and technical information and the judgments required of the Administrator in determining whether to retain or revise the existing O_3 NAAQS. The primary and secondary O_3 NAAQS are set to protect the public health and the public welfare from O_3 and other photochemical oxidants in ambient air.

DATES: Comments should be received on or before December 16, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0279, 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 the Docket ID No. EPA–HQ–OAR–2018–0279 in the subject line of the message.
- *Fax:* (202) 566–9744. Include the Docket ID No. EPA–HQ–OAR–2018–0279 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document. This document will be available on the EPA's website at *https://www.epa.gov/naaqs/ozone-o3-air-quality-standards.* The document will be accessible under ''Policy Assessments'' from the current review.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre L. Murphy, Office of Air Quality Planning and Standards, (Mail Code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0729, fax number: 919–541–027; or email: *murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0279, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written submission. The written submission is considered the official submission and should include discussion of all points you wish to make. The EPA will generally not consider submissions or submission content located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Information About the Document

Two sections of the Clean Air Act (CAA or the Act) govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list certain air pollutants and then issue ''air quality criteria'' for those pollutants. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air . . .'' (CAA section 108(a)(2)). Under section 109 of the Act, the EPA is then to establish primary (health-based) and secondary (welfare-based) NAAQS for each pollutant for which the EPA has issued air quality criteria. Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria. Revised air quality criteria are to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Under the same provision, the EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

The Act additionally requires appointment of an independent scientific review committee that is to periodically review the existing air quality criteria and NAAQS and to recommend any new standards and revisions of existing criteria and standards as may be appropriate (CAA section 109(d)(2)(A)–(B)). Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the Clean Air Scientific Advisory Committee (CASAC).

Presently the EPA is reviewing the air quality criteria and NAAQS for photochemical oxidants and O_3.[1] The EPA's overall plan for this review is presented in the Integrated Review Plan for the Ozone NAAQS (IRP).[2] As described in the IRP, the EPA is preparing an Integrated Science Assessment for (ISA), a draft of which was released in September 2019 for public comment and review by the CASAC (84 FR 50836).[3] The PA, when final, serves to ''bridge the gap'' between the scientific and technical information in the final ISA and any air quality, exposure and risk analyses available in the review, and the judgments required of the Administrator in determining whether to retain or revise the existing ozone NAAQS. The draft PA builds upon information presented in the draft ISA and the draft exposure and risk analyses (presented in an appendix to the draft PA). The draft PA document will be available on or about October 31, 2019, on the EPA's website at *https://www.epa.gov/naaqs/ozone-o3-air-quality-standards.* The EPA is soliciting advice and recommendations from the CASAC by means of a review of this draft document at an upcoming public meeting of the CASAC. Information about this public meeting, including the dates and location, will be published as a separate notice in the **Federal Register**. Following the CASAC meeting, the EPA will consider comments received from the CASAC and the public in preparing revisions to these documents.

The draft document briefly described above does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. The EPA will consider any public comments submitted in response to this notice when revising the document.

[1] The EPA's call for information for this review was issued on June 26, 2018 (83 FR 29785).

[2] The IRP (EPA–452/R–19–002, August 2019) is available at *https://www.epa.gov/naaqs/ozone-o3-standards-planning-documents-current-review.*

[3] 3 The draft ISA is available at: *https://www.epa.gov/naaqs/ozone-o3-standards-integrated-science-assessments-current-review.*

Dated: October 28, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–23888 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9047–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 10/21/2019 10 a.m. ET Through 10/28/2019 10 a.m. ET

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20190261, Draft, USAF, NM, Special Use Airspace Optimization Holloman Air Force Base, New Mexico, *Comment Period Ends:* 12/16/2019, *Contact:* Robin Divine 210–925–2730

EIS No. 20190262, Draft, USFWS, CA, Fort Ord Multi-Species Habitat Conservation Plan Public Draft EIS/EIR, *Comment Period Ends:* 12/16/2019, *Contact:* Steve Henry 805–644–1766

EIS No. 20190263, Final Supplement, NRC, FL, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 5, Second Renewal, Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4, *Review Period Ends:* 12/02/2019, *Contact:* Robert Schaaf 301–415–6020

EIS No. 20190264, Final, APHIS, PRO, Rangeland Grasshopper and Mormon Cricket Suppression Program, *Review Period Ends:* 12/02/2019, *Contact:* Jim Warren 202–316–3216

EIS No. 20190265, Final, BIA, BLM, OK, Oklahoma, Kansas and Texas Final Joint EIS, BLM RMP, and BIA Integrated RMP, *Review Period Ends:* 12/31/2019, *Contact:* Patrick Rich 405–579–7154

EIS No. 20190266, Draft, BLM, CA, Crimson Solar Project Draft Environmental Impact Statement and Environmental Impact Report and Draft Land Use Plan Amendment to the California Desert Conservation Area Plan, *Comment Period Ends:* 01/30/2020, *Contact:* Miriam Liberatore 541–618–2412

EIS No. 20190267, Final Supplement, BLM, CA, Bakersfield Field Office Hydraulic Fracturing Final Supplemental EIS, *Review Period Ends:* 12/02/2019, *Contact:* Carly Summers 661–391–6000

Amended Notice

EIS No. 20190239, Draft, USFWS, OR, Deschutes Basin Habitat Conservation Plan, *Comment Period Ends:* 12/03/2019, *Contact:* Bridget Moran 541–383–7146. Revision to FR Notice Published 10/04/2019; Extending the Comment Period from 11/18/2019 to 12/03/2019.

Dated: October 28, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–23877 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10001–58–OA]

Notification of a Public Meeting of the Chartered Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the Chartered Clean Air Scientific Advisory Committee (CASAC). The CASAC will discuss its Draft Report on EPA's *Policy Assessment for the Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (External Review Draft—September 2019)* and will peer review EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (External Review Draft—September 2019)* and EPA's *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (External Review Draft).*

DATES: The public face-to-face meeting will be held on Tuesday, December 3, 2019, from 9:00 a.m. to 5:00 p.m. (ET), Wednesday, December 4, 2019, from 8:30 a.m. to 5:00 p.m. (ET), Thursday, December 5, 2019, from 8:30 a.m. to 5:00 p.m. (ET), and Friday, December 6, 2019, from 8:30 a.m. to 3:30 p.m. (ET).

ADDRESSES: The public face-to-face meeting will be held at the Embassy Suites by Hilton Raleigh Durham Research Triangle, 201 Harrison Oaks Boulevard, Cary, North Carolina 27513.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning these public meetings may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), at (202) 564–2050 or at *yeow.aaron@epa.gov.* General information about the CASAC, as well as any updates concerning the meeting announced in this notice, may be found on the CASAC website at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as a scientific advisory committee. The CASAC provides independent advice, information and recommendations on the scientific and technical aspects of air quality criteria and the National Ambient Air Quality Standards (NAAQS). The CASAC shall also: Advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. The CAA requires that the Agency, at five-year intervals, review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including particulate matter and ozone. EPA is currently reviewing the NAAQS for particulate matter and the NAAQS for ozone.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The Chartered CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Chartered CASAC will hold a public face-to-face meeting to discuss its Draft Report on EPA's *Policy Assessment for the Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (External Review Draft—September 2019)* and to peer review

EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (External Review Draft—September 2019)* and EPA's *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (External Review Draft).*

Technical Contacts: Any technical questions concerning the *Policy Assessment for the Review of the National Ambient Air Quality Standards for Particulate Matter (External Review Draft—September 2019)* should be directed to Dr. Scott Jenkins (*jenkins.scott@epa.gov*). Any technical questions concerning the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (External Review Draft—September 2019)* should be directed to Dr. Tom Luben (*luben.tom@epa.gov*) and Dr. Meredith Lassiter (*lassiter.meredith@epa.gov*). Any technical questions concerning the *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (External Review Draft)* should be directed to Dr. Deirdre Murphy (*murphy.deirde@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the CASAC and the EPA review documents, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: Individuals or groups requesting an oral presentation during the face-to-face meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by November 26, 2019, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by November 26, 2019. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: October 22, 2019.

Khanna Johnston,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2019–23945 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1163]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 31, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1163.

Title: Regulations Applicable to Broadcast, Common Carrier, and Aeronautical Radio Licensees Under Section 310(b) of the Communications Act of 1934, as amended.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 81 respondents; 81 responses.

Estimated Time per Response: 2 hours–46 hours.

Frequency of Response: On-occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 160, 303(r), 309, 310 and 403.

Total Annual Burden: 1,830 hours.

Total Annual Cost: $524,400.

Nature and Extent of Confidentiality: In submitting the information request, respondents may need to disclose confidential information to satisfy the requirements. However, covered entities would be free to request that such materials submitted to the Commission be withheld from public inspection (see 47 CFR 0.459 of the Commission's rules).

Privacy Impact Assessment: No impacts(s).

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting a three-year extension of OMB Control No. 3060–1163 titled, Regulations Applicable to Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as amended.

Section 310(b)(4) of the Act requires that the Commission pass upon the propriety of foreign ownership of U.S. parent companies that control common carrier and aeronautical radio licensees before such ownership exceeds 25 percent. The Commission's section 310(b)(3) forbearance approach (applicable to common carrier licensees only) requires that the Commission pass upon the propriety of foreign ownership of common carrier radio licensees before such ownership exceeds 20 percent. The information collection will preserve the Commission's ability to disallow foreign investment that may pose a risk of harm to competition or national security, law enforcement, foreign policy, or trade policy.

If the information collection were not conducted or were conducted less frequently than proposed, the Commission would not be able to carry out its statutory mandate under section 310(b) of the Act, and its section 310(b)(3) forbearance policy, to disallow foreign investment that the Commission finds would be contrary to the U.S. public interest. In particular, the Commission would lack the information it needs to determine whether proposed foreign investment in U.S. broadcast, common carrier, and aeronautical radio licensees may pose a risk of harm to competition or national security, law enforcement, foreign policy, or trade policy.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2019–23942 Filed 10–31–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Wednesday December 4, 2019 in the Commission Meeting Room, from 10:00 a.m. to 3 p.m. at the Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

DATES: Wednesday December 4, 2019.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ha, Deputy Chief, Policy and Rules Division 202–418–2099; *michael.ha@fcc.gov.*

SUPPLEMENTARY INFORMATION: At the December 4th meeting, the FCC Technological Advisory Council will discuss progress on work initiatives from the previous meeting and provide the final recommendations from each working group. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Michael Ha, the FCC's Designated Federal Officer for Technological Advisory Council by email: *michael.ha@fcc.gov* or U.S. Postal Service Mail (Michael Ha, Federal Communications Commission, Room 2–A665, 445 12th Street SW, Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may not be possible to fill.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer Office of the Secretary.

[FR Doc. 2019–23937 Filed 10–31–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1035]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 2, 2019. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F International Broadcast Stations.

Form No.: FCC Forms 309, 310 and 311.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 225 respondents; 225 responses.

Estimated Time per Response: 2–720 hours.

Frequency of Response: Recordkeeping requirement; On occasion, semi-annual, weekly and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 307, 334, 336 and 554.

Total Annual Burden: 20,096 hours.

Annual Cost Burden: $100,415.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a three-year extension of the information collection titled ''Part 73, Subpart F International Broadcast Stations'' under OMB Control No. 3060–1035. This information collection is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR part 73, subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. Therefore, the information collection requirements are as follows:

FCC Form 309—Application for Authority to Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station—The FCC Form 309 is filed on occasion when the applicant is requesting authority to construct or make modifications to the international broadcast station.

FCC Form 310—Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License—The FCC Form 310 is filed on occasion when the applicant is submitting an application for a new international broadcast station.

FCC Form 311—Application for Renewal of an International or Experimental Broadcast Station License—The FCC Form 311 is filed by applicants who are requesting renewal of their international broadcast station licenses.

47 CFR 73.702(a) states that six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission in triplicate, indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. Requests will be honored to the extent that interference and propagation conditions permit and that they are otherwise in accordance with the provisions of section 47 CFR 73.702(a).

47 CFR 73.702(b) states that two months before the start of each season, the licensee or permittee must inform the Commission in writing as to whether it plans to operate in accordance with the Commission's authorization or operate in another manner.

47 CFR 73.702(c) permits entities to file requests for changes to their original request for assignment and use of frequencies if they are able to show good cause. Because international broadcasters are assigned frequencies on a seasonal basis, as opposed to the full term of their eight-year license authorization, requests for changes need to be filed by entities on occasion.

47 CFR 73.702 (note) states that permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission in triplicate not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies.

47 CFR 73.702(e) states within 14 days after the end of each season, each licensee or permittee must file a report with the Commission stating whether the licensee or permittee has operated the number of frequency hours authorized by the seasonal schedule to each of the zones or areas of reception specified in the schedule.

47 CFR 73.782 requires that licensees retain logs of international broadcast stations for two years. If it involves communications incident to a disaster, logs should be retained as long as required by the Commission.

47 CFR 73.759(d) states that the licensee or permittee must keep records of the time and results of each auxiliary transmitter test performed at least weekly.

47 CFR 73.762(b) requires that licensees notify the Commission in writing of any limitation or discontinuance of operation of not more than 10 days.

47 CFR 73.762(c) states that the licensee or permittee must request and receive specific authority from the Commission to discontinue operations for more than 10 days under extenuating circumstances.

47 CFR 1.1301–1.1319 cover certifications of compliance with the National Environmental Policy Act and how the public will be protected from radio frequency radiation hazards.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–23943 Filed 10–31–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0357 and 3060–1029]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 31, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0357.

Title: Recognized Private Operating Agency (RPOA), 47 CFR 63.701.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 2–5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154(j), 201, 214 and 403.

Total Annual Burden: 35 hours.

Annual Cost Burden: $19,450.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension after the 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The Commission requests this information in order to make recommendations to the U.S. Department of State for granting recognized private operating agency (RPOA) status to requesting entities. The Commission does not require entities to request RPOA status. Rather, this is a voluntary application process for use by companies that believe that obtaining RPOA status will be beneficial in persuading foreign governments to allow them to conduct business abroad. RPOA status also permits companies to join the International Telecommunication Union's (ITU's) Telecommunications Sector, which is the standards-setting body of the ITU.

The information furnished in RPOA requests is collected pursuant to 47 CFR 63.701 of the Commission's rules. Entities submit these applications on a voluntary basis. The collection of information is a one-time collection for each respondent. Without this information collection, the Commission's policies and objectives for assisting unregulated providers of enhanced services to enter the market for international enhanced services would be thwarted.

OMB Control No.: 3060–1029.

Title: Data Network Identification Code (DNIC).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5 respondents; 5 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collections is contained in 47 U.S.C. 151, 154(i)–(j), 201–205, 211, 214, 219, 220, 303(r), 309 and 403.

Total Annual Burden: 1 hour.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance. A Data Network Identification Code (DNIC) is a unique, four-digit number designed to provide discrete identification of individual public data networks. The DNIC is intended to identify and permit automated switching of data traffic to particular networks. The FCC grants the DNICs to operators of public data networks on an international protocol. The operators of public data networks file an application for a DNIC on the internet-based, International Bureau Filing System (IBFS). The DNIC is obtained free of charge on a one-time only basis unless there is a change in ownership or the owner chooses to relinquish the code to the FCC. The Commission's lack of an assignment of DNICs to operators of public data networks would result in technical problems that prevent the identification and automated switching of data traffic to particular networks.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–23944 Filed 10–31–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing.

SUPPLEMENTARY INFORMATION: This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992, issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation website at *www.fdic.gov/bank/individual/failed/banklist.html*, or contact the Manager of Receivership Oversight at *RO@fdic.gov* or at Division of Resolutions and Receiverships, FDIC, 1601 Bryan Street, Suite 34100, Dallas, TX 75201–3401.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10532	Louisa Community Bank, Inc.	Louisa	KY	10/25/2019
10533	Resolute Bank	Maumee	OH	10/25/2019

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 28, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–23820 Filed 10–31–19; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) reapprove the proposed information collection project: ''*Medical Expenditure Panel Survey—Insurance Component.*''

This proposed information collection was previously published in the **Federal Register** on August 8, 2019, and allowed 60 days for public comment. AHRQ received no comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by 30 days after date of publication.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditure Panel Survey—Insurance Component

Employer-sponsored health insurance is the source of coverage for 84.4 million current and former workers, plus many of their family members, and is a cornerstone of the U.S. health care system. The Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) measures the extent, cost, and coverage of employer-sponsored health insurance on an annual basis. These statistics are produced at the National, State, and sub-State (metropolitan area) level for private industry. Statistics are also produced for State and Local governments.

This research has the following goals:

(1) To provide data for Federal policymakers evaluating the effects of National and State health care reforms.

(2) to provide descriptive data on the current employer-sponsored health insurance system and data for modeling the differential impacts of proposed health policy initiatives.

(3) to supply critical State and National estimates of health insurance spending for the National Health Accounts and Gross Domestic Product.

This study is being conducted by AHRQ through the Bureau of the Census, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b–2.

Method of Collection

To achieve the goals of this project the following data collections for both private sector and state and local government employers will be implemented:

(1) Prescreener Questionnaire—The purpose of the Prescreener Questionnaire, which is collected via telephone, varies depending on the insurance status of the establishment contacted (establishment is defined as a single, physical location in the private sector and a governmental unit in state and local governments). For establishments that do not offer health insurance to their employees, the prescreener is used to collect basic information such as number of employees. Collection is completed for these establishments through this telephone call. For establishments that do offer health insurance, contact name and address information is collected that is used for the mailout of the establishment and plan questionnaires. Obtaining this contact information helps ensure that the questionnaires are directed to the person in the establishment best equipped to complete them.

(2) Establishment Questionnaire—The purpose of the mailed Establishment Questionnaire is to obtain general information from employers that provide health insurance to their employees. Information such as total active enrollment in health insurance, other employee benefits, demographic

characteristics of employees, and retiree health insurance is collected through the establishment questionnaire.

(3) Plan Questionnaire—The purpose of the mailed Plan Questionnaire is to collect plan-specific information on each plan (up to four plans) offered by establishments that provide health insurance to their employees. This questionnaire obtains information on total premiums, employer and employee contributions to the premium, and plan enrollment for each type of coverage offered—single, employee-plus-one, and family—within a plan. It also asks for information on deductibles, copays, and other plan characteristics.

The primary objective of the MEPS–IC is to collect information on employer-sponsored health insurance. Such information is needed in order to provide the tools for Federal, State, and academic researchers to evaluate current and proposed health policies and to support the production of important statistical measures for other Federal agencies.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS–IC. The Prescreener questionnaire will be completed by 29,931 respondents and takes about 5 minutes to complete. The Establishment questionnaire will be completed by 25,819 respondents and takes about 23 minutes to complete. The Plan questionnaire will be completed by 22,859 respondents and will require an average of 2.2 responses per respondent. Each Plan questionnaire takes about 11 minutes to complete. The total annualized burden hours are estimated to be 21,611 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this data collection. The annualized cost burden is estimated to be $705,599.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS FOR THE 2020–2021 MEPS–IC

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Prescreener Questionnaire	29,931	1	5/60	2,494
Establishment Questionnaire	25,819	1	* 23/60	9,897
Plan Questionnaire	22,859	2.2	11/60	9,220
Total	78,609	na	na	21,611

* The burden estimate printed on the establishment questionnaire is 45 minutes which includes the burden estimate for completing the establishment questionnaire and two plan questionnaires (on average, each establishment completes 2.2 plan questionnaires), plus the prescreener. The establishment and plan questionnaires are sent to the respondent as a package and are completed by the respondent at the same time.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN FOR THE 2020–2021 MEPS–IC

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Prescreener Questionnaire	29,931	2,494	32.65	$81,429
Establishment Questionnaire	25,819	9,897	32.65	323,137
Plan Questionnaire	22,859	9,220	32.65	301,033
Total	78,609	21,611	na	705,599

* Based upon the mean hourly wage for Compensation, Benefits, and Job Analysis Specialists occupation code 13–1141, at *https://www.bls.gov/oes/current/oes131141.htm* (U.S. Department of Labor, Bureau of Labor Statistics.)

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 28, 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–23872 Filed 10–31–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Interventions for Dyspnea in Patients With Advanced Cancer

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Interventions for Dyspnea in Patients with Advanced Cancer,* which is currently being conducted by the

AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* by 30 days after date of publication of this notice.

ADDRESSES: *Email submissions: epc@ahrq.hhs.gov.*

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or email: *epc@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Interventions for Dyspnea in Patients with Advanced Cancer*. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Interventions for Dyspnea in Patients with Advanced Cancer,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/dyspnea-advanced-cancer/protocol*.

This is to notify the public that the EPC Program would find the following information on Interventions for Dyspnea in Patients with Advanced Cancer helpful:

▪ A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*

▪ *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.

▪ *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.

▪ Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of four (4) weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates*.

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

1. What are the comparative benefits of non-pharmacological interventions (either alone or in combination) for improving dyspnea in patients with advanced cancer?

2. What are the comparative benefits of pharmacological interventions (either alone or in combination) for improving dyspnea in patients with advanced cancer?

3. What are the comparative benefits of non-pharmacological, pharmacological, and multimodal interventions for improving dyspnea in patients with advanced cancer?

4. What are the harms of non-pharmacological and pharmacological interventions for improving dyspnea in patients with advanced cancer?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)

Population(s)

Patients (age ≥ 18 years of age) with advanced cancer (unlikely to be cured or unlikely to be controlled with treatment) and dyspnea.

Interventions

Non-Pharmacological Interventions (KQ 1, 3, and 4)

Respiratory Interventions

a. *Airflow/cooling:* Fan therapy, water spray, changing the room environment (cooling the room/opening a window)
b. Compressed air
c. Supplemental oxygen therapy (for hypoxemic and non-hypoxemic patients)
d. *Breathing gas:* Heliox
e. Noninvasive Positive-Pressure Ventilation (Bilevel positive airway pressure (BiPAP)/Continuous positive airway pressure (CPAP))

Behavioral and Psychoeducational Interventions

a. Cognitive-behavioral therapy (CBT)
b. Other behavioral interventions (may include components such as other psychosocial interventions, teaching problem-solving or coping and adaptation strategies, relaxation/distraction techniques, biofeedback, energy conservation)

Activity and Rehabilitation Interventions

a. Walking aids/mobility aids
b. Exercise (healthcare professional-guided exercise, physical therapy, occupational therapy, aerobic exercise, non-aerobic exercise, isometric exercise, tai chi, qigong)
c. Respiratory training
d. Pulmonary rehabilitation
e. Chest wall vibration
f. Neuromuscular electrical stimulation (NMES)

Complementary and Alternate Medicine Interventions

a. Acupuncture
b. Acupressure
c. Reiki
d. Mindfulness
e. Yoga
f. Meditation
g. Music therapy

Combination of any of the above

Pharmacological interventions (drugs approved by the Food and Drug Administration (FDA) for any indication) (KQ 2, 3, and 4).

Any routes of administration for all drug classes are included.

- Bronchodilators
  a. *Beta-adrenergic receptor agonists:* Albuterol, arformoterol, formoterol, indaceterol, levalbuterol, olodaterol, terbutaline, vilanterol
  b. *Antimuscarinics:* Aclidinium, atropine, glycopyrrolate, ipratropium, scopolamine, tiotropium, umeclidinium
  c. *Methylxanthines:* Theophylline, aminophylline, caffeine
- Nebulized saline
- *Corticosteroids:* Beclomethasone, betamethasone, budesonide, ciclesonide, dexamethasone, flunisolide, fluticasone, hydrocortisone, methylprednisolone, mometasone, prednisone
- *Diuretics:* Amiloride, bumetanide, ethacrynic acid, furosemide, hydrochlorothiazide, indapinide, metolazone, spironolactone, torsemide, triamterine
- Lidocaine
- *Non-steroidal anti-inflammatory agents:* Celecoxib, diclofenac, diflusinal, etodolac, fenoprofen, flurbiprofen, ibuprofen, indomethacin, ketoprofen, ketorolac, meloxicam, nabumetone, naproxen, oxaprozin, piroxicam, salsalate, sulindac, tolmetin
- *Phenothiazines:* Promethazine, prochlorperazine, chlorpromazine, thioridazine
- *Atypical antipsychotics:* Aripiprazole, asenapine, brexpiprazole, cariprazine, clozapine, haloperidol, iloperidone, lurasidone, olanzapine, paliperidone, pimavanserin, quetiapine, risperidone, ziprasidone
- *Gamma-Aminobutyric acid (GABA) analog anticonvulsants:* Gabapentin, pregabalin
- *Opioids:* Buprenorphine, codeine, dihydrocodeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol
- Anxiolytics
  a. *Benzodiazepines:* Alprazolam, clonazepam, diazepam, lorazepam, midazolam, oxazepam, temazepam
  b. *Serotonin-norepinephrine reuptake inhibitors (SNRIs)/Selective serotonin reuptake inhibitors (SSRIs):* Citalopram, desvenlafaxine, duloxetine, escitalopram, fluoxetine, fluvoxamine, levomilnacipran, milnacipran, paroxetine, sertraline, venlafaxine
  c. *Other:* Bupropion, buspirone, mirtazapine
- Combinations of any of the above

Combinations of Nonpharmacologic and Pharmacologic or Multimodal Interventions

Comparators

- KQ 1: Placebo, usual care, other non-pharmacological intervention or a combination of non-pharmacological interventions
- KQ 2: Placebo, usual care, other pharmacological intervention or dose or route, or a combination of pharmacological interventions
- KQ 3: Placebo, usual care, non-pharmacological interventions, pharmacologic interventions, or multimodal interventions (*e.g.,* opioids versus respiratory training, or acupuncture versus morphine versus combination acupuncture and morphine)
- KQ 4: Any of the comparators for KQ 1, KQ 2, or KQ 3

Outcomes

Patient- or Caregiver-Reported, or Observational Symptom-Related Outcomes (KQ1–3)

Caregiver-Reported or Observational Symptom-Related Only if Patients are Unable to Self-Report

- Dyspnea as measured by a validated tool, which must include *patient- or caregiver-reported or observational symptom-related measures* of breathing difficulty or discomfort
- Anxiety as measured by a validated tool. This tool must include *patient- or caregiver-reported* measures of anxiety
- Functional status (measured by validated *patient- or caregiver-reported tool*)
- Health-related quality of life (general or disease-specific, measured by a validated patient- or caregiver-reported tool)

Clinical or Utilization Health Outcomes (KQ1–4)

- Respiratory rate
- Oxygen or carbon dioxide/bicarbonate levels
- Heart rate
- Blood pressure
- Objective measure of functional capacity, *e.g.,* 6-minute walk test
- Level of sedation
- Utilization outcomes linked to dyspnea: hospitalizations, intensive care unit stays, emergency room visits

Patient-Centered Adverse Effects of Dyspnea Treatments (KQ4)

- Central nervous system (cognitive changes, dizziness, drowsiness, fatigue, headache, respiratory depression)
- Gastrointestinal (constipation, nausea, vomiting)
- Pruritus
- Urinary retention, dry mouth
- Opioid use disorder
- Discomfort or distress from equipment, *e.g.,* oxygen or masks
- Death
- Dropouts

Timing: Any Duration of Follow-up

Setting: Any Setting

Study Design: RCTs for all KQ

- For KQ1–3: RCTs, nonrandomized controlled trials, and observational studies with a concurrent comparison group, with at least 10 patients in each group
- For KQ 4: RCTs, nonrandomized controlled trials, observational studies with a concurrent comparison group, and prospective or retrospective cohort studies where the primary objective of the study is to evaluate harms from dyspnea treatments

Dated: October 28, 2019.

Virginia L. Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2019–23871 Filed 10–31–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0977]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 2, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–

395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0312. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents—21 CFR 1140.30

OMB Control Number 0910–0312—Extension

This is a request for an extension of OMB approval for the information collection requirements contained in FDA's regulations for cigarettes and smokeless tobacco containing nicotine. The regulations that are codified at 21 CFR part 1140 are authorized by section 102 of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31). Section 102 of the Tobacco Control Act required FDA to publish a final rule regarding cigarettes and smokeless tobacco identical in its provisions to the regulation issued by FDA in 1996 (61 FR 44396, August 28, 1996), with certain specified exceptions including that subpart C (which included 21 CFR 897.24) and 21 CFR 897.32(c) be removed from the reissued rule (section 102(a)(2)(B)). The reissued final rule was published in the **Federal Register** of March 19, 2010 (75 FR 13225).

This collection includes reporting information requirements for § 1140.30 (21 CFR 1140.30), which directs persons to notify FDA if they intend to use a form of advertising that is not addressed in the regulations and not originally described in the March 19, 2010, final rule. Section 1140.30 requires manufacturers, distributors, and retailers to (1) observe certain format and content requirements for labeling and advertising and (2) notify FDA if they intend to use an advertising medium that is not listed in the regulations. The concept of permitted advertising in § 1140.30 is sufficiently broad to encompass most forms of advertising.

In the **Federal Register** of May 17, 2019 (84 FR 22496), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received that was PRA related. The commenter stated that this program is ineffective and has no effect on whether Americans smoke. FDA disagrees. Section 1140.30 is intended to help protect children and adolescents by reducing the appeal of cigarettes and smokeless tobacco to them. Section 1140.30, in part, contains a comprehensive list of permissible forms of advertising and labeling; in the unlikely event that a person wishes to use a form of advertising or labeling that is not described in § 1140.30, the section directs respondents to notify FDA of the form of advertising or labeling they intend to use.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1140.30—Scope of permissible forms of labeling and advertising	25	1	25	1	25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden hour estimates for this collection of information were based on industry-prepared data and information regarding cigarette and smokeless tobacco product advertising expenditures.

FDA estimates that approximately 25 respondents will submit an annual notice of alternative advertising, and the Agency has estimated it should take 1 hour to provide such notice. Therefore, FDA estimates that the total time required for this collection of information is 25 hours.

We have adjusted our burden estimate to approximately 25 notifications annually, which more accurately reflects the current number of submissions under this regulation. This is a decrease to the currently approved burden. The decrease in notifications is not unexpected given that the regulation applies to cigarettes and smokeless tobacco and many of the alternative media notifications have been made in previous years.

Dated: October 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23934 Filed 10–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–P–2982]

Determination That MEXITIL (Mexiletine Hydrochloride) Capsules, 150 Milligrams, 200 Milligrams, and 250 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that MEXITIL (mexiletine hydrochloride) capsules, 150 milligrams (mg), 200 mg, and 250 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Carlarease Hunter, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–3702, *Carlarease.Hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an

ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

MEXITIL (mexiletine hydrochloride) is the subject of NDA 018873, held by Boehringer Ingelheim Pharmaceuticals, Inc., and initially approved on December 30, 1985. MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, are indicated for the treatment of documented ventricular arrhythmias, such as sustained ventricular tachycardia, that, in the judgment of the physician, are life-threatening.

MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Hetero Labs Limited submitted a citizen petition dated June 19, 2019 (Docket No. FDA–2019–P–2982), under 21 CFR 10.30, requesting that the Agency determine whether MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, were not withdrawn for reasons of safety or effectiveness.

The petitioner has identified no data or other information suggesting that MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to MEXITIL (mexiletine hydrochloride) capsules, 150 mg, 200 mg, and 250 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: October 28, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23923 Filed 10–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0880]

Assessing User Fees Under the Generic Drug User Fee Amendments of 2017; 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 ''Assessing User Fees under the Generic Drug User Fee Amendments of 2017.'' This draft guidance provides stakeholders information regarding the implementation of the Generic Drug User Fee Amendments of 2017 (GDUFA II) and policies and procedures surrounding its application. This draft guidance revises and replaces FDA's draft guidance for industry entitled ''Assessing User Fees under the Generic Drug User Fee Amendments of 2017,'' published in October 2017.

DATES: Submit either electronic or written comments on the draft guidance by December 31, 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–2012–D–0880 for ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017; Draft Guidance for Industry.'' 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 this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Keith Verrett, Division of User Fee Management and Budget Formulation Staff, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, Rm. 2179, Silver Spring, MD 20993, 301–796–7900, *CDERCollections@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Assessing User Fees under the Generic Drug User Fee Amendments of 2017.'' GDUFA II (Pub. L. 115–52, Title III), signed into law by the President on August 18, 2017, continues FDA's and industry's goal to improve public access to safe and effective generic drugs and to improve upon the predictability of the review process. GDUFA II extends FDA's authority to collect user fees from fiscal year (FY) 2018 to FY 2022 and introduces a number of technical revisions that affect what fees are collected and how some fees are collected.

The draft guidance announced in this notice revises and replaces the draft guidance for industry on ''Assessing User Fees under the Generic Drug User Fee Amendments of 2017.'' This draft guidance addresses changes in user fee assessments from GDUFA I, user fees incurred by industry under GDUFA II, payment procedures, reconsideration and appeals, and other additional information to assist industry in complying with GDUFA II. Clarifying language was added to the revised draft guidance based on the public comments submitted for the draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that 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 draft guidance refers to collections of information for filling out and submitting Form FDA 3913 (User Fee Payment Refund Request), previously approved under OMB control number 0910–0805, and Form FDA 3914 (User Fee Payment Transfer Request), previously approved under OMB control number 0910–0805.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: October 28, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23875 Filed 10–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4042]

Chronic Hepatitis D Virus Infection: Developing Drugs for Treatment; 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 ''Chronic Hepatitis D Virus Infection: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in all phases of development of antiviral drugs for the treatment of chronic hepatitis D virus (HDV) infection. This guidance is intended to provide consistent FDA advice to stakeholders regarding HDV drug development strategies.

DATES: Submit either electronic or written comments on the draft guidance by December 31, 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–4042 for ''Chronic Hepatitis D Virus Infection: Developing Drugs for Treatment.'' 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. 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: Aimee Hodowanec, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6341, Silver Spring, MD 20993–0002, 240–402–5752.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Chronic Hepatitis D Virus Infection: Developing Drugs for Treatment.'' The purpose of this draft guidance for industry is to provide consistent recommendations for the development of antiviral drugs for the treatment of chronic HDV infection. The guidance addresses all phases of drug development, from nonclinical considerations to phase 3 trial design recommendations.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Chronic Hepatitis D Virus Infection: Developing Drugs for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

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 (PRA) (44 U.S.C. 3501–3520). The collection of information in 21 CFR part 314 for the submission of new drug applications (NDAs) has been approved under OMB control number 0910–0001. The submission of biologics license applications (BLAs) has been approved under OMB control number 0910–0338. The collection of information in 21 CFR part 312, including submissions under subpart E, has been approved under OMB control number 0910–0014. The submission of prescription drug labeling under 21 CFR 201.56 and 201.57 has been approved under OMB control number 0910–0572. The submission of medication guides under 21 CFR part 208 has been approved under OMB control number 0910–0393. The submission of prescription drug advertisements under 21 CFR 202.1 has been approved under OMB control number 0910–0686.

The collection of information in the guidance for industry entitled ''Formal Meetings between the FDA and Sponsors or Applicants of PDUFA (Prescription Drug User Fee Act) Products'' (available at *https://www.fda.gov/media/109951/download*), including requests for pre-NDA and pre-BLA meetings and other meetings, has been approved under OMB control number 0910–0429. The collection of information in the guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' (available at *https://www.fda.gov/media/86377/download*), including fast track designation, breakthrough therapy designation, accelerated approval, and priority review designation, has been approved under OMB control number 0910–0765.

In accordance with the PRA, prior to publication of any final guidance document, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to those previously approved collections of information found in FDA regulations or guidances.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: October 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23926 Filed 10–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0001]

Office of Minority Health and Health Equity Public Meeting on Strategies To Improve Health Equity Amidst the Opioid Crisis; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Office of Minority Health and Health Equity Public Meeting on Strategies to Improve Health Equity Amidst the Opioid Crisis.'' The purpose of this public meeting is to share information and obtain the public's perspectives on the current opioid crisis and how it specifically affects racial and ethnic minority, underrepresented, and underserved populations across the country, approaches to prevent and treat opioid use disorder, and emerging research to improve care, and explore how FDA can support those efforts.

DATES: The public meeting will be held on November 21, 2019, from 9 a.m. to 4 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: Hilton Washington, DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852, 301–468–1100.

FOR FURTHER INFORMATION CONTACT: Jovonni Spinner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2384, Silver Spring, MD 20993, 301–796–8729, *Jovonni.Spinner@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Minority Health and Health Equity's (OMHHE) mission is to ''promote and protect the health of diverse populations through research and communication that addresses health disparities.'' Racial and ethnic minorities have experienced an increase in opioid-involved overdose deaths over the past few years. For example, the rate of opioid-involved overdose death nearly doubled among Black/non-Hispanic populations between 2015 (6.6 per 100,000 population) and 2017 (12.9 per 100,000 population) (Ref. 1). It has also been shown that racial and ethnic minority populations suffer from chronic pain at higher rates than other populations and the evaluation and treatment for pain management may vary across ethnic groups (Ref. 2). The opioid crisis is a multifaceted issue and our aim is to convene diverse stakeholders to stimulate dialogue that will highlight and bring about solutions to improve the health of the communities we serve. Meeting discussions will inform future programming for the OMHHE.

II. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website to register: *https://www.eventbrite.com/e/fda-omhhe-strategies-to-improve-health-equity-amidst-the-opioid-epidemic-tickets-70822278341.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Anonymous registration is available. Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by 11:59 p.m. Eastern Time, November 15, 2019. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public meeting/public workshop.

If you need special accommodations due to a disability, please contact Jovonni Spinner at 301–796–8729 or *Jovonni.Spinner@fda.hhs.gov* no later than November 7, 2019.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast: *https://www.eventbrite.com/e/fda-omhhe-strategies-to-improve-health-equity-amidst-the-opioid-epidemic-tickets-70822278341.*

III. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Henry, J., Kaiser Foundation, ''Opioid Overdose Deaths by Race/Ethnicity.'' Available at: *https://www.kff.org/other/state-indicator/opioid-overdose-deaths-by-raceethnicity/?dataView=2&activeTab=graph&currentTimeframe=0&startTimeframe=18&selectedDistributions=white-non-hispanic--black-non-hispanic-hispanic&selectedRows=%7B%22wrapups%22:%7B%22united-states%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.* Accessed on September 9, 2019.
2. Campbell, C.M. and R.R. Edwards, ''Ethnic Differences in Pain and Pain Management.'' *Pain Management,* vol. 2(3), pp. 219–230, 2012.*

Dated: October 28, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23941 Filed 10–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 10221 North 32nd Street Suite J, Phoenix, AZ 85028, 602–457–5411

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

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* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

The following laboratory is voluntarily withdrawing from the National Laboratory Certification Program (NLCP) effective November 1, 2019 and November 7, 2019 respectively:

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center), Withdrawing from NLCP effective November 1, 2019

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226, Withdrawing from NLCP effective November 7, 2019

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles P. LoDico,

Chemist.

[FR Doc. 2019–23873 Filed 10–31–19; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1968]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before January 30, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1968, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

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

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Douglas County, Georgia and Incorporated Areas Project: 16–04–2660S Preliminary Date: May 12, 2016 and March 14, 2019	
City of Douglasville	City Hall, 6695 Church Street, Douglasville, GA 30134.
Unincorporated Areas of Douglas County	Douglas County Courthouse, 8700 Hospital Drive, Douglasville, GA 30134.
Montour County, Pennsylvania (All Jurisdictions) Project: 15–03–0227S Preliminary Date: March 8, 2019	
Borough of Danville	Municipal Building, 463 Mill Street, Danville, PA 17821.
Township of Cooper	Cooper Township Municipal Building, 59 Steltz Road, Danville, PA 17821.
Township of Mahoning	Mahoning Municipal Building, 849 Bloom Road, Danville, PA 17821.
Township of Mayberry	Mayberry Municipal Building, 162 High Road, Catawissa, PA 17820.

[FR Doc. 2019–23884 Filed 10–31–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1971]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

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

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:.						
Maricopa	City of Surprise (19–09–0616P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 24, 2020	040053
Maricopa	Unincorporated Areas of Maricopa County (19–09–0616P).	The Honorable Bill Gates, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 24, 2020	040037
Yavapai	City of Prescott (19–09–1152P).	The Honorable Greg Mengarelli, Mayor, City of Prescott, City Hall, 201 South Cortez Street, Prescott, AZ 86303.	Public Works Department, 433 North Virginia Street, Prescott, AZ 86301.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 6, 2020	040098
Yavapai	Unincorporated Areas of Yavapai County (19–09–1152P).	The Honorable Randy Garrison, Chairman, Board of Supervisors, Yavapai County, 10 South 6th Street, Cottonwood, AZ 86326.	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 6, 2020	040093
California:						
Lake	Unincorporated Areas of Lake County (19–09–1004P).	The Honorable Tina Scott, Chair, Board of Supervisors, Lake County, 255 North Forbes Street, Lakeport, CA 95453.	Lake County, Department of Public Works, 255 North Forbes Street, Room 309, Lakeport, CA 95453.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 16, 2020	060090
Placer	City of Roseville (19–09–1696P).	The Honorable John B. Allard II, Mayor, City of Roseville, 311 Vernon Street, Roseville, CA 95678.	Engineering Department, 316 Vernon Street, Roseville, CA 95678.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 21, 2020	060243
Riverside	Agua Caliente Band of Cahuilla Indian Reservation (19–09–1172P).	The Honorable Jeff L. Grubbe, Chairman, Tribal Council, Agua Caliente Band of Cahuilla Indians, 5401 Dinah Shore Drive, Palm Springs, CA 92264.	Tribal Administrative Office, Planning and Natural Resources, 5401 Dinah Shore Drive, Palm Springs, CA 92264.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 31, 2020	060763
Riverside	City of Palm Springs (19–09–1172P).	The Honorable Robert Moon, Mayor, City of Palm Springs, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	Public Works and Engineering Department, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 31, 2020	060257
Idaho:						
Canyon	City of Middleton (19–10–0311P).	The Honorable Darin Taylor, Mayor, City of Middleton, City Hall, 1103 West Main Street, Middleton, ID 83644.	City Hall, 1103 West Main Street, Middleton, ID 83644.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 17, 2020	160037

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Canyon	Unincorporated Areas of Canyon County (19–10–0311P).	The Honorable Pam White, Chair, Board of County Commissioners, County Courthouse, 1115 Albany Street, Room 101, Caldwell, ID 83605.	Canyon County Administration Building, 111 North 11th Avenue, Room 101, Caldwell, ID 83605.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 17, 2020	160208
Illinois:						
DuPage	City of Warrenville (19–05–2162P).	The Honorable David L. Brummel, Mayor, City of Warrenville, 28W701 Stafford Place, Warrenville, IL 60555.	City Hall, 28W701 Stafford Place, Warrenville, IL 60555.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 9, 2020	170218
DuPage	Unincorporated Areas of DuPage County (19–05–2162P).	The Honorable Dan Cronin, Chairman, DuPage County Board, 421 North County Farm Road, Wheaton, IL 60187.	DuPage County Administration Building, Stormwater Management, 421 North County Farm Road, Wheaton, IL 60187.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 9, 2020	170197
Marshall	City of Wenona (19–05–3185P).	The Honorable Jamie Durham, Mayor, City of Wenona, P.O. Box 601, Wenona, IL 61377.	City Hall, 226 South Chestnut Street, Wenona, IL 61377.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 9, 2020	170462
Marshall	Unincorporated Areas of Marshall County (19–05–3185P).	The Honorable Gary R. Kroeschen, Chairman, Marshall County Board, P.O. Box 328, Lacon, IL 61540.	Marshall County Courthouse, 122 North Prairie Street, Lacon, IL 61540.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 9, 2020	170994
Indiana:						
Marion	City of Indianapolis (18–05–2012P)	The Honorable Joe Hogsett, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, IN 46204.	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 24, 2020	180159
Marion	Town of Speedway (18–05–2012P)	Mr. Jacob Blasdel, Town Manager, Town of Speedway, 1450 North Lynhurst Drive, Speedway, IN 46224.	Town Hall, 1450 North Lynhurst Drive, Speedway, IN 46224.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 24, 2020	180162
Iowa: Black Hawk	City of Waterloo (19–07–1540P).	The Honorable Quentin M. Hart, Mayor, City of Waterloo, 715 Mulberry Street, Waterloo, IA 50703.	City Hall, 715 Mulberry Street, Waterloo, IA 50703.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 28, 2020	190025
Minnesota: Hennepin.	City of Maple Grove (18–05–4086P).	The Honorable Mark Steffenson, Mayor, City of Maple Grove, Government Center, 12800 Arbor Lakes Parkway North, Maple Grove, MN 55369.	Government Center, and Public Safety Facility, 12800 Arbor Lakes Parkway North, Maple Grove, MN 55369.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 31, 2020	270169
Missouri:						
St. Charles	City of St. Charles (19–07–1154P).	The Honorable Dan Borgmeyer, Mayor, City of St. Charles, 200 North 2nd Street, 4th Floor, Room 400, St Charles, MO 63301.	City Hall, 200 North 2nd Street, St. Charles, MO 63301.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 28, 2020	290318
Scott	City of Sikeston (18–07–2115P).	The Honorable Steven Burch, Mayor, City of Sikeston, 105 East Center Street, Sikeston, MO 63801.	City Hall, 105 East Center Street, Sikeston, MO 63801.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 6, 2020	295270
Scott	Unincorporated Areas of Scott County (18–07–2115P).	The Honorable Jim Glueck, Presiding Scott County Commissioner, P.O. Box 188, Benton, MO 63736.	Scott County Courthouse, 131 South Winchester Street, Benton, MO 63736.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 6, 2020	290837
Nebraska: Lincoln	City of North Platte (19–07–0085P).	The Honorable Dwight Livingston, Mayor, City of North Platte, 211 West 3rd Street, North Platte, NE 69101.	City Hall, 211 West 3rd Street, North Platte, NE 69101.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 7, 2020	310143
Nevada: Clark	Unincorporated Areas of Clark County (19–09–1976P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 13, 2020	320003

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Ohio:						
Butler	Unincorporated Areas of Butler County (18–05–6293P).	The Honorable Donald L. Dixon, President, Board of Commissioners, Butler County Government Services Center, 315 High Street, 6th Floor, Hamilton, OH 45011.	Butler County Administrative Center, Building and Zoning Department, 130 High Street, 1st Floor, Hamilton, OH 45011.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 27, 2020	390037
Franklin	City of Grove City (18–05–3157P).	The Honorable Richard L. "Ike" Stage, Mayor, City of Grove City, 4035 Broadway, Grove City, OH 43123.	City Hall, 4035 Broadway, Grove City, OH 43123.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 10, 2020	390173
Warren	City of Mason (18–05–6293P).	The Honorable Victor Kidd, Mayor, City of Mason, Mason Municipal Center, 6000 Mason Montgomery Road, Mason, OH 45040.	Municipal Center, 6000 Mason Montgomery Road, Mason, OH 45040.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 27, 2020	390559

[FR Doc. 2019–23883 Filed 10–31–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of open Federal Advisory Committee meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet via teleconference on Wednesday, December 18, 2019. The meeting will be open to the public.

DATES: The meeting will take place on Wednesday, December 18, 2019, 9:30 a.m. to 11:30 a.m. Eastern Daylight Time (EDT). Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the teleconference should contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business December 10, 2019, to obtain the call-in number and access code for the December 18, 2019, meeting. For more information on services for individuals with disabilities or to request special assistance, contact Debbie Gartrell-Kemp as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Participants seeking their comments to be considered during the meeting should submit them in advance or during the public comment segment. Comments submitted up to 30 days after the meeting will be included in the public record and may be considered at the next meeting. Comments submitted in advance must be identified by Docket ID FEMA–2008–0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Deborah Gartrell-Kemp, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, post marked no later than December 1, 2019.

Instructions: All submissions received must include the words "Federal Emergency Management Agency" and the Docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov,* click on "Advanced Search," then enter "FEMA–2008–0010" in the "By Docket ID" box, then select "FEMA" under "By Agency," and then click "Search."

FOR FURTHER INFORMATION CONTACT:

Alternate Designated Federal Officer: Kirby E. Kiefer, telephone (301) 447–1117, email *Kirby.Kiefer@fema.dhs.gov.*

Logistical Information: Deborah Gartrell-Kemp, telephone (301) 447–7230, email *Deborah.GartrellKemp@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. appendix.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

On Wednesday, December 18, 2019, there will be four sessions, with deliberations and voting at the end of each session as necessary. The board will discuss the following:

1. United States Fire Administration Data, Research, Prevention and Response.
2. Deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2020 Budget Request/Budget Planning.
3. Recommendations on Academy program activities to include

developments, deliveries, staffing, and admissions.

4. Updates on the Board of Visitors Subcommittee Groups for the Professional Development Initiative Update and the National Fire Incident Report System.

There will be a 10-minute comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated following the last call for comments. Contact Deborah Gartrell-Kemp to register as a speaker. Meeting materials will be posted at *https://www.usfa.fema.gov/training/nfa/about/bov.html* by December 10, 2019.

Tonya L. Hoover,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2019–23907 Filed 10–31–19; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N064; FXES11140800000–189–FF08EVEN00]

Draft Habitat Conservation Plan for Eight Species; Draft Environmental Impact Statement for the Habitat Conservation Plan for Fort Ord, Monterey County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an incidental take permit application under the Endangered Species Act of 1973, as amended. The permit would authorize take of the federally threatened California tiger salamander, California red-legged frog, and western snowy plover, and the federally endangered Smith's blue butterfly, incidental to otherwise lawful activities associated with commercial, residential and recreational development, recreational use, and habitat management within portions of the former Fort Ord Army base in the draft habitat conservation plan (HCP). We invite public comment on the applicant's draft HCP and the draft environmental impact statement, which the Service prepared in response to the application for an incidental take permit.

DATES: Written comments must be received on or before December 16, 2019.

ADDRESSES:

To obtain documents: You may download a copy of the draft habitat conservation plan and environmental impact statement at *http://www.fws.gov/ventura/,* or you may request copies of the documents by sending U.S. mail to our Ventura office (see below), or by phone (see **FOR FURTHER INFORMATION CONTACT**). For information on reviewing U.S. Environmental Protection Agency (EPA) comments on the draft EIS, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION**.

To submit written comments: Please send us your written comments using one of the following methods:

- *U.S. mail:* Send your comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *Facsimile:* Fax your comments to 805–644–3958.
- *Electronic Mail:* Send your comments to *fw8fortordhcp@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Leilani Takano, Assistant Field Supervisor, by phone at 805–644–1766, at the Ventura address in **ADDRESSES**, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant has developed a draft habitat conservation plan (HCP) for the project that includes measures to mitigate and avoid/minimize impacts to the federally threatened California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), western snowy plover (*Charadrius nivosus nivosus*), and Monterey spineflower (*Chorizanthe pungens* var. *pungens*); the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), Monterey (sand) gilia (*Gilia tenuiflora* ssp. *arenaria*), and Yadon's piperia (*Piperia yadonii*); and the State endangered seaside bird's beak (*Cordylanthus rigidus* ssp. *littoralis*). The permit would authorize take of the California tiger salamander, California red-legged frog, western snowy plover, and Smith's blue butterfly incidental to otherwise lawful activities associated with the Fort Ord HCP. We invite public comment on the application, the draft HCP, and draft environmental impact statement (EIS).

Background

The California tiger salamander was listed as threatened on August 4, 2004 (69 FR 47212); the California red-legged frog was listed as threatened on May 23, 1996 (61 FR 25813); the western snowy plover was listed as threatened on March 5, 1993 (58 FR 12864); the Monterey spineflower was listed as threatened on February 4, 1994 (59 FR 5499); the Smith's blue butterfly was listed as endangered on June 1, 1976 (41 FR 22041); the Monterey (sand) gilia was listed as endangered on June 22, 1992 (57 FR 27848); and the Yadon's piperia was listed as endangered on August 12, 1998 (63 FR 43100). The seaside bird's beak has no Federal status, but was listed as endangered by the State of California in 1982 (*https://www.dfg.ca.gov/wildlife/nongame/list.html*), and the applicant has chosen to address this species in the HCP to facilitate State permitting.

Section 9 of the ESA and its implementing regulations in effect at the time the above-referenced species were listed prohibited the take of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the ESA to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed fish or wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. Under the ESA, protections for federally listed plants differ from the protections afforded to federally listed animals. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittees would receive assurances under our ''No Surprises'' regulations ((50 CFR 17.22(b)(5) and 17.32(b)(5)) regarding conservation activities for the California tiger salamander, California red-legged frog, western snowy plover, Monterey spineflower, Smith's blue butterfly, Monterey (sand) gilia, Yadon's piperia, and seaside bird's beak.

Applicant's Proposed Activities

The applicant has applied for a permit for incidental take of the California tiger salamander, California red-legged frog, western snowy plover, and Smith's blue butterfly. Take is likely to occur in association with activities necessary to develop and use commercial, residential, and recreational facilities on non-Federal portions of the former Fort Ord Army base and to manage habitats within conserved areas of the former base. The site contains 4 acres of aquatic breeding habitat and 5,718 acres of upland habitat for the California tiger salamander. The site contains 4 acres of aquatic breeding habitat and 3,494 acres of upland habitat for the California red-legged frog. The site contains 71 acres of breeding, foraging, and overwintering habitat for the western snowy plover, all of which is in critical habitat designated for the species. The site contains 110 acres of habitat (for all of the species' activities) for the Smith's blue butterfly. The HCP includes measures to minimize take of the California tiger salamander, California red-legged frog, western snowy plover, and Smith's blue butterfly in the forms of injury, mortality, and harm. Mitigation for unavoidable take of the species consists of preservation and management of existing habitat and restoration of areas of degraded habitat (primarily through restoration of aquatic breeding habitat for the two amphibian species and of upland habitat for all species).

National Environmental Policy Act Compliance

The Service has developed a draft EIS in response to the ITP application in accordance with the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The draft EIS analyzes three alternatives. The proposed action is issuance of a base-wide ITP, which would address development and use of the former Fort Ord in accordance with the HCP. This would include unrestricted development of some undisturbed habitat areas, redevelopment of areas developed by the Army during its use of the base, and limited development within areas otherwise conserved and managed as habitat. Under the ''no action'' alternative, a base-wide ITP would not be issued and the HCP would not be implemented. Development and use of the former base would likely continue under existing local and Army-prepared planning documents and the applicant would likely apply for future project-specific ITPs. Under the ''reduced take'' alternative, a base-wide ITP would be issued, but limited development within areas otherwise conserved and managed as habitat would be eliminated.

EPA's Role in the EIS Process

The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs. Therefore, EPA is publishing a notice in the **Federal Register** announcing this draft EIS, as required under section 309 of the Clean Air Act. The publication date of EPA's notice of availability is the official beginning of the public comment period. EPA's notices are published on Fridays. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. All EISs must be filed with EPA. You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Public Comments

If you wish to comment on the permit application, draft HCP, draft EIS, and associated documents, you may submit comments by one of the methods in **ADDRESSES**. 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 view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA and its implementing regulations (40 CFR 1506.6).

Michael Long,

Acting Assistant Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2019–23972 Filed 10–31–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2019–N125; FXES11130600000–190–FF06E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Gunnison Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft recovery plan for Gunnison sage-grouse, a bird species listed as threatened under the Endangered Species Act. We are requesting review and comment from the public on this draft plan. The draft recovery plan includes objective, measurable criteria, and site-specific management actions as may be necessary to remove the species from the Federal List of Endangered and Threatened Wildlife.

DATES: We must receive any comments on the draft recovery plan on or before December 31, 2019.

ADDRESSES:

Document availability: Copies of the draft recovery plan are available at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may request a copy by U.S. mail from the Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 445 West Gunnison Avenue, #240, Grand Junction, CO 81501–5711; or via telephone at 970–628–7181.

Submitting comments: If you wish to comment on the draft recovery plan, you may submit your comments in writing by email to *gusgrecoveryplan@fws.gov,* or by U.S. mail or hand-delivery to the Field Supervisor at the address above.

Viewing public comments: Comments and materials the Service receives will be available for public inspection by appointment during normal business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Ann Timberman, Field Supervisor, Colorado Ecological Services Field Office, Grand Junction, at the above U.S. mail address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft recovery plan for Gunnison sage-grouse (*Centrocercus minimus;* hereafter, GUSG), a bird species listed as threatened under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). We are requesting review and comment from the public on this draft recovery plan.

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. Recovery means improving the status of a listed species to the point at which listing is no longer necessary according to the criteria specified under section 4(a)(1) of the Act. The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. To help guide recovery efforts, we prepare recovery plans to promote the conservation of the species.

The purpose of a recovery plan is to provide a recommended framework for the recovery of a species so that protection of the Act is no longer necessary. Pursuant to section 4(f) of the Act, a recovery plan must, to the maximum extent possible, include: (1) A description of site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would support a determination under section 4(a)(1) of the Act that the species should be removed from the List of Endangered and Threatened Species; and (3) estimates of time and costs required to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

We used our new recovery planning and implementation (RPI) process to develop the draft recovery plan for Gunnison sage-grouse. The RPI process helps reduce the time needed to develop and implement recovery plans, increases the relevancy of the recovery plan over longer timeframes, and adds flexibility so that the recovery plan can be more easily adjusted to new information and circumstances. Under our RPI process, a recovery plan will include the three statutorily required elements for recovery plans—objective and measurable criteria, site-specific management actions, and estimates of time and cost—along with a concise introduction and our strategy for how we plan to achieve species recovery. The RPI recovery plan is supported by a separate species status assessment (SSA) report, which provides the scientific background information and threat assessment for the species, which are key to the development of the recovery plan. A third, separate working document, called the recovery implementation strategy (RIS), steps down the more general descriptions of actions in the recovery plan to detail the specifics needed to implement the recovery plan, which improves the flexibility of the recovery plan. The RIS will be adaptable, with new information on actions incorporated, as needed, without requiring a concurrent revision to the recovery plan, unless changes to the three statutory elements are required.

On November 20, 2014, we listed GUSG as a threated species (79 FR 69192) and concurrently designated critical habitat for the species (79 FR 69312). On April 25, 2018, we agreed to complete a recovery plan in order to receive a stay of litigation. We conducted a SSA for the species and documented our analysis in an SSA report (Service 2019), which is an in-depth, scientific review of the species' biology and threats, an evaluation of its biological status, and an assessment of the resources and conditions needed to support populations over time. The SSA report provides the scientific background and threats assessment for our draft recovery plan.

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994); our August 22, 2016, Director's Memo on the Peer Review Process; and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in the SSA report. Results of this structured peer review process can be found at *https://www.fws.gov/mountain-prairie/science/peerReview.php.* We also submitted our SSA report to our Federal, State, and Tribal partners for their scientific review. We incorporated the results of the peer and partner review in the SSA report, as appropriate. The SSA report is the scientific foundation for the draft recovery plan.

This notice opens the public review and comment period for our draft recovery plan for the GUSG. Section 4(f) of the Act requires that we notify the public and provide an opportunity for public review and comment during the development of recovery plans. We will consider all information we receive during a public comment period when preparing the recovery plan for approval, and particularly look for comments that provide scientific rationale or background. The Service and other Federal agencies will take these comments into consideration in the course of implementing an approved final recovery plan.

Species Information

Gunnison sage-grouse (or GUSG) is a small bird in the grouse family that lives exclusively in sagebrush steppe ecosystems of southwestern Colorado and southeastern Utah. GUSG are closely associated with sagebrush (*Artemisia* spp.) ecosystems in North America (Young *et al.* 2015, p. 1). GUSG rely on ecosystems with relatively contiguous and healthy sagebrush stands for food and shelter year round, while grasses and forbs in the understory provide cover and food during the nesting and early brood-rearing periods (Connelly *et al.* 2000, p. 971).

Since the 1900s, the GUSG's occupied range has contracted, due largely to habitat loss associated with the conversion of sagebrush habitats to agriculture and residential and commercial development. GUSG now occupies an estimated 10 percent of its historical range (Schroeder *et al.* 2004, p. 370). Currently, GUSG are found in eight small populations distributed across eight counties in Colorado and one county in Utah, with seven populations located in Colorado (Gunnison Basin, Poncha Pass, Crawford, Cerro Summit-Cimarron-Sims Mesa (CSCSM), Piñon Mesa, San Miguel, and Dove Creek) and one population in Utah (Monticello). These eight populations occupy six different ecoregions, or areas delineated by common geology, landforms, soils, vegetation, climate, land use, wildlife, and hydrology (EPA 2018), which represent distinct ecological differences in habitat between the populations.

A number of threats continue to affect GUSG populations, including: Habitat loss due to commercial and residential development; improperly managed grazing; encroachment by piñon-juniper; the effects of small population size; and regulatory mechanisms are inadequate to protect the species from these threats.

Recovery Strategy

Below, we summarize components from our draft recovery plan for GUSG. Please reference the draft recovery plan for full details (see **ADDRESSSES** above).

The draft recovery plan describes the recovery goal as the survival and conservation of GUSG. In general, GUSG need a sufficient number of resilient populations distributed across the overall range to maximize ecological and genetic diversity to withstand environmental stochasticity and catastrophes, and to adapt to environmental change. Recovery for GUSG will be signified by at least five resilient populations (Gunnison Basin, San Miguel Basin, Piñon Mesa, Crawford, and Monticello) and improved habitat in two populations (Dove Creek and CSCSM). These conditions provide sufficient representation and redundancy across the species' range through the occupancy of multiple ecoregions, the number of populations, and a broad distribution.

Recovery criteria in the draft plan include: (1) Maintaining sufficiently high male counts (HMCs) for at least 7 out of 9 years (specific targets are described in the draft recovery plan); and (2) reducing or ameliorating threats associated with habitat loss and degradation in all populations, via regulatory mechanisms or other conservation plans or programs. To help meet these criteria, the draft recovery plan identifies recovery actions from the following general categories: Translocating GUSG to augment populations; conserving and restoring habitat; managing motorized routes on Federal lands; and continued research and monitoring.

Request for Public Comments

The Service solicits public comments on the draft recovery plan. All comments we receive by the date specified (see **DATES**) will be considered prior to approval of the plan. Written comments and materials regarding the plan should be sent via the means in the **ADDRESSES** section.

We are specifically seeking comments and suggestions on the following questions:

- Understanding that the time and cost presented in the draft recovery plan will be fine-tuned when localized recovery implementation strategies are developed, are the estimated time and cost to recovery realistic? Is the estimate reflective of the time and cost of actions that may have already been implemented by Federal, State, county, or other agencies? Please provide suggestions or methods for determining a more accurate estimation.
- Do the draft recovery criteria provide clear direction to State partners on what is needed to recover the species? How could they be improved for clarity?
- Are the draft recovery criteria both objective and measurable given the information available for this species now and into the future? Please provide suggestions.
- Understanding that specific, detailed, and area-specific recovery actions will be developed in the RIS, do the draft recovery actions presented in the draft recovery plan generally cover the types of actions necessary to meet the recovery criteria? If not, what general actions are missing? And, are any of the draft recovery actions unnecessary for achieving recovery? Have we prioritized the actions appropriately?

Public Availability of Comments

We will summarize and respond to the issues raised by the public in an appendix to the approved final recovery plan. 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. You may request at the top of your comment that we withhold this information from public review; however, 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, 16 U.S.C. 1533(f).

Dated: September 20, 2019.

Noreen Walsh,

Regional Director, Lakewood, Colorado.

[FR Doc. 2019–23894 Filed 10–31–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF INTERIOR

Bureau of Indian Affairs

[120A2100DD/AAKC001030/ A0A501010.999900253G]

Land Acquisitions; The Pawnee Nation of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire 20.00 acres, more or less, of land near the City of Pawnee, Pawnee County, Oklahoma, (Site) in trust for the Pawnee Nation of Oklahoma for gaming and other purposes on October 7, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW, Washington, DC 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On October 7, 2019, the Assistant Secretary—Indian Affairs made a final agency determination to transfer the Site, consisting of approximately 20.00 acres, more or less, into trust for the Pawnee Nation of Oklahoma (Nation) pursuant to the Indian Reorganization Act, 25 U.S.C. 5108. The Assistant Secretary—Indian Affairs also determined that the Site meets the requirements of the Indian Gaming Regulatory Act, see 25 U.S.C. 2719(a)(2)(A)(i).

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Site in the name of the United States of America in trust for the Nation upon fulfillment of Departmental requirements.

The 20.00 acres, more or less, are located in Section 8, Township 20 North, Range 05 East, Pawnee County, Oklahoma, and are described as follows:

A part of the NE/4 of the NE/4 of Section 8, Township 20 North, Range 5 East, I.M., Pawnee County, Oklahoma; being more particularly described as follows:

Commencing at the Northeast corner of Section 8; Thence S89°24′00″ W along the North line of the NE/4 of the NE/4 a distance of 60.00 feet to the Northwest corner of a tract recorded in Book 67 Misc. Page 248 for a point of beginning; Thence S00°08′16″ E and parallel with the East line of the NE/4 of the NE/4 along the West line of the tract recorded in Book 67 Misc. Page 248 a distance of 983.03 feet to the Northeast corner of the highway easement recorded in Book 139 Page 270; Thence S89°37′23″ W along the North line of the highway easement recorded in Book 139 Page 270 a distance of 40.00 feet to the Northwest corner of the said highway easement; Thence S00°08′16″ E along the West line of the highway easement recorded in Book 139 Page 270 a distance of 350.00 feet to the Southwest corner of the said highway easement and on the South line of the NE/4 of the NE/4; Thence S89°37′23″ W along the South line of the NE/4 of the NE/4 a distance of 624.70 feet; Thence N00°08′16″ W and parallel with the East line of the NE/4 of the NE/4 a distance of 1330.44 feet to a point on the North line of the NE/4 of the NE/4; Thence N89°24′00″ E along the north line of the NE/4 of the NE/4 a distance of 664.72 feet to the point of beginning.

More particularly described as:

A tract of land located in the Northeast quarter of the Northeast quarter (NE/4–NE/4) of Section Eight (8), Township Twenty (20) North, Range Five (5) East of the Indian Meridian, Pawnee County, Oklahoma, with a geodetic basis of bearing of N89°24′26″ E along the North Section line and more particularly described as: Commencing at a 1/2″ iron pin at the Northeast corner (NE/C) of said NE/4 NE/4; Thence S89°24′26″ W along the North section line for a distance of 60.00 feet to the point of beginning; Thence S00°08′08″ E and parallel with the East line of the NE/4 of the NE/4 for a distance of 983.03 feet to the Northeast corner of the highway easement; Thence S89°37′31″ W for a distance of 40.00 feet to the Northwest corner of said highway easement; Thence S00°08′08″ E along the West side of said highway easement for a distance of 350.00

feet to the Southwest corner of said highway easement and to a point on the South line of the NE/4 of the NE/4; Thence S89°37′31″ W along the South line of the NE/4 of the NE/4 for a distance of 624.70 feet; Thence N00°08′08″ W and parallel with the East line of the NE/4 of the NE/4 for a distance of 1330.51 feet to a point on the North line of the NE/4 of the NE/4; Thence N89°24′26″ E along the North line of the NE/4 of the NE/4 for a distance of 664.72 feet to the point of beginning, containing 20.00 acres, more or less, as to surface rights only, Fee-to-Trust Case No. B–812–2016–0001.

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Dated: October 7, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–23834 Filed 10–31–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY921000, L712200000.EU0000, LVTFKX899040, 18X, WYW186936]

Notice of Realty Action: Non-Competitive (Direct) Sale of Public Land in Big Horn County, WY (Rageth, 60.96 Acres)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes a non-competitive (direct) sale of 60.96 acres of public lands in Big Horn County, Wyoming, to Brent and Sherri Rageth for the purpose of resolving an inadvertent unauthorized use. The sale will be subject to applicable provisions of the Federal Land Policy Management Act of 1976, as amended (FLPMA), and BLM regulations. The appraised Fair Market Value (FMV) for the sale parcels is $21,500.

DATES: Submit written comments regarding the sale parcel and associated Environmental Assessment until December 16, 2019.

ADDRESSES: Mail written comments concerning this direct sale to Field Manager, BLM, Cody Field Office, 1002 Blackburn Street, Cody, Wyoming 82414.

FOR FURTHER INFORMATION CONTACT: Cara Blank, Realty Specialist, BLM, Cody Field Office, at the above address or by telephone 307–578–5912. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following public lands have been examined and found suitable for sale in accordance with the criteria in Section 203 of the FLPMA:

Sixth Principal Meridian, Wyoming

T. 56 N., R. 97 W.,
Sec. 20, parcel 1;
Sec. 21, parcels 1 and 2;
Sec. 22, parcel 1.

The areas described aggregate 60.96 acres.

The direct sale is in conformance with the BLM Cody Field Office Approved Resource Management Plan (September 18, 2015), which identifies these parcels of public lands as suitable for disposal on page 105 and management action 6011. FLPMA Section 203 allows for the disposal of public lands if they meet the following disposal criteria: (1), such tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The subject parcels meet this criteria because the existing structures and the change in the character of the lands associated with farming operations make the lands difficult to manage as public lands.

A parcel-specific Environmental Assessment (EA) document numbered DOI–BLM–WY–R020–2019–0007–EA was prepared in connection with this sale. A copy of the EA, Finding of No Significant Impact and Decision Record are available online at: *https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=118368.*

Regulations at 43 CFR 2711.3–3(a) allow the direct sale of public lands (without competition), when a competitive sale is not appropriate and the public interest would best be served by a direct sale. In this case, a competitive sale is not appropriate because the subject lands contain improvements that directly support the adjoining farm property, owned by Brent and Sherri Rageth, rendering the land unusable by the public. The minimal acreage was considered to create a manageable boundary that included the lands surrounding a metal shop and all irrigation improvements. The public's interest would be best served by resolving the inadvertent unauthorized use and receiving payment at FMV for the public lands. Further, in conformance with Secretarial Order 3373, the BLM has determined that sale of this land will not impact public access for outdoor recreation. Upon publication of this Notice in the **Federal Register,** the public lands described will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA.

The temporary segregation will terminate upon, (1) issuance of a conveyance document, (2) publication in the **Federal Register** terminating the segregation, or (3) on November 1, 2021, unless extended by the BLM Wyoming State Director, in accordance with 43 CFR 2711.1–2(d). Upon publication of this Notice in the **Federal Register,** the BLM is no longer accepting land use applications affecting these public lands, except applications for the amendment of previously filed rights-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 43 CFR 2886.15.

The conveyance document, if issued, will contain the following reservations; excepting and reserving to the United States:

1. Rights-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All the mineral deposits in the lands so patented pursuant to the Act of October 21, 1976 (43 U.S.C. 1719), including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act, and to it, its permittees, licensees, lessees, and mining claimants, the right to prospect for, mine and remove the minerals owned by the United States under applicable law an such regulations as the Secretary of the Interior may prescribe. This reservation includes necessary access and exit rights and the right to conduct all necessary and incidental activities including, without limitation, all drilling, underground, open pit or surface mining operations, storage and transportation facilities deemed reasonably necessary.

Unless otherwise provided by separate agreement with the surface owner, mining claimants, permittees, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against mining claimants, permittees, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its mining claimants, permittees, licensees and lessees.

The conveyance document, if issued, will be subject to all valid existing rights.

The BLM will publish this Notice in the Lovell Chronicle newspaper once a week for three consecutive weeks. Only written comments submitted by postal service or overnight mail will be considered as properly filed. Electronic mail, facsimile, or telephone comments will not be considered.

Any adverse comments regarding the sale will be reviewed by the BLM Wyoming State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any timely filed objections, this realty action will become the final determination of the Department of the Interior.

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. Comments, including names and street addresses of respondents, will be available for public review at the BLM Cody Field Office during regular business hours, except holidays.

Authority: 43 CFR 2711.

Duane Spencer,

Acting State Director, Wyoming.

[FR Doc. 2019–23954 Filed 10–31–19; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(LLCAD06000.51010000.ER0000. LVRWB19B5120.19X5017AP) CACA51967 (MO# 4500135522)]

Notice of Availability of the Crimson Solar Project Draft Environmental Impact Statement and Environmental Impact Report and Draft Land Use Plan Amendment to the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS), Environmental Impact Report (EIR), and draft Land Use Plan Amendment to the California Desert Conservation Area Plan (CDCA) for the Crimson Solar Project (Project), and by this notice is announcing the opening of the 90-day public comment period.

DATES: To ensure that all comments will be considered, the BLM must receive written comments on the draft plan amendment and Draft EIS/EIR within 90 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings and any other public involvement activities at least 15 days in advance through public notices, news releases, the project website, and/ or mailings.

ADDRESSES: The public may submit comments related to the project during the public comment period by using any of the following methods:

- *Website: https://bit.ly/2xntD5u*
- *Email: blm_ca_crimsonsolar@blm.gov*
- *Mail:* Crimson Solar Project, Bureau of Land Management Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262

Copies of the Draft EIS/EIR and draft plan amendment are available at the BLM-Palm Springs-South Coast Field Office at the above address and at the BLM California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553, and electronically on the project website referenced earlier.

FOR FURTHER INFORMATION CONTACT: Miriam Liberatore, BLM project manager, telephone: (541) 618–2412; email: *mliberat@blm.gov;* address Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504.

Persons who use a telecommunication device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Liberatore during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or questions. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Sonoran West Solar Holdings LLC (the Applicant), a wholly owned subsidiary of Recurrent Energy LLC, applied for a right-of-way (ROW) grant for a photovoltaic solar project with the BLM. The applicant proposes to construct, operate, maintain, and decommission a maximum 350-megawatt solar photovoltaic facility with integrated battery storage and necessary ancillary facilities, including project substations, access roads, operations and maintenance buildings, and lay down areas. The proposed project includes 2,500 acres of BLM-administered land in the Riverside East Solar Energy Zone.

The BLM is the lead NEPA agency and will make Federal decisions regarding the proposed plan amendment and the ROW for the Project. The U.S. Fish and Wildlife Service is a Cooperating Agency and will issue a Biological Opinion for the project. The EPA (Region 9) is a Cooperating Agency, but does not have a direct permitting role in the project. The California Department of Fish and Wildlife is the lead agency under the California Environmental Quality Act (CEQA) and will make State decisions on applications filed by the Applicant for an Incidental Take Permit and a Lake and Streambed Alteration Agreement. This Draft EIS/EIR was prepared as a joint Federal/State environmental document that analyzes the impacts of the project under both NEPA and CEQA.

In addition to the proposed action (Alternative A), the Draft EIS/EIR considers a no action alternative and two action alternatives. Alternative B, Alternative Design, would include one or more of three design elements to reduce grading, trenching, and vegetation removal during construction. Alternative C, Reduced Acreage Alternative, would be the same as described under Alternative A in the number and size of project-related facilities, but the project area would be reduced by about 300 acres. All alternatives would amend the CDCA plan to allow the project. Alternative C is the BLM preferred alternative.

Public input on these alternatives or other issues is important and will be considered in the Final EIR/EIS.

Please note that public comments and information submitted, including names, street addresses, and email addresses of persons who submit comments, will be available for public review and disclosure at the address listed in the **ADDRESSES** section during regular business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Danielle Chi,

Deputy State Director, Resources.

[FR Doc. 2019–23825 Filed 10–31–19; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC06000.L13100000.DS0000. LXSIAREV0000.19XL1109AF; MO#4500131458]

Notice of Availability of the Bakersfield Field Office Hydraulic Fracturing Final Supplemental Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) has prepared a Final Supplemental Environmental Impact Statement (EIS) analyzing the potential impacts of hydraulic fracturing on new oil and gas leases within the Bakersfield Field Office planning area, and by this notice the BLM is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.**

ADDRESSES: Copies of the Bakersfield Field Office Hydraulic Fracturing Final Supplemental EIS are available for public inspection during regular business hours at 3801 Pegasus Drive, Bakersfield, CA 93308. Interested persons may also review the Final Supplemental EIS online at *https://go.usa.gov/xE3Nw.*

FOR FURTHER INFORMATION CONTACT: Carly Summers, Supervisory Natural Resources Specialist; telephone: 661–391–6000; *email: csummers@blm.gov;* address Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Carly Summers during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bakersfield Field Office planning area is located in eastern Fresno, western Kern, Kings, Madera, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties in California and encompasses approximately 1.2 million acres of Federal minerals and roughly 400,000 surface acres of BLM-managed public land.

The supplemental environmental analysis is being conducted in response to a May 2017, U.S. District Court Order. The U.S. District Court upheld the range of alternatives analyzed in the 2012 Proposed Resource Management Plan (RMP)/Final EIS. The five management alternatives analyzed in the Proposed RMP/Final EIS were:

- The No Action alternative (Alternative A)—continue current management under the existing 1997 Caliente RMP and 1984 Hollister RMP, as amended;
- The Proposed Plan (Alternative B)—balance resource conservation and ecosystem health with the production of commodities and public use of the land;
- Alternative C—emphasize conserving cultural and natural resources, maintaining functioning natural systems, and restoring degraded natural systems;
- Alternative D—same as Alternative C, except that Alternative D would eliminate livestock grazing from BLM-managed lands in the planning area; and
- Alternative E—emphasize the production of natural resources, commodities and public use opportunities.

The 2012 Proposed RMP/Final EIS identified public lands available to fluid-mineral leasing and no changes to those designations are proposed through the Final Supplemental EIS.

Preliminary resource issues were presented for public scoping review and comment in the August 8, 2018, **Federal Register** Notice of Intent (83 FR 39116). Issues identified by BLM personnel; Federal, State, and local agencies; and other stakeholders and analyzed in the Final Supplemental EIS include: Air and atmospheric values; water quality and quantity; seismicity; special status species; and mineral resources (oil and gas.)

The Draft Supplemental EIS was available for a 45-day public comment period initiated on April 26, 2019, **Federal Register** Notice of Availability (84 FR 17885). The BLM held public meetings on May 21, 22, and 23, 2019, in Bakersfield, San Luis Obispo, and Santa Barbara, respectively. Approximately 600 individuals attended the three meetings and approximately 16,000 written comments were received through ePlanning and standard mail.

Responses to substantive comments are presented in Appendix B: Public Comment Summary Report of the Final Supplemental EIS.

The results of this final supplemental analysis regarding the impacts of hydraulic fracturing, additive to those identified in the 2012 Final EIS, did not show a notable increase in total impacts. No conflicts were found between the estimated impacts of hydraulic fracturing and the resource or program management goals and objectives stated in the 2014 RMP. The range of alternatives has not changed between the approved 2014 RMP and its 2012 Final EIS and the Final Supplemental EIS. Therefore, no amendment to the 2014 RMP is necessary. In addition, no protest period is required because no changes are proposed to the 2014 RMP planning decisions. The BLM has fully analyzed the effects of hydraulic fracturing in accordance with the order of the court, and although the 2012 EIS has been supplemented, no changes are proposed to the 2014 RMP planning decisions. Because there are no changes to the RMP, no protest period is required and none is given.

The BLM has utilized and coordinated the NEPA process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108), as provided in 36 CFR 800.2(d)(3). The BLM will continue to consult with Indian tribes on a government-to-government basis, in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will continue to be given due consideration.

BLM review were considered and incorporated, as appropriate, into the Final Supplemental EIS. Public comments resulted in the addition of clarifying text and incorporation of new information, but did not require or suggest further supplementation or change proposed decisions.

Authority: Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Danielle Chi,

Deputy State Director, Natural Resources.

[FR Doc. 2019–23827 Filed 10–31–19; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bureau of Land Management

[LLNM004400. L16100000.DO0000.LXSSG0690000 19XL1109AF]

Notice of Availability of the Oklahoma, Kansas, and Texas Final Joint Environmental Impact Statement, Bureau of Land Management Proposed Resource Management Plan and Bureau of Indian Affairs Proposed Integrated Resource Management Plan

AGENCY: Bureau of Land Management, Interior; and Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA) have prepared a Final Joint Environmental Impact Statement (FJEIS) for the BLM Proposed Resource Management Plan (P–RMP), the Bureau of Indian Affairs (BIA) Proposed Integrated Resource Management Plan (P–IRMP) for the BLM Oklahoma Field Office, the BIA Eastern Oklahoma Regional Office, and the BIA Southern Plains Regional Office, and by this Notice is announcing the opening of the protest period.

DATES: Pursuant to the BLM planning regulations at 43 CFR 1610.5–2, any person who participated in the land use planning process associated with the development of these proposed land use plans and has an interest that could be adversely impacted by these management decisions can protest the management decisions within 30 days of the date the U.S. Environmental Protection Agency publishes the Notice of Availability of the Oklahoma, Kansas, and Texas FJEIS/BLM P–RMP/BIA P–IRMP.

ADDRESSES: The Oklahoma, Kansas, and Texas FJEIS/BLM P–RMP/BIA P–IRMP is available online in the Documents and Reports section of the BLM e-Planning project website at: *https://go.usa.gov/xVPk3.*

Protests must be made in writing (43 CFR 1610.5–2(a)(1)) and filed with the BLM Director, either as a hard copy or electronically via the BLM's e-Planning website listed above. To submit an electronic protest, go to the project website and select the ''Documents & Reports'' link at the left, then select ''Submit Protest'' next to the Final Joint Environmental Impact Statement (FJEIS). Upon selection of the ''Submit Protest'' button, a new window will open that will guide you through the submission process. Printed ''hard copy'' protest submissions must be mailed to one of the following addresses, and postmarked by the end of the protest period. Via mail: Director (210), *Attn:* Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383; *Via Overnight Delivery:* Director (210), Attn: Protest Coordinator, 20 M Street SE, Room 2134LM, Washington, DC 20003.

Copies of the Oklahoma, Kansas, and Texas FJEIS/BLM P–RMP/BIA P–IRMP are available upon request from:

- The Bureau of Land Management, Oklahoma Field Office, Attn.: Patrick Rich, RMP Team Lead, 201 Stephenson Parkway, Suite 1200, Norman, OK 73072.
- BIA Eastern Oklahoma Regional Office, Attn.: Mosby Halterman, P.O. Box 8002, Muskogee, Oklahoma 74402–8002.
- BIA Southern Plains Regional Office, Attn.: David Anderson, P.O. Box 368, Anadarko, Oklahoma 73005–0368.
- The Bureau of Land Management, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508.
- Copies of the Oklahoma, Kansas and Texas FJEIS/BLM P–RMP/BIA P–IRMP are also available for public inspection at the BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508 and at the BLM Oklahoma Field Office, 201 Stephenson Parkway, Suite 1200, Norman, OK 73072.

FOR FURTHER INFORMATION CONTACT: Patrick Rich, RMP Team Lead, telephone (405) 579–7154; address 201 Stephenson Parkway, Suite 1200, Norman, OK 73072; email *BLM_NM_OKT_RMP@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In the Oklahoma, Kansas, and Texas FJEIS/BLM P–RMP/BIA P–IRMP, the BLM and BIA analyze the environmental consequences of four alternatives under consideration for managing Federal lands and minerals within the Oklahoma-Kansas-Texas planning area. The BLM Oklahoma Field Office administers approximately 15,100 acres of public surface estate, including approximately 11,833 acres at the Cross Bar Management Area near Amarillo, Texas; about 3,300 acres of small tracts scattered across the planning area; and Federal lands along the 116-mile stretch of the Red River between the North Fork of the Red River and the 98th Meridian. No exact acreages of Federal lands along the Red River are available at this time because the full 116-mile stretch of land has not been surveyed. The Oklahoma Field Office also administers approximately 4,810,900 acres of subsurface Federal mineral estate across the 269,650,000-acre planning area, to include approximately 4,012,400 acres underlying surface estate managed by other Federal surface management agencies, such as U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service, and approximately 785,300 acres of split-estate, where Federal minerals underlie private surface estate.

The BIA decision area includes approximately 394,200 surface acres and 2,033,500 mineral estate acres for the BIA Eastern Oklahoma Regional Office. Approximately 1,474,500 acres of the BIA Eastern Oklahoma Regional Office jurisdictional area is limited to coal or other minerals in Osage County. The BIA decision area also includes approximately 457,500 surface acres and 632,000 mineral estate acres for the BIA Southern Plains Regional Office. This includes lands and mineral estate in Oklahoma, Kansas, Texas, and Richardson County, Nebraska.

The BLM is the lead agency for development of the land use plan, while the BIA Regional Offices are co-lead planning partners on this joint, integrated land use planning effort. The Oklahoma, Kansas, and Texas FJEIS/BLM P–RMP/BIA P–IRMP provides a comprehensive, integrated land use plan that will replace the BLM's current 1994 Oklahoma RMP, as amended; the 1991 Kansas RMP; and the 1996 Texas RMP, as amended. Land use plan revision and consolidation is necessary due to numerous changes, including renewable energy, recreation, special status species, visual resources, and wildlife habitat which have occurred across the Oklahoma, Kansas, and Texas planning area since previous plan publications. New resource data are available for consideration, and new policies, guidelines, and laws have been established.

The four alternatives analyzed in the Oklahoma, Kansas, and Texas FJEIS/ BLM P–RMP/BIA P–IRMP are as follows:

- Alternative A (No Action Plan) is a continuation of existing land use management actions under the current Kansas, Oklahoma, and Texas RMPs and associated amendments;
- Alternative B (Proposed Alternative) represents a mix of resource use and resource value conservation stewardship principles and management decisions that address current and reasonably foreseeable future land use management issues, including provisions for energy development, recreational opportunities, and conservation of natural resources;
- Alternative C (Environmental Focused Plan) represents a land use management strategy intended primarily to preserve and protect ecosystem health and resource values across the planning area; and
- Alternative D (Resource Use Focused Plan) represents a land use management strategy intended primarily to develop resources and promote economic development across the decision area, such as livestock grazing, energy and mineral development, and recreation.

This land use planning effort was initiated on July 26, 2013, through a Notice of Intent published in the **Federal Register** (78 FR 45266), notifying the public of a formal scoping period and soliciting public participation. The BLM and BIA held 17 scoping meetings between November 2013 and January 2014, throughout Kansas, Oklahoma, and Texas, with stakeholders, interest groups, and the public. During this external scoping period, the public provided the BLM Oklahoma Field Office with input on relevant issues to consider during the land use planning process. Additional information was collected during three additional workshops, one each in Kansas, Oklahoma, and Texas, with the public and cooperating agencies. Based on these issues, conflicts, information, and the BLM and BIA goals and objectives for this planning effort, the BLM–BIA Interdisciplinary Team formulated three action alternatives for consideration and analysis in the Draft Oklahoma, Kansas, and Texas FJEIS/ BLM P–RMP/BIA P–IRMP.

The public comment period for the Oklahoma, Kansas, and Texas FJEIS/ BLM P–RMP/BIA P–IRMP was initiated on November 19, 2018, through a **Federal Register** Notice of Availability (83 FR 58283), notifying the public of the release of the draft land use plan for an extended 125-day public comment period, which occurred from November 19, 2018, until March 24, 2019, and solicitation of public comments. Seventy-two cooperating agencies expressed interest in collaborating with the BLM and BIA during the NEPA process and signed a formal cooperating agency agreements.

The BLM and BIA held six public meetings between February 2019 and March 2019, throughout Oklahoma, Kansas, and Texas, with stakeholders, interest groups, and the public. Public meetings were hosted to solicit public input on the Draft Oklahoma, Kansas, and Texas FJEIS/BLM P–RMP/BIA P–IRMP as follows: Wichita, KS, on February 26, 2019; Muskogee, OK, on February 27, 2019; Norman, OK, on February 28, 2019; Amarillo, TX, on March 4, 2019; Fort Worth, TX, on March 5, 2019; and Corpus Christi, TX, on March 8, 2019. In total, 110 attendees participated in the six public meetings and offered oral and written comments to the BLM and BIA. Following the closing of the 125-day public comment period, the BLM and BIA held an internal 5-day conference at the BLM Oklahoma Field Office where an interdisciplinary team of resource management experts reviewed the 150 substantive comment submissions for potential revision of the Draft Oklahoma, Kansas, and Texas FJEIS/ BLM P–RMP/BIA P–IRMP in preparation for release of the OKT Final Joint EIS, BLM P–RMP and BIA P–IRMP. All comments on the Draft EIS/ RMP were given careful consideration, with necessary revisions incorporated into the FJEIS and plans, as appropriate. Public comments and BLM responses are available in Appendix O of the Final EIS.

At the close of the 30-day protest period, the BLM and BIA will resolve protests on the Oklahoma, Kansas, and Texas FJEIS/BLM P–RMP/BIA P–IRMP in preparation for the Approved BLM RMP, Approved BIA IRMP, three Records of Decision (ROD) to include one ROD for the BLM Oklahoma Field Office; one ROD for the BIA Eastern Oklahoma Regional Office; and one ROD for the BIA Southern Plains Regional Office.

Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Timothy R. Spisak,
BLM New Mexico State Director.

Eddie Streater,
BIA Eastern Oklahoma Regional Director.

Jim Schock,
BIA Southern Plains Regional Director.

[FR Doc. 2019–23823 Filed 10–31–19; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–29141; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before October 12, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by November 18, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 12, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State Historic Preservation Officers:

ALABAMA

Escambia County

Atmore Commercial Historic District, Carney, Main, Trammell, Roberts, Presley, E. Church & Ridgeley Sts., Pensacola, Nashville & Louisville Aves., Atmore, SG100004641

Jefferson County

Palmerdale Homesteads Historic District, Parts of Miles Springs, N & S Valley, Brookwood, Southfield N & S, Midwood, Marsh Mountain & W Hill Rds., Helms Cir. & AL 75, Pinson, SG100004642

CONNECTICUT

Fairfield County

Greenwich Point Historic District, Tod's Driftway at Shore Rd., Greenwich, SG100004671

IDAHO

Ada County

Phillips, Dr. John and Elaine, House, 3233 Edson St., Boise, SG100004672

Forty-Four and Sixty-Six Service Station, 3130 (3128) W State St., Boise, SG100004673

Kootenai County

Pen d'Oreille City, Address Restricted, Athol, SG100004674

Valley County

Johnson Flying Service Hangar, 103 S 3rd St., McCall, SG100004675

MICHIGAN

Oakland County

Northland Gardens, Westland Ave., Westhampton Rd., Rutland Dr., and Westover Rd. between Southfield Rd., & the John C. Lodge Freeway, Southfield, SG100004660

Plumbrooke Estates, Plumbrooke Dr., Southfield, SG100004661

MINNESOTA

Ramsey County

Norwegian Evangelical Lutheran Church, 105 University Ave., St. Paul, SG100004655

Ford Motor Company Building, 117 University Ave., St. Paul, SG100004656

Degree of Honor Protective Association Building, 325 Cedar St., St. Paul, SG100004657

NEW JERSEY

Bergen County

Zabriskie, John A.L., House, 460 W Saddle River Rd., Village of Ridgewood, SG100004648

NEW YORK

Albany County

Washington Avenue Corridor Historic District, Generally Central, Washington & Western Aves., Albany, SG100004669

Columbia County

Ancramdale Historic District, NY 82, Cty. Rd. 3 & 8, Maple Ln., Ancramdale, SG100004668

PENNSYLVANIA

Allegheny County

Highland Park, Roughly bounded by Butler St., Washington Blvd., Stanton Ave., Farmhouse Dr., Bunker Hill St. & Heth's Run, Pittsburgh, SG100004665

Lackawanna County

Stoehr and Fister Building, 200 Adams Ave., Scranton, SG100004662

Luzerne County

Wilkes-Barre Silk Company Mill, 92 S Empire St., Wilkes-Barre, SG100004666

Montgomery County

Humane Fire Engine Company No. 1, 301 Walnut St., Royersford, SG100004663

VIRGINIA

Albemarle County

Periwinkle Cottage, (The Work of Marshall Swain Wells Architect), 2245 Blue Ridge Ln., Charlottesville, MP100004659

Fredericksburg Independent City

Sligo, 1100 Dixon St., Fredricksburg, SG100004658

Hanover County

Ellington, (Civil War in Virginia MPS), 17335 Washington Hwy., Doswell, MP100004650

Pittsylvania County

Hargrave Military Academy, 200 Military Dr., Chatham, SG100004652

Pulaski County

St. Albans Hospital, 6248 University Park Dr., Radford, SG100004653

Richmond Independent City

Holly Springs Apartments, (Federal Housing Administration-Insured Garden Apartments in Richmond, Virginia MPS), 801 Holly Springs Ave., Richmond, MP100004649

WASHINGTON

Island County

Deception Pass State Park-North Beach Picnic Area Historic District, (Historic Park Landscapes in National and State Parks MPS), 41020 WA 20, Oak Harbor, MP100004645

Deception Pass State Park-Cranberry Lake Caretaker's Area Historic District, (Historic Park Landscapes in National and State Parks MPS), 41020 WA 20, Oak Harbor, MP100004647

King County

Frink Park, Roughly bounded by 31st Ave. S, Lake Washington Blvd. & 34th Ave., S King St. & S Main St., Seattle, SG100004646

WISCONSIN

Forest County

Connor Lumber and Land Company Store, 4894 Mill St., Laona, SG100004667

Additional documentation has been received for the following resource(s):

MICHIGAN

Wayne County

Fort Wayne, 6325 W Jefferson Ave., Detroit, AD71000425

MINNESOTA

Wabasha County

Wabasha Commercial Historic District, Roughly along Main St. between Bridge and Bailey Aves., Wabasha, AD82003063

NEW YORK

Albany County

Slinger-Sprong House, 698 Kenwood Ave., Slingerlands, AD11001087

PENNSYLVANIA

Bedford County

Cuppett's Covered Bridge, (Bedford County Covered Bridges TR), 1 mi. N of New Paris, Napier Township, New Paris vicinity, AD80003423

VIRGINIA

Goochland County

Tuckahoe, SE of Manakin near jct. of Rtes. 650 and 647, Manakin vicinity, AD68000049

Hopewell Independent City

City Point Historic District, Off VA 10/156, Hopewell, AD79000248

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

MISSOURI

Oregon County

Dennig Cabins Historic District, 3/10 mi. W of OR 19 & 3/10 mi. NE of Greer Spring, Alton, SG100004677

Authority: Section 60.13 of 36 CFR part 60

Dated: October 15, 2019.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–23855 Filed 10–31–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–038]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 8, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–630 and 731–TA–1462 (Preliminary) (Glass Containers from China). The Commission is currently scheduled to complete and file its determinations on November 12, 2019; views of the Commission are currently scheduled to be completed and filed on November 19, 2019.
5. Vote on Inv. Nos. 701–TA–623 and 731–TA–1449 (Final) (Vertical Metal File Cabinets from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission by November 21, 2019.
6. Outstanding action jackets: None.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 29, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–24007 Filed 10–30–19; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–506 and 508 and 731–TA–1238–1243 (Review)]

Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty orders on non-oriented electrical steel (''NOES'') from China and Taiwan and revocation of the antidumping duty orders on NOES from China, Germany, Japan, Korea, Sweden, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2019. To be assured of consideration, the deadline for responses is December 2, 2019. Comments on the adequacy of responses may be filed with the Commission by January 14, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 3, 2014, the Department of Commerce (''Commerce'') issued countervailing duty orders on imports of NOES from China and Taiwan (79 FR 71749) and antidumping duty orders on imports of NOES from China, Germany, Japan, Korea, Sweden, and Taiwan (79 FR 71741). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China, Germany, Japan, Korea, Sweden, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as AK Steel, the only known U.S. producer of NOES.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is December 3, 2014.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 2, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 14, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–444, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 28, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–23799 Filed 10–31–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1163]

Certain Light-Emitting Diode Products, Systems, and Components Thereof (I); Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 16) of the presiding Administrative Law Judge (''ALJ'') terminating the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On June 25, 2019, the Commission instituted Inv. No. 337–TA–1163, *Certain Light-Emitting Diode Products, Systems, and Components Thereof* (I) under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Lighting Science Group Corporation of Cocoa Beach, Florida; Healthe, Inc. of Cocoa Beach, Florida; and Global Value Lighting, LLC of West Warwick, Rhode Island (collectively, ''Complainants''). 84 FR 29877–79 (June 25, 2019). The complaint, as amended, alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,098,483; 7,095,053; 8,506,118 (''the '118 patent''); 7,528,421; 8,674,608; 8,201,968; and 8,967,844. The notice of investigation (''NOI'') names numerous respondents. The Commission's Office of Unfair Import Investigations was not named as a party. *Id.* at 29878. Subsequently, the complaint and NOI were amended to add allegations of infringement of claim 9 of the '118 patent against respondents MLS Co., Ltd. of Zhongshan City, China; LEDVANCE GmbH of Garching, Germany; LEDVANCE LLC of Wilmington, Massachusetts; Acuity Brands, Inc. of Atlanta, Georgia; and Acuity Brands Lighting, Inc. of Conyers, Georgia. 84 FR 55173–74 (Oct. 15, 2019). Furthermore, the investigation was terminated as to U.S. Patent No. 8,674,608 and respondents Leedarson Lighting Co., Ltd. and Leedarson America, Inc. Order No. 16 (*non-reviewed* October 28, 2019).

On October 8, 2019, Complainants filed an unopposed motion seeking to terminate this investigation in its entirety based on withdrawal of the complaint. *See* Mot. at 1–2.

On October 9, 2019, the ALJ issued the subject ID (Order No. 16) pursuant to 19 CFR 210.21(a), granting Complainants' motion. The ID finds that the motion for termination of this investigation based on withdrawal of the complaint complies with the Commission's Rules. ID at 1. The ID further finds that there are no extraordinary circumstances that warrant denying the motion. *Id.* at 2. No party petitioned for review of the ID, and the Commission has determined not to review the subject ID.

The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 29, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–23925 Filed 10–31–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Meeting of the National Domestic Communications Assistance Center Executive Advisory Board

AGENCY: Justice Department.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Department of Justice's National Domestic Communications Assistance Center's (NDCAC) Executive Advisory Board (EAB). The meeting is being called to address the items identified in the Agenda detailed below. The NDCAC EAB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA).

DATES: The NDCAC EAB meeting is open to the public, subject to the registration requirements detailed below. The EAB will meet in open session from 10:00 a.m. until 1:00 p.m. on November 19, 2019.

ADDRESSES: The meeting will take place at 5000 Seminary Rd., Alexandria, VA 22311. Entry into the meeting room will begin at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Alice Bardney-Boose, Designated Federal Officer, National Domestic Communications Assistance Center, Department of Justice, by email at *NDCAC@fbi.gov* or by phone at (540) 361–4600.

SUPPLEMENTARY INFORMATION: Agenda: The meeting will be called to order at 10:00 a.m. by EAB Chairman Preston Grubbs. All EAB members will be introduced and EAB Chairman Grubbs will provide remarks. The EAB will: Receive an update and hold a discussion on the National Domestic Communications Assistance Center and support it provides to the law enforcement; be provided a presentation and hold a discussion on lawful access; be briefed on a recent Manhattan District Attorney's Office Report: ''Smartphone Encryption and Public Safety;'' discuss changes in EAB membership and leadership; and receive status reports from its Administrative and Technology Subcommittees. Note: Agenda items are subject to change.

The purpose of the EAB is to provide advice and recommendations to the Attorney General or designee, and to the Director of the NDCAC that promote public safety and national security by advancing the NDCAC's core functions: Law enforcement coordination with respect to technical capabilities and solutions, technology sharing, industry relations, and implementation of the

Communications Assistance for Law Enforcement Act (CALEA). The EAB consists of 15 voting members from Federal, State, local and tribal law enforcement agencies. Additionally, there are two non-voting members as follows: A federally-employed attorney assigned full time to the NDCAC to serve as a legal advisor to the EAB, and the DOJ Chief Privacy Officer or designee to ensure that privacy and civil rights and civil liberties issues are fully considered in the EAB's recommendations. The EAB is composed of eight State, local, and/or tribal representatives and seven federal representatives.

Written Comments: Any member of the public may submit written comments to the EAB. Written comments must be provided to Ms. Alice Bardney-Boose, DFO, at least seven (7) days in advance of the meeting so that the comments may be made available to EAB members for their consideration prior to the meeting. Written comments must be submitted to *NDCAC@fbi.gov* on or before November 12, 2019.

In accordance with the FACA, all comments shall be made available for public inspection.

Commenters are not required to submit personally identifiable information (such as name, address, etc.). Nevertheless, if commenters submit personally identifiable information as part of the comments, but do not want it made available for public inspection, the phrase ''Personally Identifiable Information'' must be included in the first paragraph of the comment. Commenters must place all personally identifiable information not to be made available for public inspection in the first paragraph and identify what information is to be redacted. Privacy Act Statement: Comments are being collected pursuant to the FACA. Any personally identifiable information included voluntarily within comments, without a request for redaction, will be used for the limited purpose of making all documents available to the public pursuant to FACA requirements.

Registration: Individuals and entities who wish to attend the public meeting are required to pre-register for the meeting on-line by clicking the registration link found at: *http://ndcac-eab.eventbee.com.* Registrations will be accepted on a space available basis. Attendees must bring registration confirmation (*i.e.,* email confirmation) to be admitted to the meeting. Privacy Act Statement: The information requested on the registration form and required at the meeting is being collected and used pursuant to the FACA for the limited purpose of ensuring accurate records of all persons present at the meeting, which records may be made publicly available. Providing information for registration purposes is voluntary; however, failure to provide the required information for registration purposes will prevent you from attending the meeting.

Online registration for the meeting must be completed on or before 5:00 p.m. (EST) November 8, 2019. Anyone requiring special accommodations should notify Ms. Bardney-Boose at least seven (7) days in advance of the meeting or indicate your requirements on the online registration form.

Alice Bardney-Boose,

Designated Federal Officer, National Domestic Communication Assistance Center, Executive Advisory Board.

[FR Doc. 2019–23891 Filed 10–31–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Friday, November 22, 2019. The meeting will be held from 9:00 a.m. to 4:00 p.m. in the Postal Square Building, 2 Massachusetts Avenue NE, Washington, DC.

The Committee presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics, and survey design.

The meeting will be held in rooms 1, 2, and 3 of the Postal Square Building Janet Norwood Conference Center. The schedule and agenda for the meeting are as follows:

9:00 a.m. Commissioner's Welcome and Review of Agency Developments
9:30 a.m. The Future of the National Longitudinal Surveys
12:30 p.m. What is the Appropriate Index Formula to Estimate Producer Price Change?
2:30 p.m. Evaluate the Potential of Standardizing the Task Data in ORS
4:00 p.m. Approximate conclusion

The meeting is open to the public. Any questions concerning the meeting should be directed to Sarah Dale, Bureau of Labor Statistics Technical Advisory Committee, at 202–691–5643 or *dale.sarah@bls.gov.* Individuals who require special accommodations should contact Ms. Dale at least two days prior to the meeting date.

Signed at Washington, DC, this 25th day of October 2019.

Mark Staniorski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2019–23874 Filed 10–31–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0005]

Cadmium in General Industry Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend OMB approval of the information collection requirements specified in the Cadmium in General Industry Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by December 31, 2019.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0005, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2012–0005) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and dates of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (see 29 U.S.C. 657).

The collection of information specified in the Cadmium in General Industry Standard (29 CFR 1910.1027) protects workers from the adverse health effects that may result from their exposure to cadmium. The major collection of information of the standard include: Conducting worker exposure monitoring; notifying workers of their cadmium exposures; implementing a written compliance program; implementing medical surveillance of workers; providing examining physicians with specific information; ensuring that workers receive a copy of their medical surveillance results; maintaining workers' exposure monitoring and medical surveillance records for specific periods; and providing access to these records to the workers who are the subject of the records, the worker's representative, and other designated parties.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

The agency estimates decreases in the number of exposed workers in the cross-industry sectors as well as in the specific-industry sectors. As a result, OSHA is requesting an adjustment decrease of 2,602 burden hours (from 75,998 to 73,396 hours). This decrease was offset by a slight estimated increase in plants (employers). Also as a result, the operation and maintenance costs have also decreased from $5,407,985 to $5,176,416, a total decrease of $231,569. This decrease was offset by increases in estimated costs for exposure monitoring sampling and medical exams.

III. Proposed Actions

Type of Review: Extension of a currently approved collection.

Title: Cadmium in General Industry Standard (29 CFR 1910.1025).

OMB Control Number: 1218–0185.

Affected Public: Business or other for-profits.

Number of Respondents: 50,679.

Frequency: On occasion; Quarterly; Biennially; Semi-annually; Annually.

Average Time per Response: Various.

Estimated Number of Responses: 234,036.

Estimated Total Burden Hours: 73,396.

Estimated Cost (Operation and Maintenance): $5,176,416.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA–2012–0005) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350; TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 24, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–23879 Filed 10–31–19; 8:45 am]

BILLING CODE 4510–26–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–12; MC2020–16 and CP2020–15]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 5, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–12; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 150 and Motion for Temporary Relief; *Filing Acceptance Date:* October 25, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 5, 2019.

2. *Docket No(s).:* MC2020–16 and CP2020–15; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 67 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 28, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 5, 2019.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–23924 Filed 10–31–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 1, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 102 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–17, CP2020–16.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–23914 Filed 10–31–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 1, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 67 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–16, CP2020–15.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–23864 Filed 10–31–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 1, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 557 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–18, CP2020–17.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–23915 Filed 10–31–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87410; File No. SR–NYSEArca–2019–33]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Changes to Investments of the First Trust TCW Unconstrained Plus Bond ETF

October 28, 2019.

I. Introduction

On May 6, 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 modify certain investments of the First Trust TCW Unconstrained Plus Bond ETF, the shares of which are currently listed and traded on the Exchange pursuant to NYSE Arca Rule 8.600–E. On May 16, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on May 28, 2019.[3]

On July 3, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On August 26, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] On September 18, 2019, the Exchange filed Amendment No. 2 to the proposed rule change.[8] The Commission has received no comment letters on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain changes, described below under ''Application of Generic Listing Requirements'', regarding investments of the First Trust TCW Unconstrained Plus Bond ETF (''Fund''), shares (''Shares'') of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares [9] on the Exchange. Shares of the Fund commenced trading on the Exchange on June 5, 2018 in accordance with the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E.

The Shares are offered by First Trust Exchange-Traded Fund VIII (the ''Trust''), which is registered with the Commission as an open-end management investment company.[10] The Fund is a series of the Trust.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85903 (May 21, 2019), 84 FR 24576.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 86299, 84 FR 32804 (July 9, 2019).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 86760, 84 FR 45816 (August 30, 2019).

[8] In Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety, the Exchange (i) modified its representation regarding holdings of the Fund (as defined herein) to align with revised Commentary .01(b)(5) to NYSE Arca Rule 8.600–E; (ii) conformed a requirement relating to certain investment restrictions from ''average loan maturity'' to ''weighted average loan age''; (iii) provided additional arguments in support of the proposed modifications to the Fund's investments; and (iv) made non-substantive and technical changes. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-33/srnysearca201933-6148204-192289.pdf.*

[9] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[10] The Trust is registered under the 1940 Act. On May 29, 2018, the Trust filed with the Commission

First Trust Advisors L.P. is the investment adviser (''First Trust'' or ''Adviser'') to the Fund. TCW Investment Management Company LLC (''TCW'' or the ''Sub-Adviser''), serves as the Fund's investment sub-adviser. First Trust Portfolios L.P. is the distributor (''Distributor'') for the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent (''Custodian'' or ''Transfer Agent'') for the Fund.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[11] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to relevant personnel and any broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

First Trust TCW Unconstrained Plus Bond ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund is to seek to maximize long-term total return. Under normal market conditions,[12] the Fund intends to invest at least 80% of its net assets (including investment borrowings) in a portfolio of ''Fixed Income Securities'' (described below).

In managing the Fund's portfolio, TCW intends to employ a flexible approach that allocates the Fund's investments across a range of global investment opportunities and actively manage exposure to interest rates, credit sectors and currencies. TCW seeks to utilize independent, bottom-up research to identify securities that are undervalued and that offer a superior risk/return profile. Pursuant to this investment strategy, the Fund may invest in the following Fixed Income Securities, which may be represented by derivatives relating to such securities, as discussed below:

- Securities issued or guaranteed by the U.S. government or its agencies, instrumentalities or U.S. government-sponsored entities (''U.S. government securities'');
- Treasury Inflation Protected Securities (''TIPS'');
- the following non-agency, non-government-sponsored entity (''GSE'') and privately-issued mortgage-related and other asset-backed securities: Residential mortgage-backed securities (''RMBS''), commercial mortgage-backed securities (''CMBS''), asset-backed securities (''ABS''), and collateralized loan obligations (''CLOs'' and, together with such RMBS, CMBS and ABS, ''Private ABS/MBS''); [13]
- Agency RMBS, agency CMBS, and agency ABS;
- domestic corporate bonds;
- Fixed Income Securities issued by non-U.S. corporations and non-U.S. governments;
- bank loans, including first lien senior secured floating rate bank loans (''Senior Loans''), secured and unsecured loans, second lien or more junior loans, and bridge loans;
- fixed income convertible securities;
- fixed income preferred securities; and
- municipal bonds.

The Fund may invest in agency RMBS and CMBS by investing in to-be-announced transactions (''TBA Transactions'').

The Fund may hold cash and cash equivalents.[14] In addition, the Fund may hold the following short-term instruments with maturities of three months or more: Certificates of deposit; bankers' acceptances; repurchase agreements and reverse repurchase agreements; bank time deposits; and commercial paper.

The Fund may enter into short sales of any securities in which the Fund may invest.

The Fund may utilize exchange-listed and over-the-counter (''OTC'') traded derivatives instruments for duration/yield curve management and/or hedging

its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–210186 and 811–23147) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795).

[11] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[12] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

[13] For avoidance of doubt, ''Private ABS/MBS'' as referenced herein are non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities as stated in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E.

[14] For purposes of this filing, cash equivalents are the short-term instruments with maturities of less than 3 months enumerated in Commentary .01(c) to Rule 8.600–E.

purposes, for risk management purposes or as part of its investment strategies. The Fund will use derivative instruments primarily to hedge interest rate risk, actively manage interest rate exposure, hedge foreign currency risk and actively manage foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure, to manage cash flows or to preserve capital. Derivatives may also be used to hedge risks associated with the Fund's other portfolio investments. The Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only. Derivatives that the Fund may enter into are the following: Futures on interest rates, currencies, Fixed Income Securities and fixed income indices; exchange-traded and OTC options on interest rates, currencies, Fixed Income Securities and fixed income indices; swap agreements on interest rates, currencies, Fixed Income Securities and fixed income indices; credit default swaps (''CDX''); and currency forward contracts.

Other Investments

While the Fund, under normal market conditions, invests at least 80% of its net assets in the Principal Investments described above, the Fund may invest its remaining assets in the following ''Non-Principal Investments.''

The Fund may invest in exchange-traded common stock, exchange-traded preferred stock, and exchange-traded real estate investment trusts (''REITs'').

The Fund may invest in the securities of other investment companies registered under the 1940 Act, including money market funds, exchange-traded funds (''ETFs''), open-end funds (other than money market funds and other ETFs), and U.S. exchange-traded closed-end funds.[15]

The Fund may hold exchange-traded notes (''ETNs'').[16]

The Fund may hold exchange-traded or OTC ''Work Out Securities.''[17]

The Fund may hold exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities.

Investment Restrictions

The Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

The Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio[18] that may be invested in Private ABS/MBS under Commentary .01(b)(5) to NYSE Arca Rule 8.600–E,[19] the following restrictions will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.[20]

The Exchange proposes that up to 25% of the Fund's assets may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio. For purposes of these percentage limitations on OTC derivatives, the weight of such OTC derivatives will be calculated as the aggregate gross notional value of such OTC derivatives.

The Fund's holdings of bank loans will not exceed 15% of the Fund's total assets, and the Fund's holdings of bank loans other than Senior Loans will not exceed 5% of the Fund's total assets.

The Fund's holdings in fixed income convertible securities and in equity securities issued upon conversion of such convertible securities will not exceed 10% of the Fund's total assets.

The Fund's holdings in Work Out Securities will not exceed 5% of the Fund's total assets.

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[21]

Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the ''Principal Investments'' section above for the purposes described in that section. Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies.

[15] For purposes of this filing, the term ''ETFs'' are Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[16] ETNs are Index-Linked Securities (as described in NYSE Arca Rule 5.2–E(j)(6)). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs (*e.g.,* 2X or –3X).

[17] For purposes of this filing, Work Out Securities are U.S. or foreign equity securities of any type acquired in connection with restructurings related to issuers of Fixed Income Securities held by the Fund. Work Out Securities are generally traded OTC, but may be traded on a U.S. or foreign exchange.

[18] *See* Securities Exchange Act Release No. 86017 (June 3, 2019), 84 FR 26711 (June 7, 2019) (SR–NYSEArca–2019–06) (order approving an amendment to Commentary .01(b)(5) to Rule 8.600–E to delete the reference to the ''fixed income portion of the'' portfolio, such that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the whole portfolio).

[19] Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

[20] Information relating to weighted average loan age for non-agency RMBS, non-agency CMBS, CLOs and non-agency ABS is widely available from major market data vendors such as Bloomberg.

[21] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board''). In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives and Private ABS/MBS. The Adviser and the Sub-Adviser understand that market makers and participants should be able to value derivatives and Private ABS/MBS as long as the positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value (''NAV''), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser and Sub-Adviser do not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives and Private ABS/MBS.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV [22] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares. The size of a Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket'').[23] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e), as described below.

The Fund will not comply with the requirements set forth in Commentary .01(a)(1) [24] and (a)(2) [25] to NYSE Arca

[22] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m., Eastern Time (''E.T.''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

[23] It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

[24] Commentary .01(a)(1) to NYSE Arca Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis: (A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million; (B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months; (C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio; (D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; (E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and (F) American Depositary Receipts (''ADRs'') in a portfolio may be exchange-traded or non-exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

[25] Commentary .01(a)(2) to NYSE Arca Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis: (A) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million; (B) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (C) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; (D) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part,

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Rule 8.600–E with respect to the Fund's investments in equity securities.[26] Instead, the Exchange proposes that (i) the Fund's investments in equity securities will meet the requirements of Commentary .01(a) with the exception of Commentary .01(a)(1)(C) and .01(a)(1)(D) (with respect to U.S. Component Stocks) and Commentary .01(a)(2)(C) and .01(a)(2)(D) (with respect to Non-U.S. Component Stocks). Any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, exchange-traded equity securities issued upon conversion of fixed income convertible securities, exchange-traded Work Out Securities and U.S. exchange-traded closed-end funds would provide for enhanced diversification of the Fund's portfolio and, in any case, would be Non-Principal Investments and would not exceed 20% of the Fund's net assets in the aggregate. With respect to any Fund holdings of exchange-traded equity securities issued upon conversion of fixed income convertible securities and exchange-traded Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions. The Adviser and Sub-Adviser represent that, under these circumstances, application of the weighting requirements of Commentary .01(a)(1)(C) and Commentary .01(a)(2)(C) and the minimum number of components requirements of Commentary .01(a)(1)(D) and Commentary .01(a)(2)(D) would impose an unnecessary burden on the Fund's ability to hold such equity securities.

The Fund will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Fund will not comply with the requirements in Commentary .01(b)(4) to Rule 8.600–E that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Commentary .01(b)(4), because certain Private ABS/MBS cannot satisfy the criteria in Commentary .01(b)(4).[27] Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Commentary .01(b)(4). As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4).[28]

The Fund will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600–E that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio.[29] Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Commentary .01(b)(5) to NYSE Arca Rule 8.600–E,[30] the following restrictions will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.

In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.[31] The

components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and (E) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

[26] For purposes of these exceptions, investments in equity securities that are OTC Work Out Securities, OTC equity securities issued upon conversion of fixed income convertible securities, or non-exchange-traded securities of other open-end investment companies (*e.g.,* mutual funds) are excluded and are discussed further below.

[27] Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[28] *See, e.g.,* Exchange Act Release Nos. 67894 (September 20, 2012) 77 FR 59227 (September 26, 2012) (SR–BATS–2012–033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR–NYSEArca–2013–71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF and SPDR SSgA Aggressive Ultra Short Term Bond ETF).

[29] *See* note 19, *supra.*

[30] *See* note 19, *supra.*

[31] As noted above, the Fund's holdings in derivative instruments for hedging purposes would

Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Fund's portfolio will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E.[32] Specifically, the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.[33]

As noted above, the Fund may hold equity securities that are Work Out Securities, which generally are traded OTC (but that may be traded on a U.S. or foreign exchange), exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities, and non-exchange-traded securities of other open-end investment company securities (*e.g.,* mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities,[34] and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) and Commentary .01(a)(2) (A) through (E) to Rule 8.600–E. Investments in non-exchange-traded securities of open-end investment company securities will not be principal investments of the Fund.[35] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. With respect to any Fund holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in OTC equity securities issued upon conversion of fixed income convertible securities or OTC Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

With respect to investments in non-exchange-traded investment company securities, because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).[36]

The Exchange notes that Commentary .01(a) through (d) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E).[37] In its

be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

[32] Commentary .01(e) to NYSE Arca Rule 8.600–E provides that the portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[33] The Commission has previously approved an exception from requirements set forth in Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund in Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR–NYSEArca–2017–09) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600).

[34] Commentary .01 (a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6).

[35] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[36] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

[37] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E (j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (''2008 Approval Order''). *See also,* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of

Continued

2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (a) through (d) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[38] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange notes that, other than Commentary .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e) to Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's website (*www.ftportfolios.com*) will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[39] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.[40]

On a daily basis, the Fund will disclose the information required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR and Forms N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities will be available from major market data vendors. Price information relating to OTC options, forwards and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Intraday and other price information for the Fixed Income Securities in which the Fund will invest will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, and Private ABS/MBS, to the extent transactions in such securities are reported to TRACE.[41]

Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). *See also,* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.*

[38] *See* Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[39] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[40] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[41] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent

Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system. Non-exchange-traded open-end investment company securities are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, bank loans, Private ABS/MBS, cash equivalents and short-term instruments with maturities of three months or more generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Information relating to weighted average loan age for Private ABS/MBS is widely available from major market data vendors such as Bloomberg.

Information regarding market price and trading volume of the Shares, ETFs, ETNs, common stocks, preferred stocks, REITs, equity securities issued upon conversion of fixed income convertible securities, Work-Out Securities and closed-end funds will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work-Out Securities will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (''OCC'') are available via the Options Price Reporting Authority (''OPRA''). In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[42] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Fund's Shares also will be subject to Rule 8.600–E(d)(2)(D) (''Trading Halts'').

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With the exception of the requirements of Commentary .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e) to Rule 8.600–E as described above in ''Application of Generic Listing Requirements,'' the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. Consistent with NYSE Arca Rule 8.600–E(d)(2)(B)(ii), the Adviser and Sub-Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio.

The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 [43] under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[44]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities, certain Work-Out Securities with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.[45] In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the

required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For Fixed Income Securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

[42] *See* NYSE Arca Rule 7.12–E.

[43] 17 CFR 240.10A–3.

[44] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[45] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').

Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E (m).

Information Bulletin

The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [46] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities and certain Work-Out Securities with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio.

The Exchange notes that, other than Commentary .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e) to Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, certain REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work-Out Securities will be available via the CTA high-speed line. Exchange-traded options quotation and last sale information for options cleared via the OCC are available via OPRA. The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that

[46] 15 U.S.C. 78f(b)(5).

it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, Disclosed Portfolio, and quotation and last sale information for the Shares.

Deviations from the generic requirements, as described above, are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in a manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirements set forth in Commentary .01(a)(1) and (a)(2) to NYSE Arca Rule 8.600–E with respect to the Fund's investments in equity securities. Instead, the Exchange proposes that (i) the Fund's investments in equity securities will meet the requirements of Commentary .01(a) with the exception of Commentary .01(a)(1)(C) and .01(a)(1)(D) (with respect to U.S. Component Stocks) and Commentary .01(a)(2)(C) and .01(a)(2)(D) (with respect to Non-U.S. Component Stocks).[47] The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such equity securities do not comply with the requirements set forth in Commentary .01(a)(1) and (a)(2) to NYSE Arca Rule 8.600–E in that any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, U.S. exchange-traded closed-end funds, exchange-traded equity securities issued upon conversion of fixed income convertible securities, and exchange-traded Work Out Securities would provide for enhanced diversification of the Fund's portfolio. Such securities would be Non-Principal Investments, not exceeding 20% of the Fund's net assets in the aggregate.

The Fund will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Exchange proposes that Private ABS/MBS will not be required to comply with the requirements of Commentary .01(b)(4) because certain Private ABS/MBS cannot satisfy the criteria in Commentary .01(b)(4). Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Commentary .01(b)(4). The Exchange believes that this is appropriate because Commentary .01(b)(4) does not appear to be designed for structured finance vehicles such as Private ABS/MBS. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600–E that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio. Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 25% of its total assets in non-agency ABS; (2) may not invest more than 30% of its total assets in non-agency RMBS; and (3) may not invest more than 25% of its total assets in non-agency CMBS and CLOs. With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Commentary .01(b)(5) to NYSE Arca Rule 8.600–E, the Fund's holdings in Private ABS/MBS will be subject to minimum weighted average loan age restrictions described above.[48] In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.[49] The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such Private ABS/MBS do not comply with the requirements set forth in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E in that the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Board, and the Adviser and Sub-Adviser do not expect that investments in Private ABS/MBS of up to 50% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add

[47] *See* notes 24 and 25, *supra.*

[48] *See* note 19 and accompanying text, *supra.*

[49] *See* note 31, *supra.*

significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Exchange believes the loan age parameters described above are appropriate for the corresponding Private ABS/MBS; the 84, 60 and 12 month time frames take into account that the longer Private ABS/MBS continue to trade, the more price discovery has occurred in the market and the more opportunity there has been for market participants to perform due diligence in understanding and evaluating the underlying loans for such securities.

With respect to non-agency RMBS, a weighted average loan age of 84 months accommodates investment in well-seasoned securities that are continuing to trade with resilient pricing notwithstanding events during the market crisis of 2008–2010, during which loan defaults drastically impacted pricing in non-agency RMBS. Pricing in such securities is generally more reliable than RMBS with a lower loan age in that pricing is no longer reliant on market expectations but on actual post-crisis loan performance.

With respect to non-agency CMBS, a weighted average loan age of 60 months would include securities for which there is a known track record regarding cash flows and default rates for loans underlying real estate and other assets underlying CMBS. A five year loan age facilitates pricing based on actual loan performance rather than default projections. Similarly, for non-agency CLOs, a weighted average loan age of 60 months provides the opportunity for market participants to evaluate data regarding the bank loans underlying the CLOs and to assess how the loans are actually being used—for example, to implement corporate strategy or for capital usage—rather than relying on pro forma statements regarding the loans.

With respect to non-agency ABS, a weighted average loan age of 12 months provides an appropriately limited time frame for market participants to assess the likely trajectory of expected defaults (for example, for sub-prime auto loans). The loans underlying non-agency ABS are typically of much shorter duration than other Private ABS/MBS. Because such loans are more likely to default within a short time after issuance, a one-year minimum loan age can be expected to provide a sufficient time frame for market participants to assess the reliability of loan pricing for loans underlying non-agency ABS.

As noted above, the Fund's portfolio will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''), and that the Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. As noted above, the Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in OTC derivatives do not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E in that, depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.

The Adviser and Sub-Adviser represent that OTC derivatives can be tailored to hedge the specific risk arising from the Fund's investments and frequently may be a more efficient hedging vehicle than listed derivatives. For example, the Fund could obtain an OTC foreign currency derivative in a notional amount that exactly matches the notional amount of the Fund's investments. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund might have to ''over hedge'' or ''under hedge'' if round lot sizes in listed derivatives were not available. In addition, for example, an OTC CDX option can be structured to provide protection tailored to the Fund's credit exposure and can be a more efficient way to hedge credit risk with respect to specific exposures than listed derivatives. Similarly, OTC interest rate derivatives can be more effective hedges of interest rate exposure because they can be customized to match the basis risk arising from the term of the investments held by the Fund.

Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in foreign currency denominated Fixed Income Securities, the 20% limit in Commentary .01(e) to Rule 8.600–E could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund's ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund's assets (on a gross notional value basis) were $100 million and no listed derivative were suitable to hedge the Fund's risk, under the generic standards the Fund would be limited to holding up to $20 million gross notional value in OTC derivatives ($100 million * 20%). Accordingly, the maximum amount the Fund would be able to invest in foreign currency denominated Fixed Income Securities while remaining adequately hedged would be $20 million. The Fund then would hold $60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600–E, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were $100 million and the Fund held $20 million in foreign currency denominated Fixed Income Instruments with two types of risks (*e.g.,* currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding $20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding $10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Adviser and Sub-Adviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate or credit risk arising from the Fund's investments using the most efficient financial instrument. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards, options and swaps) can be customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Therefore, the Exchange believes that increasing the percentage limit in Commentary .01(e), as described above, to the Fund's investments in OTC derivatives, including forwards, options and swaps, that are used specifically for hedging purposes would help protect investors and the public interest.

As noted above, the Fund's portfolio will not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities, and, with respect to the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, would not meet the requirements of Commentary .01(a)(1)(A) through (E) and Commentary .01(a)(2)(A) through (E) to Rule 8.600–E. The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities,and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) and Commentary .01(a)(2)(A) through (E) to Rule 8.600–E. Investments in non-exchange-traded securities of open-end investment company securities will not be principal investments of the Fund.[50] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.

With respect to any Fund holdings of exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities and Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of shares of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[51] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[52] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the proposal, the Exchange represents that the Fund's investments in equity securities will not meet the requirements of Commentaries .01(a)(1)(C) and .01(a)(1)(D) (with respect to U.S. Component Stocks) and Commentaries .01(a)(2)(C) and .01(a)(2)(D) (with respect to Non-U.S. Component Stocks). The Exchange further represents that any Fund holdings of exchange-traded equity securities issued upon conversion of fixed income convertible securities and exchange-traded Work Out Securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Exchange also represents that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities or acquire such securities as a result of the Fund's voluntary investment decisions. The Commission believes that, because the Fund's investments in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, exchange-traded equity securities issued upon conversion of fixed income convertible securities, exchange-traded Work Out Securities, and U.S. exchange-traded closed-end fund securities would be Non-Principal Investments and therefore would not exceed 20% of the Fund's total assets, concerns related to these securities would be mitigated.

In addition, the Exchange represents that the Fund will not meet the requirements of Commentaries .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities. The Commission notes that such open-end investment company securities are required to be registered with the Commission and would be subject to all of the applicable requirements of the 1940 Act and the rules and regulations thereunder. The Commission further notes that it has approved the listing and trading of other series of Managed Fund Shares that may invest in non-exchange-traded open-end investment company securities notwithstanding that those series of Managed Fund Shares would not meet the requirements of Commentaries .01(a)(1)(A) through (E) to NYSE Arca

[50] *See* note 35, *supra.*

[51] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78f(b)(5).

Rule 8.600–E with respect to investments in such securities.[53]

According to the Exchange, the Fund also will not comply with the requirement in Commentary .01(b)(1) to NYSE Arca Rule 8.600–E.[54] The Exchange proposes instead that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. In addition, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per-CUSIP basis. In addition, the Exchange proposes that at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum original principal amount outstanding (*i.e.,* $50 million). The Exchange believes this aspect of the proposal would provide additional diversification to the Fund's investments in Fixed Income Securities.

The Exchange further represents that the Fund will not comply with the requirements in Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[55] Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities, except for Private ABS/MBS will comply with the requirements of Commentary .01(b)(4). As noted above, the Exchange proposes that the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per-CUSIP basis. The Commission notes that it has previously approved the listing of other series of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4).[56]

Separately, the Exchange proposes to permit the Fund to invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund would not be permitted to invest more than: (i) 30% of its total assets in non-agency RMBS, (ii) 25% of its total assets in non-agency CMBS and CLOs, and (iii) 25% of its total assets in non-agency ABS. Further, with respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS, the Exchange represents that the Fund's holdings in Private ABS/MBS will be subject to certain weighted average loan age restrictions. The Exchange also represents that the Fund's investments in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Board. The Commission also notes that it has previously approved proposals which permit other series of Managed Fund Shares to hold private asset-backed and mortgaged-backed securities in excess of the levels permitted under Commentary .01(b)(5).[57]

With respect to the Fund's proposed investments in OTC derivatives, the Fund's investments other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk, will be limited to 20% of the Fund's portfolio. The Exchange proposes that up to 25% of the Fund's assets may be invested in OTC derivatives that are used to reduce currency, interest rate, or credit risk arising from the Fund's investments. The Commission notes that it has approved other proposals that permit a fund to invest in OTC derivatives in excess of the 20% limit in Commentary .01(e).[58]

The Exchange represents that information relating to the Fund's underlying assets, intra-day and closing price information regarding Fixed Income Securities will be available from major market data vendors, as well as through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by Authorized Participants and other market participants.[59] Additionally, the Exchange represents that FINRA's TRACE will be a source of price information for corporate bonds and Private ABS/MBS, to the extent transactions in such securities are reported to TRACE.[60] According to the Exchange, information relating to weighted average loan age for Private ABS/MBS is widely available from major market data vendors such as Bloomberg. Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's EMMA system. With respect to the Fund's holdings in derivatives, price information relating to OTC options, forwards, and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments, including exchange-traded options, will be available from the applicable exchange and from major market data vendors. Exchange-traded options quotation and last-sale information for options cleared via the OCC are available through OPRA. With respect to the Fund's holdings in equity securities, non-exchange-traded open-end investment company securities are typically priced once each business day and their prices are available through the applicable fund's website or from major market data vendors. Information regarding market price and trading volume of the underlying ETFs, ETNs, common stocks, preferred stocks, REITs, equity securities issued upon conversion of fixed income convertible securities, Work-Out Securities, and closed-end funds will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the underlying ETFs, ETNs, closed-end funds, REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work-Out Securities will be available via the CTA high-speed line.

The Exchange further represents that, with respect to trading in the Shares, the Exchange or FINRA, on behalf of the Exchange, or both, will communicate with and may obtain information from, other markets and other entities that are members of the ISG, or with which the Exchange has in place a CSSA, and FINRA, on behalf of the Exchange, is able to access, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance

[53] *See supra* note 38.

[54] Commentary .01(b)(1) to NYSE Arca Rule 8.600–E states that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[55] *See supra* note 27.

[56] *See supra* note 28.

[57] *See, e.g.,* Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–Nasdaq–2017–128) (approving the listing and trading of shares of the Western Asset Total Return ETF); and 84826 (December 14, 2018), 83 FR 65386 (December 20, 2018) (SR–NYSEArca–2018–25) (approving the continued listing and trading of shares of the Natixis Loomis Sayles Short Duration Income ETF).

[58] *See* Securities Exchange Act Release Nos. 86698 (August 16, 2019), 84 FR 43823 (August 22, 2019) (NYSEArca–2018–83) (order approving the listing and trading of shares of the iShares Bloomberg Roll Select Commodity Strategy ETF) and 86636 (August 12, 2019), 84 FR 42030 (August 16, 2019) (NYSEArca–2018–98) (order approving the listing and trading of the iShares Commodity Multi-Strategy ETF).

[59] The Exchange also states that price information regarding U.S. government securities, bank loans, Private ABS/MBS, cash equivalents, and short-term instruments with maturities of three months or more generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

[60] *See supra* note 41.

purposes in connection with trading in the Shares. The Exchange also asserts that it has a general policy prohibiting the distribution of material, non-public information by its employees.

According to the Exchange, other than Commentaries .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e) to NYSE Arca Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of NYSE Arca Rule 8.600–E. The Commission believes that, based on the representations of the Exchange with respect to the Fund's investment objective and proposed holdings and restrictions, the proposal is consistent with the requirements of Section 6(b)(5) of the Act. The Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, and (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares. In addition, the Exchange represents that the issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor [61] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act [62] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–33 and should be submitted on or before November 22, 2019.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. The Commission notes that Amendment No. 2 clarified representations to reflect changes adopted in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E; conformed a requirement relating to certain investment restrictions from ''average loan maturity'' to ''weighted average loan age''; and provided additional arguments in support of the Fund's proposed changes to its investments and investment restrictions. Amendment No. 2 also provided non-substantive clarifications and technical changes. The additional information in Amendment No. 2 assisted the Commission in evaluating the Exchange's proposal and in determining that the trading of the Shares under the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[63] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[64] that the proposed rule change (SR–NYSEArca–2019–33), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–23858 Filed 10–31–19; 8:45 am]

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[61] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[62] 15 U.S.C. 78f(b)(5).

[63] 15 U.S.C. 78s(b)(2).

[64] *Id.*

[65] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87409; File No. SR–NYSEArca–2019–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Permitting the Continued Listing and Trading of the WisdomTree Emerging Markets Multifactor Fund and the WisdomTree International Multifactor Fund

October 28, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 15, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

(''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the continued listing and trading of the WisdomTree Emerging Markets Multifactor Fund and the WisdomTree International Multifactor Fund, under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to NYSE Arca Rule 8.600–E, the Exchange proposes to permit the continued listing and trading of the WisdomTree Emerging Markets Multifactor Fund (''Emerging Markets Fund'') and the WisdomTree International Multifactor Fund (''International Fund'') (each a Fund, and collectively, the ''Funds''), that do not otherwise meet the standards set forth in Rule 8.600–E, Commentary .01(e), as described below. The shares (''Shares'') of the Funds commenced trading on the Exchange on August 10, 2018 pursuant to the generic listing criteria in Commentary .01 to NYSE Arca Rule 8.600–E (''Managed Fund Shares'').[4]

The Shares are offered by the WisdomTree Trust (the ''Trust''). WisdomTree Asset Management, Inc. (the ''Adviser'') acts as adviser to the Funds. Mellon Investments Corporation acts as sub-adviser (the ''Sub-Adviser'') to the Funds. The Trust is registered with the Commission as an investment company and has most recently updated its registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of the Funds that includes disclosure described herein.[5]

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a ''fire wall'' with respect to such broker-dealers and their personnel regarding access to information concerning the composition and/or changes to a Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such Fund's portfolio. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange submits this proposal in order to allow the Funds to hold OTC currency swaps and OTC currency forwards in a manner that may not comply with Commentary .01(e) to Rule 8.600–E.[7] Specifically, the aggregate gross notional value of each Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives.[8] The Exchange proposes that up to 50% of each Fund's assets (calculated as the aggregate gross notional value of the OTC derivatives) may be invested in OTC derivatives, that is, currency swaps and currency forwards, that are used to reduce (that is, ''hedge'') currency risk arising from each Fund's investments. Each Fund's investments in OTC derivatives, other

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] *See* Registration Statement (File Nos. 333–132380 and 811–21864) and filings dated August 1, 2019. The description of the operation of the Trust and the Funds herein is based, in part, on the information in the Registration Statement.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] In particular, the Funds may not meet the requirement under Commentary .01(e) to Rule 8.600–E, which provides that a portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[8] The Adviser and Sub-Adviser monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis.

than OTC derivatives used to hedge each Fund's portfolio against currency risk, will be limited to 20% of the assets in each Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. The only OTC derivatives that each Fund may invest in are currency swaps and currency forwards.

Otherwise, the Funds comply with, and will continue to comply with, all other listing requirements on an initial and continued listing basis under Commentary .01(e) to Rule 8.600–E for Managed Fund Shares (''Generic Listing Standards'').

WisdomTree Emerging Markets Multifactor Fund

According to the Registration Statement, the Emerging Markets Fund seeks capital appreciation. The Emerging Markets Fund is actively managed using a model-based approach and seeks to achieve its investment objective by investing primarily in equity securities of emerging markets that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser seeks to identify equity securities of emerging markets countries that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser employs a quantitative model to identify which securities the Emerging Markets Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the Emerging Markets Fund's portfolio will be rebalanced quarterly according to the Adviser's quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the Emerging Markets Fund may vary. The Sub-Adviser, with oversight by the Adviser, is responsible for the day-to-day management of the Emerging Markets Fund's portfolio in implementing the foregoing models-based approach.

The Adviser's strategy, as implemented by the Sub-Adviser, seeks to manage the Emerging Markets Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the applicable foreign currencies against the U.S. dollar (the ''Emerging Markets Currency Hedge''), ranging from a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under normal market conditions,[9] the Emerging Markets Fund will hold only the following instruments: Non-U.S. Component Stocks,[10] U.S. Component Stocks [11] (in addition to U.S. exchange-listed exchange-traded funds (''ETFs'')),[12] American Depository Receipts (''ADRs''), cash and cash equivalents,[13] OTC currency forwards and OTC currency swaps. As noted above, all of the Emerging Markets Fund's holdings meet, and will continue to meet, the Generic Listing Standards with the exception of its holdings in OTC currency forwards and OTC currency swaps, which, following the effectiveness of this proposal, may exceed the requirement under Rule 8.600–E, Commentary .01(e), that prohibits the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).

WisdomTree International Multifactor Fund

According to the Registration Statement, the International Fund seeks capital appreciation. The International Fund is actively managed using a model-based approach and seeks to achieve its investment objective by investing primarily in equity securities of developed markets, excluding the United States and Canada, that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser seeks to identify equity securities of developed countries, excluding the United States and Canada, that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser employs a quantitative model to identify which securities the International Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the International Fund's portfolio will be rebalanced quarterly according to the Adviser's quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the International Fund may vary. The Sub-Adviser, with oversight by the Adviser, is responsible for the day-to-day management of the International Fund's portfolio in implementing the foregoing models-based approach.

The Adviser's strategy, as implemented by the Sub-Adviser, seeks to manage the International Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the applicable foreign currencies against the U.S. dollar (the ''International Multifactor Currency Hedge'' and collectively, with the Emerging Markets Currency Hedge, the ''Currency Hedge''), ranging from a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under normal market conditions, the International Fund will hold only the following instruments: Non-U.S. Component Stocks, U.S. Component Stocks (in addition to U.S. exchange-listed ETFs), ADRs, cash and cash equivalents, and OTC currency forwards and OTC currency swaps. As noted above, the International Fund's holdings meet the Generic Listing Standards with the exception of its holdings in OTC currency forwards and OTC currency swaps, which may not meet the requirement under Rule 8.600–E, Commentary .01(e) that prevents the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).[14]

The Trust is required to comply with Rule 10A–3 under the Act [15] for the initial and continued listing of the Shares of each Fund. In addition, the Exchange represents that the Shares of each Fund will meet and be subject to all other requirements of the Generic Listing Standards and continued listing requirements for Managed Fund Shares under Exchange Rule 8.600–E. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and portfolio indicative values, and the

[9] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

[10] *See* Commentary .01(a)(2) to Rule 8.600–E.

[11] *See* Commentary .01(a)(1) to Rule 8.600–E.

[12] For purposes of this filing, the term ''ETFs'' includes Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[13] For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600–E.

[14] Because the Fund is not in compliance with Rule 8.600–E, Commentary .01(e), the Exchange has commenced delisting proceedings pursuant to Rule 5.5–E(m), including issuing a deficiency notification.

[15] 17 CFR 240.10A–3.

applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds. The Trust, on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5–E(m).

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolios for the Funds will not meet all of the Generic Listing Standards of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. Each Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(e) (with respect to OTC Derivatives), as described below.[16]

As described above, the Funds meet all of the Generic Listing Standards except with respect to their holdings in OTC currency forwards and OTC currency swaps, which would be used to achieve their respective Currency Hedge. The Exchange believes that this proposal does not raise any novel or substantive issues for the Commission to review because there are numerous filings that were either effective upon filing or that the Commission has approved for the listing and trading of series of Managed Fund Shares that employ similar hedging strategies.[17]

Further, the Exchange believes that, while the portfolios of the Funds may not meet Commentary .01(e) to Rule 8–600–E, the policy issues that the rule is intended to address are otherwise mitigated by the structure and purpose of the Currency Hedge within the Funds.[18] Specifically, the Exchange believes that the policy issues that Commentary .01(e) to Rule 8–600–E is intended to address are mitigated by the way that the Funds would use OTC currency forwards and OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. While the Currency Hedge positions taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. The Funds will attempt to limit counterparty risk in OTC currency forwards and OTC currency swaps by: (i) Entering into such contracts only with counterparties that Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

Availability of Information

As noted above, the Funds will each comply with the requirements for Managed Fund Shares related to Disclosed Portfolio, Net Asset Value (''NAV''), and the Portfolio Indicative Value. Additionally, the intra-day, closing and settlement prices of Non-U.S. Component Stocks, U.S. Component Stocks, ADRs, and ETFs will be readily available from the securities exchanges on which such securities are traded, as well as published or other public sources, or online information services such as Bloomberg or Reuters. Intraday price quotations on OTC currency forwards and OTC currency swaps are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for cash equivalents will be available from major market data vendors. Each Fund's Disclosed Portfolio will be available on the issuer's website (*www.WisdomTree.com*) free of charge. Each Fund's website will include the prospectus for the applicable Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the shares during all trading sessions.

Surveillance

The Exchange represents that trading in the Shares are subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect

[16] *See* note 7, *supra.*

[17] *See* Securities Exchange Act Release Nos. 85474 (March 29, 2019), 84 FR 13371 (April 4, 2019) (SR–CboeBZX–2019–019) (notice of filing and immediate effectiveness of a proposed rule change to make certain changes to the listing rule governing the listing and trading of the shares of the WisdomTree Japan Multifactor Fund and the WisdomTree Europe Multifactor Fund to allow each fund to hedge its foreign currency exposure with up to 50% gross notional exposure to OTC currency swaps); 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR–CboeBZX–2018–019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (SR–NYSEArca–2018–75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018), 83 FR 4707 (February 1, 2018) (SR–BatsBZX–2017–54) (the ''Inflation Hedged Fund'') (order approving the listing and trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund's portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR–CboeBZX–2018–036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to move increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund's gross notional value). *See also* SR–NYSEArca–2017–09 (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600); SR–NYSEArca–2018–75 (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Regarding the Listing and Trading of Shares of the PGIM Ultra Short Bond ETF); SR–NYSEArca–2018–98 (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, To List and Trade Shares of the iShares Commodity Multi-Strategy ETF Under NYSE Arca Rule 8.600–E); and SR–NYSEArca–2018–83 (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, Regarding Changes to Investments of the iShares Bloomberg Roll Select Commodity Strategy ETF).

[18] Each Fund expects to invest in excess of 80% of its net assets in Non-U.S. Component Stocks in a manner that will comply with the Generic Listing Standards.

violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[19]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, U.S. Component Stocks, ETFs, ADRs and certain of the Non-U.S. Component Stocks that are held by each Fund with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.[20] In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and portfolio indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds.

The issuer must notify the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[21] in general and Section 6(b)(5) of the Act[22] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposal is consistent with Rule 6(b)(5) of the Act in that is designed to prevent fraudulent and manipulative acts and practices because the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address, specifically Commentary .01(e) to Rule 8.600–E, related to OTC derivatives holdings, are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. Specifically, the Exchange believes that the policy issues that Commentary .01(e) to Rule 8.600–E is intended to address are mitigated by the way that the Funds would use OTC currency forwards and OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. As noted above, while the Currency Hedge positions that might be taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. The Funds will attempt to limit counterparty risk in OTC currency forwards and OTC currency swaps by: (i) Entering into such contracts only with counterparties the Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

The Exchange also notes that there are numerous filings that were either effective upon filing or that the Commission has approved for the listing and trading of series of Managed Fund Shares that employ similar hedging strategies.[23]

The Exchange believes that it is appropriate and in the public interest to allow the Funds, for hedging purposes only, to exceed the 20% limit in Commentary .01(e) to Rule 8.600–E of portfolio assets that may be invested in OTC derivatives to a maximum of 50% of Fund assets (calculated as the aggregate gross notional value of the OTC derivatives). Under Commentary .01(e), a series of Managed Fund Shares listed under the Generic Listing Standards may invest up to 20% of its assets (calculated as the aggregate gross notional value) in OTC derivatives. Because the Funds, in furtherance of their investment objective, may invest a substantial percentage of their investments in OTC currency forwards and OTC currency swaps, the 20% limit in Commentary .01(e) to Rule 8.600 could result in the Funds being unable to fully pursue their investment objective while attempting to sufficiently mitigate investment risks. The inability of the Funds to adequately hedge their holdings would effectively limit the Funds' ability to invest in certain instruments, or could expose the Funds to additional investment risk.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Trading of the Funds through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and portfolio indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds. The Trust,

[19] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] *See* note 17, *supra.*

on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5–E(m).

As described above, all ADRs and ETFs will be listed on a U.S. national securities exchange, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may obtain information regarding trading in the Funds, U.S. Component Stocks, ETFs, ADRs, and certain Non-U.S. Component Stocks held by each Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the continued listing and trading of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and Rule 19b–4(f)(6)(iii) thereunder.[27]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [28] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that there are numerous filings that were either effective upon filing or that the Commission approved for the listing and trading of series of Managed Fund Shares that employ similar hedging strategies [30] and does not believe this proposal raises new or novel issues. The Commission also notes that, except for the changes in this proposed rule change, the Funds comply with, and will continue to comply with, all other listing requirements on an initial and continued listing basis under Commentary .01(e) to Rule 8.600–E. The Commission therefore believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.[31]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–73 and should be submitted on or before November 22, 2019.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 17 CFR 240.19b–4(f)(6).

[28] *Id.*

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] *See* note 17, *supra.*

[31] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–23859 Filed 10–31–19; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33678; 812–15060]

OSI ETF Trust and O'Shares Investment Advisers, LLC; Notice of Application

October 29, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''), and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

APPLICANTS: OSI ETF Trust (''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series (each a ''Fund'') and O'Shares Investment Advisers, LLC (''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') that serves an investment adviser to the Funds (collectively with the Trust, the ''Applicants'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

FILING DATES: The application was filed on August 20, 2019, and amended on October 4, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2019, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Louise Anne Poirier, O'Shares Investment Advisers, LLC, 1010 Sherbrooke Street W, Suite 2105, Montreal, QC H3A 2R7 Canada and Michael W. Mundt, Stradley Ronon Stevens & Young, LLP, 1250 Connecticut Avenue NW, Ste. 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number or an Applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

I. Requested Exemptive Relief

1. Applicants request an order to permit the Adviser,[1] subject to the approval of the board of trustees of each Trust (collectively, the ''Board''),[2] including a majority of the trustees who are not ''interested persons'' of the Trust or the Adviser, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), without obtaining shareholder approval, to: (i) Select investment subadvisers (''Subadvisers'') for all or a portion of the assets of one or more of the Funds pursuant to an investment subadvisory agreement with each Subadviser (each a ''Subadvisory Agreement''); and (ii) materially amend Subadvisory Agreements with the Subadvisers.

2. Applicants also request an order exempting the Subadvised Funds (as defined below) from the Disclosure Requirements, which require each Fund to disclose fees paid to a Subadviser. Applicants seek relief to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of the Fund's net assets): (i) The aggregate fees paid to the Adviser and any Wholly-Owned Subadvisers; and (ii) the aggregate fees paid to Affiliated and Non-Affiliated Subadvisers (''Aggregate Fee Disclosure'').[3] Applicants seek an exemption to permit a Subadvised Fund to include only the Aggregate Fee Disclosure.[4]

3. Applicants request that the relief apply to Applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and that: (i) Is advised by the Adviser; (ii) uses the multi-manager structure described in the application; and (iii) complies with the terms and conditions of the application (each, a ''Subadvised Fund'').[5]

II. Management of the Subadvised Funds

4. The Adviser serves or will serve as the investment adviser to each

[1] The term ''Adviser'' means (i) the Initial Adviser, (ii) its successors, and (iii) any entity controlling, controlled by or under common control with, the Initial Adviser or its successors that serves as the primary adviser to a Subadvised Fund. For the purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. Any other Adviser also will be registered with the Commission as an investment adviser under the Advisers Act.

[2] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Fund (as defined below), if different from the board of trustees (''Trustees'') of the Trust.

[3] A ''Wholly-Owned Subadviser'' is any investment adviser that is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser, (2) a ''sister company'' of the Adviser that is an indirect or direct ''wholly-owned subsidiary'' of the same company that indirectly or directly wholly owns the Adviser (the Adviser's ''parent company''), or (3) a parent company of the Adviser. An ''Affiliated Subadviser'' is any investment subadviser that is not a Wholly-Owned Subadviser, but is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of a Subadvised Fund or the Adviser for reasons other than serving as investment subadviser to one or more Funds. A ''Non-Affiliated Subadviser'' is any investment adviser that is not an ''affiliated person'' (as defined in the Act) of a Fund or the Adviser, except to the extent that an affiliation arises solely because the Subadviser serves as a subadviser to one or more Funds.

[4] Applicants note that all other items required by sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

[5] All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

Subadvised Fund pursuant to an investment advisory agreement with the Fund (each an ''Investment Advisory Agreement''). Each Investment Advisory Agreement has been or will be approved by the Board, including a majority of the Independent Trustees, and by the shareholders of the relevant Subadvised Fund in the manner required by sections 15(a) and 15(c) of the Act. The terms of these Investment Advisory Agreements comply or will comply with section 15(a) of the Act. Applicants are not seeking an exemption from the Act with respect to the Investment Advisory Agreements. Pursuant to the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, will provide continuous investment management for each Subadvised Fund. For its services to each Subadvised Fund, the Adviser receives or will receive an investment advisory fee from that Fund as specified in the applicable Investment Advisory Agreement.

5. Consistent with the terms of each Investment Advisory Agreement, the Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund (if required by applicable law), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to a Subadviser. The Adviser will retain overall responsibility for the management and investment of the assets of each Subadvised Fund. This responsibility includes recommending the removal or replacement of Subadvisers, allocating the portion of that Subadvised Fund's assets to any given Subadviser and reallocating those assets as necessary from time to time.[6] The Subadvisers will be ''investment advisers'' to the Subadvised Funds within the meaning of Section 2(a)(20) of the Act and will provide investment management services to the Funds subject to, without limitation, the requirements of Sections 15(c) and 36(b) of the Act.[7] The Subadvisers, subject to the oversight of the Adviser and the Board, will determine the securities and other investments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and will place orders with brokers or dealers that they select.[8]

6. The Subadvisory Agreements will be approved by the Board, including a majority of the Independent Trustees, in accordance with sections 15(a) and 15(c) of the Act. In addition, the terms of each Subadvisory Agreement will comply fully with the requirements of section 15(a) of the Act. The Adviser may compensate the Subadvisers or the Subadvised Funds may compensate the Subadvisers directly.

7. Subadvised Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadviser is hired for any Subadvised Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[9] and (b) the Subadvised Fund will make the Multi-manager Information Statement available on the website identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days.[10]

III. Applicable Law

8. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.''

9. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company with respect to each investment adviser, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

10. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the 1934 Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

11. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statements information about investment advisory fees.

12. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy

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[6] Applicants represent that if the name of any Subadvised Fund contains the name of a subadviser, the name of the Adviser that serves as the primary adviser to the Fund, or a trademark or trade name that is owned by or publicly used to identify the Adviser, will precede the name of the subadviser.

[7] The Subadvisers will be registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration.

[8] A ''Subadviser'' also includes an investment subadviser that will provide the Adviser with a model portfolio reflecting a specific strategy, style or focus with respect to the investment of all or a portion of a Subadvised Fund's assets. The Adviser may use the model portfolio to determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and place orders with brokers or dealers that it selects.

[9] A ''Multi-manager Notice'' will be modeled on a Notice of internet Availability as defined in Rule 14a–16 under the 1934 Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser (except as modified to permit Aggregate Fee Disclosure); (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Fund. A ''Multi-manager Information Statement '' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

[10] In addition, Applicants represent that whenever a Subadviser is hired or terminated, or a Subadvisory Agreement is materially amended, the Subadvised Fund's prospectus and statement of additional information will be supplemented promptly pursuant to rule 497(e) under the Securities Act of 1933.

and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

IV. Arguments in Support of the Requested Relief

13. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is substantially equivalent to the limited role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants also assert that the shareholders expect the Adviser, subject to review and approval of the Board, to select a Subadviser who is in the best position to achieve the Subadvised Fund's investment objective. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Fund are paying the Adviser—the selection, oversight and evaluation of the Subadviser—without incurring unnecessary delays or expenses of convening special meetings of shareholders is appropriate and in the interest of the Fund's shareholders, and will allow such Fund to operate more efficiently. Applicants state that each Investment Advisory Agreement will continue to be fully subject to section 15(a) of the Act and approved by the relevant Board, including a majority of the Independent Trustees, in the manner required by section 15(a) and 15(c) of the Act.

14. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Fund in the manner described in the Application must be approved by shareholders of that Fund before it may rely on the requested relief. Applicants also state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest or economic incentives, and provide that shareholders are informed when new Subadvisers are hired.

15. Applicants contend that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that, accordingly, they believe the requested relief 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.

16. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that disclosure of the individual fees paid to the Subadvisers does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Subadvisers are to inform shareholders of expenses to be charged by a particular Subadvised Fund and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the Subadvised Fund's overall advisory fee will be fully disclosed and, therefore, shareholders will know what the Subadvised Fund's fees and expenses are and will be able to compare the advisory fees a Subadvised Fund is charged to those of other investment companies. In addition, Applicants assert that the requested relief would benefit shareholders of the Subadvised Fund because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. In particular, Applicants state that if the Adviser is not required to disclose the Subadvisers' fees to the public, the Adviser may be able to negotiate rates that are below a Subadviser's ''posted'' amounts. Applicants assert that the relief will also encourage Subadvisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

V. Relief for Affiliated Subadvisers

17. The Commission has granted the requested relief with respect to Wholly-Owned and Non-Affiliated Subadvisers through numerous exemptive orders. The Commission also has extended the requested relief to Affiliated Subadvisers.[11] Applicants state that although the Adviser's judgment in recommending a Subadviser can be affected by certain conflicts, they do not warrant denying the extension of the requested relief to Affiliated Subadvisers. Specifically, the Adviser faces those conflicts in allocating fund assets between itself and a Subadviser, and across Subadvisers, as it has an interest in considering the benefit it will receive, directly or indirectly, from the fee the Subadvised Fund pays for the management of those assets. Applicants also state that to the extent the Adviser has a conflict of interest with respect to the selection of an Affiliated Subadviser, the proposed conditions are protective of shareholder interests by ensuring the Board's independence and providing the Board with the appropriate resources and information to monitor and address conflicts.

18. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that it is appropriate to disclose only aggregate fees paid to Affiliated Subadvisers for the same reasons that similar relief has been granted previously with respect to Wholly-Owned and Non-Affiliated Subadvisers.

VI. Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order requested in the Application, the operation of the Subadvised Fund in the manner described in the Application will be, or has been, approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act, or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance and effect of any order granted pursuant to the Application. In addition, each Subadvised Fund will hold itself out to the public as employing the multi-manager structure described in the Application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets, and subject to review and oversight of the Board, will (i) set the Subadvised Fund's overall investment strategies, (ii) evaluate, select, and recommend Subadvisers for all or a portion of the Subadvised Fund's assets, (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers, (iv) monitor and evaluate the Subadvisers' performance, and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

[11] *Carillon Series Trust, et al.,* Investment Co. Act Rel. Nos. 33464 (May 2, 2019) (notice) and 33494 (May 29, 2019) (order).

4. Subadvised Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

5. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent Legal Counsel, as defined in Rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

8. The Board must evaluate any material conflicts that may be present in a subadvisory arrangement. Specifically, whenever a subadviser change is proposed for a Subadvised Fund (''Subadviser Change'') or the Board considers an existing Subadvisory Agreement as part of its annual review process (''Subadviser Review''):

(a) The Adviser will provide the Board, to the extent not already being provided pursuant to section 15(c) of the Act, with all relevant information concerning:

(i) Any material interest in the proposed new Subadviser, in the case of a Subadviser Change, or the Subadviser in the case of a Subadviser Review, held directly or indirectly by the Adviser or a parent or sister company of the Adviser, and any material impact the proposed Subadvisory Agreement may have on that interest;

(ii) any arrangement or understanding in which the Adviser or any parent or sister company of the Adviser is a participant that (A) may have had a material effect on the proposed Subadviser Change or Subadviser Review, or (B) may be materially affected by the proposed Subadviser Change or Subadviser Review;

(iii) any material interest in a Subadviser held directly or indirectly by an officer or Trustee of the Subadvised Fund, or an officer or board member of the Adviser (other than through a pooled investment vehicle not controlled by such person); and

(iv) any other information that may be relevant to the Board in evaluating any potential material conflicts of interest in the proposed Subadviser Change or Subadviser Review.

(b) the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the Subadviser Change or continuation after Subadviser Review is in the best interests of the Subadvised Fund and its shareholders and, based on the information provided to the Board, does not involve a conflict of interest from which the Adviser, a Subadviser, any officer or Trustee of the Subadvised Fund, or any officer or board member of the Adviser derives an inappropriate advantage.

9. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

11. Any new Subadvisory Agreement or any amendment to an existing Investment Advisory Agreement or Subadvisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Fund will be submitted to the Subadvised Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–23940 Filed 10–31–19; 8:45 am]

BILLING CODE 8011–01–P

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, the Securities and Exchange Commission will hold an Open Meeting on Tuesday, November 5, 2019 at 10:00 a.m.

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. 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: The subject matter of the Open Meeting will be the Commission's continued efforts to facilitate constructive shareholder engagement and enhance transparency, improve disclosures, and increase confidence in the proxy process. The specific matters to be considered are:

1. Whether to propose amendments to the proxy solicitation rules that would provide for disclosure of material conflicts of interest and set forth procedures to facilitate issuer and shareholder engagement, to provide clarity to market participants, and to improve the information provided to investors.

2. Whether to propose amendments to the shareholder proposal rules to modernize the submission and resubmission requirements and to update procedural requirements.

In addition, the subject matter of the Open Meeting will also include the Commission's continued efforts to modernize the regulatory framework for investment advisers and enhance information to investors. The specific matter to be considered is:

3. Whether to propose amendments under the Investment Advisers Act of 1940 to rules 206(4)–1 and 206(4)–3, the rules that prohibit certain investment adviser advertisements and payments to solicitors, respectively.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: October 29, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–24051 Filed 10–30–19; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87404; File No. SR–NYSEAMER–2019–43]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule

October 28, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 15, 2019, NYSE American LLC (''NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective October 15, 2019. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is modify the Fee Schedule to introduce two incentive programs that are designed to encourage increased Manual and Electronic order flow to the Exchange to the benefit of all market participants.

In brief, and as described further below, the first proposed change is designed to encourage Manual transactions by NYSE American Options Market Makers and Specialists/e-Specialists by offering these participants discounted rates on any portion of their monthly Manual volume (excluding Strategy Executions and QCC Transactions) that exceeds, by a specified percentage of Total Industry Customer equity and ETF option average daily volume (''TCADV''),[4] either the participants' August 2019 volume or, in the case of a new NYSE American Options Market Makers or and Specialists/e-Specialists, a base level of 15,000 ADV. The second proposed change is designed to encourage ATP Holders to increase their Electronic volume in the ''Professional'' range.[5] Specifically, the Exchange proposes to offer discounted rates on monthly Professional volume as well as certain credits on Customer Electronic volume, including for initiating CUBE volume, to ATP Holders that increase their Professional volume (excluding Strategy Executions, CUBE Auctions, and QCC Transactions) by specified percentages of TCADV over their August 2019 volume, or in the case of new ATP Holders, above a base level of 10,000 ADV. The Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are appropriate because these volumes are comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

The Exchange proposes to implement the rule changes on October 15, 2019.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[7] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[8]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees.

In response to this competitive environment, the Exchange has established various pricing incentives designed to encourage increased Manual and Electronic volume executed on the Exchange, including (but not limited to) the American Customer Engagement (''ACE'') Program. While the ACE Program is limited to Electronic Customer volume, the Exchange proposes two new pricing incentives that focus on encouraging additional Manual volume and Professional Electronic volume. To the extent that these incentives succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Proposed Rule Change

Manual Volume Incentive for MMs and Specialists

The Exchange proposes to offer NYSE American Options Market Makers (''MMs'') and Specialists/e-Specialists (''Specialists) discounted rates on Manual transactions that exceed a specified volume threshold. Currently, Manual transactions in both Penny and Non-Penny Pilot issues are subject to a per contract rate of $0.25 for MMs and $0.18 for Specialists.[9] As proposed, MMs or Specialists that increase their monthly Manual volumes by a specified percentage of TCADV over their August 2019 volume or, for new MMs or Specialists, that increase Manual

[4] The term ''TCADV'' is defined in the Key Terms and Definitions Section of the Preface of the Fee Schedule, *see infra* note 8 [sic]. TCADV includes Options Clearing Corporation (''OCC'') calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options.

[5] For purposes of this filing, ''Professional'' Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[7] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[8] Based on OCC data, *see id.,* the Exchange's market share in equity-based options declined from 9.82% for the month of January to 8.84% for the month of April.

[9] *See* Fee Schedule, Section I.A. (Options Transaction Fees and Credits, Rates for Options transactions), *available here: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

volume by a specified percentage of TCADV above a base level of 15,000 ADV (''Increased Manual Volume'') are eligible to receive a discounted rate solely on the Increased Manual Volume as set forth below. The Exchange will exclude any volumes attributable to QCC trades or Strategy Execution from monthly calculations of base level or Increased Manual Volume, as these transactions are subject to separate pricing described in Fee Schedule, Sections I.F., I.G. and I.J., respectively. As proposed:

- MMs with Increased Manual Volume of at least 0.15% TCADV will be charged $0.18 per contract for the Increased Manual Volume. (Specialists currently pay $0.18 per contract for all Manual transactions); and
- MMs and Specialists with an Increased Manual Volume of at least 0.30% TCADV will be charged $0.12 per contract for the Increased Manual Volume.[10]

For example, assume a MM executed 18,000 ADV Manual Volume in August, 2019. In October, the TCADV is 17,200,000. An increase of 0.15% of TCADV would be equal to 25,800 contracts. An increase of 0.30% of TCADV would be equal to 51,600 contracts.

Thus, if the MM executed 44,500 ADV in October, the MM would qualify for $0.18 per contract on the MM's volume above the 18,000 ADV (*i.e.,* the Increased Volume Amount of 26,500 contracts). The MM's billing would reflect $0.25 per contract on the MM's base amount of 18,000 ADV, and $0.18 per contact on the Increased Manual Volume of 26,500 ADV.

If the same MM executed 74,000 ADV in October, the MM would qualify for $0.12 per contract on the MM's volume above the 18,000 ADV (*i.e.,* the Increased Volume Amount of 56,000 contracts). The MM's billing would reflect $0.25 per contract on the MM's base amount of 18,000 ADV, and $0.12 per contract on the Increased Manual Volume of 56,000 ADV.

The Exchange believes this proposed incentive pricing is appropriate because Market Makers (Specialists) serve a crucial role in the options markets by providing liquidity to facilitate market efficiency and functioning. The Exchange's fees are constrained by intermarket competition, as Market Makers can register on any or all of the 16 options exchanges. Thus, ATP Holders that are also members of other exchanges have a choice of where they register and operate as Market Makers. The proposed pricing incentive for MMs and Specialists is therefore designed to encourage these participants to (continue to) conduct Manual (open outcry) trading on the Floor of the Exchange. The Exchange notes that all market participants stand to benefit from increased Manual transaction volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in (Manual or Electronic) order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of this proposed fee change, particularly because the proposed pricing incentive is new. Assuming historical behavior can be predictive of future behavior, however, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for discounted Manual rates.

Professional Step-Up Incentive

The Exchange also proposes to introduce an incentive for ATP Holders to increase (or ''step up'') their Electronic Professional[11] volume by offering lower rates and credits based on volume growth (*i.e.,* Tier A, Tier B, and Tier C). Specifically, an ATP Holder may qualify for discounted rates on its monthly Electronic Professional volume and receive credits on certain Electronic Customer volume, including initiating CUBE volume, provided the ATP Holder increases its monthly Electronic Professional volume by specified percentages of TCADV over their August 2019 volume or, for new ATP Holders, that increase Electronic Professional volume by a specified percentages of TCADV above a base level of 10,000 contracts ADV (the ''Qualifying Volume''), as set forth in the table below. The Exchange will exclude any volumes attributable to QCC trades, CUBE Auctions, or Strategy Execution from monthly calculations of base level or Qualifying Volume, as these transactions are subject to separate pricing described in Fee Schedule Sections I.F., I.G. and I.J., respectively.

PROFESSIONAL STEP-UP INCENTIVE

	Qualifying volume as a % of TCADV	Per contract penny pilot rate	Per contract non-penny pilot rate	ACE benefits
Tier A	0.04	$0.42	$0.65	N/A.
Tier B	0.07	0.35	0.55	Tier 1 Customer Credits only (per Section I.E.).
Tier C	0.09	0.25	0.50	Tier 1 Customer Credits (per Section I.E.), plus ACE Initiating Participant Rebate—All issues (per Section I.G.).

[10] *See* proposed Fee Schedule, Section I.A. (Options Transaction Fees and Credits, Rates for Options transactions), note 8 [sic].

[11] *See supra* note 5 (defining Professional volume).

As shown in the table above, the greater the increase in Qualifying Volume, the more benefits that accrue to the ATP Holder. To put in context, assume an ATP Holder executed Electronic Professional volume in August 2019 totaling 9,000 ADV and, in October, the TCADV is 17,200,000. To qualify for the Professional Step-Up Incentive program, that ATP Holder would need to execute Electronic Professional volume above its August 2019 that is at least 6,880 (*i.e.,* 0.04% of TCADV) for Tier A; 12,040 (*i.e.,* 0.07% of TCADV) for Tier B; or 15,480 (*i.e.,* 0.09% of TCADV) for Tier C. If that same ATP Holder did not have August 2019 volume, it would have to execute at least this much volume above the 10,000 ADV base level.

ATP Holders that qualify for Tier A—the lowest Professional volume growth threshold, would be charged reduced rates of $0.42 and $0.65 on Professional Electronic executions on Penny and Non-Penny issues, respectively.[12] ATP Holders that qualify for Tier B would be charged even further reduced rates—of $0.35 and $0.55 on Professional Electronic executions on Penny and Non-Penny issues, respectively,[13] and would also receive credits on Professional Electronic Customer executions that are the same as those available to ATP Holders that achieve Tier 1 of the ACE Program (the ''ACE Tier 1 Customer Credits'').[14] However, participants that qualify for Tier B of the Professional Step-Up Incentive do not receive any other benefits that inure to ATP Holders that qualify for ACE Tier 1. Finally, ATP Holders that qualify for Tier C would be charged the most reduced rates—$0.25 and $0.50 on Electronic Professional executions on Penny and Non-Penny issues, respectively; [15] would receive the ACE Tier 1 Customer Credits; and would receive the ''ACE Initiating Participant Rebate—All Issues'' (or ''ACE Rebate''), which applies rebates to certain volume that initiates a Customer Best Execution Auction or ''CUBE.[16]

The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those with similar incentive programs.[17] Thus, ATP Holders have a choice of where they direct their order flow. This proposed Professional Step-Up Incentive program is designed to encourage ATP Holders to increase the amount of Electronic Professional volume directed to and executed on the Exchange. The Exchange notes that all market participants stand to benefit from increased Electronic Professional volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of this proposed fee change, particularly because the proposed Professional Step-Up Incentive program is new. Assuming historical behavior can be predictive of future behavior, however, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for Professional Step-Up Incentive program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[21] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[22]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Manual Volume Incentive for MMs and Specialists

The Exchange believes that the proposal to offer reduced rates for MMs and Specialists on Increased Manual Volume is reasonable because it is designed to incent these participants to increase the number and type of Manual executions sent to the Floor of the Exchange. Market Makers (and Specialists) serve a crucial role in the options markets by providing liquidity to facilitate market efficiency and functioning. The Exchange's fees are

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[12] *See* Fee Schedule, Section I. A., *supra* note 9 (setting forth options transactions rates for Electronic Professional volume of $0.50 and $0.75 for Penny and Non-Penny issues respectively; except that Firm execution in Penny issues are charged $0.47 per contract).

[13] *See* proposed Fee Schedule, Section I.A. (Options Transaction Fees and Credits, Rates for Options transactions), note 8 [sic].

[14] *See id.; see also* Fee Schedule, Section I.E. (describing ACE Program).

[15] *See id.*

[16] *See* Fee Schedule, Section I.G. (describing CUBE Auctions Fees & Credits, for Single-Leg and Complex CUBE Auctions). In the case of a Single-Leg CUBE Auction, the pricing table (at note 2), states that the ACE Rebate ''is applied to each of the first 5,000 Customer contracts of a CUBE Order executed in a [Single-Leg] CUBE Auction,'' and is available to participants that qualify for ACE Tier 1. *See id.* In the case of a Complex CUBE Auction, the pricing table (at note 2), ACE ''is applied to each of the first 1,000 Customer contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction,'' and is available to participants that qualify for ACE Tier 1. *See id.*

[17] *See e.g.,* MIAX Options fee schedule, Section 1.a.iv, Professional Rebate Program, *available here, https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_04012019.pdf* (setting forth per contract credits on volume submitted for the account of Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker Dealers, and Firms (collectively, Professional for purposes of MIAX program), provided the Member achieves certain Professional volume increase percentage thresholds (set forth in the schedule) in the month relative to the fourth quarter of 2015).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] *See* Reg NMS Adopting Release, *supra* note 6, at 37499.

[21] *See supra* note 7.

[22] Based on OCC data, *see supra* note 8, in 2019, the Exchange's market share in equity-based options declined from 9.82% for the month of January to 7.86% for the month of September.

constrained by intermarket competition, as Market Makers can register on any or all of the 16 options exchanges. ATP Holders that are also members of other exchanges have a choice of where they register as Market Makers. Thus, the Exchange believes that this proposed rule change will provide an incentive for MMs and Specialists to (continue to) conduct (open outcry) Manual trading on the Exchange with increased volume. The Exchange notes that all market participants stand to benefit from increased Manual transaction volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

Professional Step-Up Incentive

The Exchange believes that the proposed Professional Step-Up Incentive is reasonable because it is designed to incent ATP Holders to increase the amount of Electronic Professional order flow directed to the Exchange. In addition, because the top two tiers (B and C) of this program allow qualifying ATP Holders to also receive credits on Electronic Customer volume (per Tier 1 of the ACE program) and, for Tier C only, to achieve rebates on certain initiating CUBE Auction order flow, the proposed program may encourage ATP Holders to direct both Professional and Customer Electronic order flow, including initiating CUBE volume to the Exchange. The Exchange notes that all market participants stand to benefit from increased Electronic transaction volume—whether Professional or Customer, as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants that do not participant in (or qualify for) the Professional Step-Up Incentive program.

The Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are reasonable because these volumes are comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

Regarding both proposed pricing changes, the Exchange cannot predict with certainty whether any participants would avail themselves of the proposed fee changes, particularly because both of the proposed incentives are new. Assuming historical behavior can be predictive of future behavior, however, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for the discounted Manual rates and between two and four firms may be able to qualify for the Professional Step-Up Inventive.[23]

Finally, to the extent the proposed pricing incentives attract greater volume and liquidity (to the Floor or otherwise), the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed rule changes are designed to incent ATP Holders to direct liquidity to the Exchange, in both Manual and Electronic executions, similar to other exchange programs with competitive pricing programs,[24] thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposals—both for discounted rates on Increased Manual Volume for MMs and Specialists and the Professional Step-Up Incentive program—are based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of these incentive or not. Moreover, the proposals are designed to encourage MMs, Specialists, and ATP Holders to aggregate their executions—particularly Manual and Electronic Professional—at the Exchange as a primary execution venue. To the extent that the proposed changes attract more Manual and (Professional) Electronic volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are appropriate because these volumes are comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposals—both for discounted rates on Increased Manual Volume for MMs and Specialists and the Professional Step-Up Incentive program—are not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are not unfairly discriminatory because these volumes are comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

The proposals are based on the amount and type of business transacted on the Exchange and MMs, Specialists, and ATP Holders are not obligated to try to achieve either of the incentive pricing options. Rather, the proposals are designed to encourage these participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase (both Manual and Electronic) volume sent to the Exchange. To the extent that the proposed changes attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market

[23] The Exchange notes that the "two and four" firms that may qualify for the different incentives proposed herein are not the same "two and four" firms.

[24] *See, e.g., supra* note 17 (regarding MIAX Professional Rebate Program).

system and, in general, to protect investors and the public interest.

With regard to the proposed discount rates on certain increases in Manual volume by MMs and Specialists, the Exchange notes that the Manual rates charged to these participants are already lower than the rates charged to other participants.[25] MMs (and Specialists) serve a crucial role in financial markets by providing liquidity to facilitate market efficiency and functioning. Market Makers, unlike other market participants, add value through continuous quoting and the commitment of capital. Because Market Makers have these obligations and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the proposed reduced Manual rates is equitable and not unfairly discriminatory in light of their obligations and the costs associated therewith.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [26]

Intramarket Competition. The proposed changes are designed to attract additional order flow (both Manual and Electronic, particularly Professional volume) to the Exchange. The Exchange believes that the proposed pricing incentives would incent market participants to direct additional volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Manual and Electronic Professional volume would increase opportunities for execution of other trading interest. The proposed pricing incentives would be available to all similarly-situated market participants that incur transaction fees on Manual and Electronic executions, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Market Makers, unlike other market participants, add value through continuous quoting and the commitment of capital. Because Market Makers have these obligations and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the proposed reduced rates, in light of their obligations and the costs associated therewith, does not create an undue burden on non-Market Makers.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[27] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[28]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage ATP Holders to direct trading interest (both Manual and Electronic) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Fee Schedule that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [29] of the Act and subparagraph (f)(2) of Rule 19b–4 [30] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [31] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[25] *See* Fee Schedule, Section I.A., *supra* note 9 (setting forth rates for Manual options transactions: MMs and Specialists are charged $0.18 per contract, while all other non-Customer participant (save for DOMMs) is charged $0.25 per contract).

[26] *See* Reg NMS Adopting Release, *supra* note 6, at 37499.

[27] *See supra* note 7.

[28] Based on OCC data, *supra* note 8, the Exchange's market share in equity-based options declined from 9.82% for the month of January to 8.84% for the month of April.

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(2).

[31] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEAMER–2019–43 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAMER–2019–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAMER–2019–43, and should be submitted on or before November 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–23857 Filed 10–31–19; 8:45 am]

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[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87408; File No. SR–NYSECHX–2019–12]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.

October 28, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 15, 2019 the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. to provide for co-location services and fees in connection with its expected migration to the NYSE Pillar platform in the fourth quarter of 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to provide for co-location services and fees in connection with its expected migration to the NYSE Pillar platform (''Pillar'') in the fourth quarter of 2019.[4] Pillar is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and, together, the ''Affiliate SROs'').[5] As detailed below, current Users [6] would not incur any new fees and no incremental co-location revenue is expected under this proposal.

The Affiliate SROs offer co-location services.[7] When a User purchases a co-

[4] Subject to rule approvals, the migration to Pillar is currently anticipated to be on November 4, 2019. *See* Exchange Act Release Nos. 85297 (March 12, 2019), 84 FR 9854 (March 18, 2019) (SR–CHX–2018–03), and 86709 (August 20, 2019), 84 FR 44654 (August 26, 2019) (SR–CHX–2019–08).

[5] In July 2018, the Exchange and its direct parent company were acquired by NYSE Group, Inc. As a result, the Exchange and the Affiliate SROs are direct or indirect subsidiaries of NYSE Group, Inc. and, indirectly, Intercontinental Exchange, Inc. *See* Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR–CHX–2018–004); *see also* Exchange Act Release No. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004).

[6] Consistent with the Affiliate SRO Price Lists, for purposes of the Exchange's co-location services, a ''User'' shall mean any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release Nos. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40); 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67); and 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82); and 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (''NYSE National Co-location Notice'').

[7] With the exception of NYSE National, the Affiliate SROs initially filed rule changes relating to their co-location services and related fees with the Commission in 2010. *See* Securities Exchange Act Release Nos. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56); 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80); and 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). NYSE National initially filed rule changes relating to its co-location services and related fees with the Commission on May 18, 2018. *See* NYSE National Co-location Notice, *supra* note 6. If any change to the Affiliate SROs' colocation services become operative after the present filing is made but before it becomes operative, the Exchange would make an additional rule filing implementing the change, with the intention that the Exchange would offer the same co-location services offered by the Affiliate SROs.

location service, it is charged once for the service, despite the service being offered by all the Affiliate SROs. Under this proposal, Users purchasing co-location services would continue to pay once, even though all four Affiliate SROs and the Exchange would offer co-location services, and would receive access to the Affiliate SROs and the Exchange in the Mahwah, New Jersey data center (the ''data center'').

The Exchange proposes that the additions to the Fee Schedule to provide for co-location services would become operative upon the Exchange's migration to Pillar.

Currently, the Exchange's trading and execution systems are not in the data center. Once the migration to Pillar is completed, the trading of all securities on the Exchange will have moved to the data center. As a result of the migration, Users will be able to have low latency connections to the Exchange over the Liquidity Center Network (''LCN''), a local area network available in the data center, and so would be able to co-locate in the data center by ''rent[ing] space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems.'' [8] Absent this proposal to offer co-location services, market participants' access to the Exchange would solely be available outside of co-location, even after the migration of the Exchange's trading and execution systems to Pillar, and so they would not be able to ''reduce latency in transmitting market data and order messages'' to the Exchange.[9]

The Exchange operates in a highly competitive environment. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation National Market System (''NMS''), the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

[8] *See* 75 FR 59310, *supra* note 7.

[9] *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 CFR 3594 (January 21, 2010), at 3598 (concept release on equity market structure).

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Proposed Services and Fees

The Exchange proposes the same services and fees set forth in the price lists and fee schedules of its Affiliate SROs (collectively, the ''Affiliate SRO Price Lists''),[11] with the non-substantive differences described below. No new or novel services or fees are proposed and, as described below, current Users of the Affiliate SROs' co-location services would not incur any new fees.

Definitions

The Exchange proposes to adopt the definitions of ''Affiliate,'' ''Aggregate Cabinet Footprint,'' ''Hosted Customer,'' ''Hosting User,'' and ''User'' as set forth in the Affiliate SRO Price Lists. Specifically, the Exchange proposes the following definitions:

- An ''Affiliate'' of a User is any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User.
- ''Aggregate Cabinet Footprint'' of a User or Hosted Customer is (a) for a User, the total kW of the User's cabinets, including both partial and dedicated cabinets, and (b), for a Hosted Customer, the total kW of the portion of the Hosting User's cabinet, whether partial or dedicated, allocated to such Hosted Customer.
- A ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space.
- A ''Hosting User'' means a User of co-location services that hosts a Hosted Customer in the User's co-location space.
- A ''User'' means any market participant that requests to receive co-location services directly from the Exchange.

As in the Affiliate SRO Price Lists, the Exchange would specify that the definitions were for purposes of the co-location fees only.

[11] *See* ''Co-Location Fees'' in ''New York Stock Exchange Price List 2019'' (''NYSE Price List'') at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* ''NYSE American Equities Price List'' (''NYSE American Equities Price List'') at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf;* ''NYSE American Options Fee Schedule'' (''NYSE American Options Fee Schedule'') at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf;* ''NYSE Arca Equities Fees and Charges'' (''NYSE Arca Equities Fee Schedule'') at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* ''NYSE Arca Options Fees and Charges'' (''NYSE Arca Options Fee Schedule'') at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* and ''NYSE National, Inc. Schedule of Fees and Rebates'' (''NYSE National Fee Schedule'') at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

General Notes

The Exchange proposes to adopt General Notes 1 through 4 as set forth in the Affiliate SRO Price Lists, subject to the differences discussed below.

General Note 1: General Note 1 of the Affiliate SRO Price Lists provides that a User that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service charged by the other Affiliate SROs. The wording of General Note 1 differs among the Affiliate SRO Price Lists both where it references the relevant price list or fee schedule and where it lists the relevant exchange's affiliates.[12]

The Exchange proposes to adopt the following General Note 1: [13]

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (NYSE), NYSE American LLC (NYSE American), NYSE Arca, Inc. (NYSE Arca) and NYSE National (NYSE National).

General Note 2: The Exchange proposes the same General Note 2 as in the Affiliate SRO Price Lists, setting forth the requirements for qualifying for a ''Partial Cabinet Solution'' bundle.[14] The proposed text is as follows:

To qualify for a Partial Cabinet Solution bundle, a User must meet the following conditions: (1) It must purchase only one Partial Cabinet

[12] For example, the NYSE Arca Options Fee Schedule provides that ''[a] User that incurs co-location fees for a particular co-location service pursuant to this *Fee Schedule* shall not be subject to co-location fees for the same co-location service charged pursuant to the *NYSE Arca Equities Fee Schedule* or by the Exchange's affiliates *NYSE American LLC (NYSE American), New York Stock Exchange LLC (NYSE) and NYSE National, Inc. (NYSE National)*'' (emphasis added) while the NYSE Price List provides that ''[a] User that incurs co-location fees for a particular co-location service pursuant to this *Price List* shall not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates *NYSE American LLC (NYSE American) and NYSE Arca, Inc. (NYSE Arca), and NYSE National, Inc. (NYSE National).*'' (emphasis added) The Exchange's proposed text for General Note 1 is consistent with the wording of General Note 1 in the NYSE Price List, with the exception that it will use ''this Fee Schedule'' instead of ''this Price List.''

[13] The Exchange expects that each Affiliate SRO will submit a proposed rule change to update General Note 1 to include NYSE Chicago as a provider of co-location services and to remove the definition of NYSE Chicago from General Note 4.

[14] *See* Securities Exchange Act Release Nos. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53); 77071 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR–NYSEMKT–2015–89); and 77070 (February 5, 2016), 81 FR 7401 (February 11, 2016) (SR–NYSEArca–2015–102); and NYSE National Co-location Notice, *supra* note 6, at 26315.

Solution bundle; (2) the User and its Affiliates must not currently have a Partial Cabinet Solution bundle; and (3) after the purchase of the Partial Cabinet Solution bundle, the User, together with its Affiliates, will have an Aggregate Cabinet Footprint of no more than 2 kW.

- A User requesting a Partial Cabinet Solution bundle will be required to certify to the Exchange (a) whether any other Users or Hosted Customers are Affiliates of the certificating User, and (b) that after the purchase of the Partial Cabinet Solution bundle, the User, together with its Affiliates, would have an Aggregate Cabinet Footprint of no more than 2 kW. The certificating User will be required to inform the Exchange immediately of any event that causes another User or Hosted Customer to become an Affiliate. The Exchange shall review available information regarding the entities and may request additional information to verify the Affiliate status of a User or Hosted Customer. The Exchange shall approve a request for a Partial Cabinet Solution bundle unless it determines that the certification is not accurate.
- If a User that has purchased a Partial Cabinet Solution bundle becomes affiliated with one or more other Users or Hosted Customers and thereby no longer meets the conditions for access to the Partial Cabinet Solution bundle, or if the User otherwise ceases to meet the conditions for access to the Partial Cabinet Solution bundle, the Exchange will no longer offer it to such User and the User will be charged for each of the services individually, at the price for each such service set out in the Fee Schedule. Such price change would be effective as of the date that the User ceased to meet the conditions.

In addition, a User that changes its Partial Cabinet Solution bundle from one option to another will not be subject to a second initial charge, but will be required to pay the difference, if any, between the bundles' initial charges.

General Note 3: The Exchange proposes the same General Note 3 as in the Affiliate SRO Price Lists, setting forth the provisions relating to the use of a waitlist.[15] The proposed text is as follows:

The initial and monthly charge for 2 bundles of 24 cross connects will be waived for a User that is waitlisted for a cage for the duration of the waitlist period, provided that the cross connects may only be used to connect the User's non-contiguous cabinets. The charge will no longer be waived once a User is removed from the waitlist.

- If a waitlist is created, a User seeking a new cage will be placed on the waitlist based on the date a signed order for the cage is received.
- A User that turns down a cage because it is not the correct size will remain on the waitlist. A User that requests to be removed or that turns down a cage that is the size that it requested will be removed from the waitlist.
- A User that is removed from the waitlist but subsequently requests a cage will be added back to the bottom of the waitlist, provided that, if the User was removed from the waitlist because it turned down a cage that is the size that it requested, it will not receive a second waiver of the charge.

General Note 4: Proposed General Note 4 would establish that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[16] a User would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of Global OTC (the ''Global OTC System'') and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. The proposed General Note 4 would be the same as the General Note 4 in the Affiliate SRO Price Lists.[17]

The Exchange proposes to adopt the following General Note 4:

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, Inc. (NYSE Chicago), and NYSE National (together, the Exchange Systems) as well as of Global OTC (the ''Global OTC System''), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National or Global OTC, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National or Global OTC. NYSE, NYSE American, NYSE Arca, NYSE Chicago and NYSE National also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems. Global OTC offers access to the Global OTC System to its subscribers, such that a User does not have to purchase access to the LCN or IP network to obtain access to the Global OTC System.

When a User purchases access to the LCN or IP network it receives connectivity to any of the Included Data Products that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Included Data Products are charged by the provider of the data feed. A User can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of the data feed. The Exchange is not the exclusive method to connect to the Included Data Products.

The Included Data Products are as follows:

NMS feeds

NYSE:

NYSE Alerts
NYSE BBO
NYSE Integrated Feed
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades

NYSE American:

NYSE American Alerts
NYSE American BBO
NYSE American Integrated Feed
NYSE American OpenBook
NYSE American Order Imbalances
NYSE American Trades

[15] *See* Securities Exchange Act Release Nos. 77681 (April 21, 2016), 81 FR 24915 (April 27, 2016 (SR–NYSE–2016–13); 77680 (April 21, 2016), 81 FR 24905 (April 27, 2016) (NYSEMKT–2016–17); and 77682 (April 21, 2016), 81 FR 24913 (April 27, 2016 (NYSEArca–2016–21); and NYSE National Co-location Notice, *supra* note 6, at 26315.

[16] *See* Securities Exchange Act Release Nos. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92); 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126); and 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172); and NYSE National Co-location Notice, *supra* note 6, at 26316.

[17] *See* Securities Exchange Act Release Nos. 85952 (May 29, 2019), 84 FR 25880 (June 4, 2019) (SR–NYSE–2019–31); 85960 (May 29, 2019), 84 FR 25848 (June 4, 2019) (SR–NYSEAmer–2019–21); 85958 (May 29, 2019), 84 FR 25858 (June 4, 2019) (SR–NYSEArca–2019–40); and 85959 (May 29, 2019), 84 FR 25887 (June 4, 2019) (SR–NYSENat–2019–13); *see also* Securities Exchange Act Release Nos. 85300 (March 13, 2019), 84 FR 10152 (March 19, 2019) (SR–NYSE–2019–11); 85302 (March 13, 2019), 84 FR 10164 (March 19, 2019) (SR–NYSEAmer–2019–02); 85306 (March 13, 2019), 84 FR 10159 (March 19, 2019) (SR–NYSEArca–2019–11); 85305 (March 13, 2019), 84 FR 10154 (March 19, 2019) (SR–NYSENat–2019–05; 83404 (June 11, 2018), 83 FR 28048 (June 15, 2018) (SR–NYSE–2018–23); 83402 (June 11, 2018), 83 FR 28041 (June 15, 2018) (SR–NYSEAmer–2018–23); and 83403 (June 11, 2018), 83 FR 28053 (June 15, 2018) (SR–NYSEArca–2018–36).

NYSE American Options

NYSE Arca:

NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Integrated Feed
NYSE Arca Order Imbalances
NYSE Arca Trades
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE Chicago
NYSE National

Cabinet-Related Fees

The Exchange proposes the same services and fees set forth in the Affiliate SRO Price Lists under ''Initial Fee per Cabinet''; ''Monthly Fee per Cabinet''; ''Cabinet Upgrade Fee''; ''PNU Cabinet''; and ''Cage Fees'' (collectively, the ''Cabinet-Related Fees'').

Initial Fee per Cabinet and Monthly Fee per Cabinet: As in the Affiliate SRO Price Lists, the Exchange proposes that, to house its servers and other equipment in the data center, a User have the option of an entire cabinet dedicated solely to that User (''dedicated cabinet'') or a partial cabinet alternative (''partial cabinet'').[18] Partial cabinets would be made available in increments of eight-rack units of space. Users would pay an initial fee and a monthly fee based on the number of kilowatts (''kW'').

Cabinet Upgrade Fee: Users that require additional power allocation may prefer to maintain their hardware within one of their existing cabinets rather than add an additional cabinet. Specifically, Users may develop their hardware infrastructure within a particular cabinet in such a way that, if expansion of such hardware is needed, it can be accomplished within the space constraints of that particular cabinet. If this type of User requires additional power allocation, it would likely want to modify its existing cabinet in this manner, rather than taking an additional dedicated cabinet due to the expense of re-developing its infrastructure within such additional dedicated cabinet. Accordingly, as in the Affiliate SRO Price Lists, the Exchange would offer Users the option of a ''Cabinet Upgrade'' and related fee, pursuant to which the Exchange would accommodate requests for additional power allocation beyond the typical amount that the Exchange allocates per dedicated cabinet, at which point the Exchange must upgrade the cabinet's power capacity.[19]

The Exchange notes that the Cabinet Upgrade Fees in the Affiliate SRO Price Lists have a parenthetical setting forth lower fees for a User that submitted a written order for a Cabinet Upgrade by January 31, 2014, provided that the Cabinet Upgrade became fully operational by March 31, 2014. Because a User that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service charged by the Affiliate SROs and such Users may already be subject to this different charge based on the Price List of an Affiliate SRO, the Exchange proposes to maintain the information regarding the lower price on its Fee Schedule.

PNU Fee: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users the option of an unused cabinet for which power is not utilized (''PNU cabinet'') and charge a monthly fee.[20] A User may wish to have a PNU cabinet it reserves for future use. Although PNU cabinets do not use power, when the Exchange establishes a PNU cabinet, it would include wiring, circuitry, and hardware and allocate kWs of unused power capacity. This would allow the PNU cabinet to be powered and used promptly upon the User's request.

Cage Fee: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users the use of cages to house their cabinets within the data center, with initial and monthly charges based on the size of the cage.[21] A cage would typically be purchased by a User that has several cabinets within the data center and that wishes to enhance privacy around its cabinets, *e.g.,* so that other Users cannot see what type of hardware is being utilized.

The Exchange proposes to add the following fees and language to its Fee Schedule:

Initial Fee per Cabinet	
Dedicated Cabinet	$5,000
8-Rack Unit of a Partial Cabinet	$2,500
Monthly Fee per Cabinet	
Dedicated Cabinet:	
Number of kWs	Per kW Fee Monthly
4–8	$1,200
9–20	$1,050
21–40	$950
41+	$900
8-Rack Unit of a Partial Cabinet:	
Number of kWs	Total Fee Monthly
1	$1,500
2	$2,700
Cabinet Upgrade Fee	
Dedicated Cabinet	$9,200 ($4,600 for a User that submitted a written order for a Cabinet Upgrade by January 31, 2014, provided that the Cabinet Upgrade became fully operational by March 31, 2014).

[18] *See* Securities Exchange Act Release Nos. 71122 (December 18, 2013), 78 FR 77739 (December 24, 2013) (SR–NYSE–2013–81); 71131 (December 18, 2013), 78 FR 77750 (December 24, 2013) (SR–NYSEMKT–2013–103); and 71130 (December 18, 2013), 78 FR 77765 (December 24, 2013) (SR–NYSEArca–2013–143) and NYSE National Co-location Notice, *supra* note 6, at 26316.

[19] *See id.*

[20] *See* Securities Exchange Act Release Nos. 70913 (November 21, 2013), 78 FR 70987 (November 27, 2013 (SR–NYSE–2013–74); 70914 (November 21, 2013), 78 FR 71000 (November 27, 2013) (SR–NYSEMKT–2013–93); and 70916 (November 21, 2013), 78 FR 70989 (November 21, 2013) (SR–NYSEArca–2013–124) and NYSE National Co-location Notice, *supra* note 6, at 26316.

[21] *See* Securities Exchange Act Release Nos. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18); 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR–NYSEMKT–2012–11); 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR–NYSEArca–2012–62); and 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR–NYSEArca–2012–63); and NYSE National Co-location Notice, *supra* note 6, at 26316.

PNU Cabinet	monthly charge of $360 per kW allocated to PNU Cabinet.
Cage Fees	
2–14 Cabinets	$5,000 initial charge plus $2,700 monthly charge.
15–28 Cabinets	$10,000 initial charge plus $4,100 monthly charge.
29+ Cabinets	$15,000 initial charge plus $5,500 monthly charge.

Access and Service Fees

The Exchange proposes to adopt the same services and fees set forth in the Affiliate SRO Price Lists under ''LCN Access''; ''Bundled Network Access''; ''Partial Cabinet Solution bundles''; ''IP Network Access''; ''Testing and Certification IP Network Access''; ''Wireless Connections for Third Party Data''; ''Virtual Control Circuit between two Users''; ''Hosting Fee''; ''Data Center Fiber Cross Connect''; ''Connection to Time Protocol Feed'' and ''Expedite Fee'' (collectively, the ''Access and Service Fees'').

LCN Access: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users the option to purchase 1 Gb, 10 Gb, 40 Gb, and 10 Gb LX LCN circuits, with initial and monthly charges.[22] As in the Affiliate SRO Price Lists, the Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable. This would apply to a User that purchases six 10 Gb LCN connections at one time as well as to a User that purchases six 10 Gb LCN connections at separate times.[23]

Bundled Network Access: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users two ''Bundled Network Access'' options, with initial and monthly charges.[24] Both bundles would include two LCN connections, two IP network connections, and two optic connections to outside access centers. One bundle would have 1 Gb connections, and the other 10 Gb connections.

Partial Cabinet Solution Bundles: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users four ''Partial Cabinet Solution'' bundles.[25] Each Partial Cabinet Solution bundle option would include a one or two kW partial cabinet, one LCN connection, one IP network connection, two fiber cross connections, and connectivity to either the Network Time Protocol (''NTP'') or Precision Timing Protocol (''PTP'') time feed. The power of the partial cabinet and Gb of the network connections would vary by bundle.[26] A User and its Affiliates would be limited to one Partial Cabinet Solution bundle at a time, and must have an Aggregate Cabinet Footprint of 2 kW or less to qualify. As noted above, such requirements would be set forth in General Note 2.[27] Finally, a User purchasing a Partial Cabinet Solution bundle would be subject to a 90-day minimum commitment, after which period it would be subject to the 60-day rolling time period.

IP Network Access: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users the option to purchase 1 Gb, 10 Gb, and 40 Gb IP network circuits, with initial and monthly charges.[28]

Testing and Certification IP Network Access: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users access to an IP network circuit for testing and certification at no charge.[29] The circuit could only be used for testing and certification, and the testing and certification period would be limited to three months.

Wireless Connections for Third Party Data: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users a means to receive market data feeds from third party markets (''Wireless Third Party Data'') through a wireless connection, for an initial and monthly fee.[30] Fees would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. The wireless connections would include the use of one port for connectivity to the Wireless Third Party Data. If a User that has more than one wireless connection wishes to use more than one port to connect to the Wireless Third Party Data, the Exchange proposes to make such additional ports available for a monthly fee per port.[31]

Virtual Control Circuit between two Users: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users ''Virtual Control Circuits'' (''VCCs'') between two Users for a monthly charge based on the size of the VCC. [32] VCCs are connections between two points over dedicated bandwidth using the IP network. A VCC is a two-way connection which the two participants can use for any purpose. The Exchange would bill the User requesting the VCC, but would not set up a VCC until the other User confirmed that it wishes to have the VCC set up.

Hosting Fee: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users a hosting service for a monthly fee per cabinet per Hosted Customer for each cabinet in which such Hosted Customer is hosted.[33] ''Hosting'' would be a service offered by a User to another entity in the User's

[22] *See* note 16, *supra.*

[23] *See* note 21, *supra.*

[24] *See* note 16, *supra.*

[25] *See* note 14, *supra;* Securities Exchange Act Release Nos. 84893 (December 20, 2018), 83 FR 67455 (December 28, 2018) (SR–NYSE–2018–63); 84925 (December 21, 2018), 83 FR 67754 (December 31, 2018) (SR–NYSEAmer–2018–55); 84893 (December 20, 2018), 83 FR 67455 (December 28, 2018) (SR–NYSEArca–2018–93); and 84895 (December 20, 2018), 83 FR 67405 (December 28, 2018) (SR–NYSENat–2018–26).

[26] The Affiliate SROs have filed to amend two of the Partial Cabinet Solution bundles by replacing the 10 Gb LCN connection with a LCN 10 Gb LX connection. According to the Affiliate SROs, the change is expected to become operative during the fourth quarter of 2019, and the implementation date will be announced through a customer notice. *See* Securities Exchange Act Release Nos. 86550 (August 1, 2019), 84 FR 38696 (August 7, 2019) (SR–NYSE–2019–41); 86548 (August 1, 2019), 84 FR 38704 (August 7, 2019) (SR–NYSEAmer–2019–28); 86547 (August 1, 2019), 84 FR 38708 (August 7, 2019) (SR–NYSEArca–2019–54); and 86549 (August 1, 2019), 84 FR 38700 (August 7, 2019) (SR–NYSENat–2019–17). The Exchange proposes to include notes to the Partial Cabinet Solution bundles in the Fee Schedule indicating the expected change.

[27] *See* text accompanying note 14, *supra.*

[28] *See* note 16, *supra. See also* Securities Exchange Act Release Nos. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015 (SR–NYSE–2015–05); 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08); and 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) and NYSE National Co-location Notice, *supra* note 6, at 26317.

[29] *See id.* 80 FR at 7888, 80 FR at 7894, 80 FR at 7899, and NYSE National Co-location Notice, *supra* note 6, at 26318.

[30] *See* Securities Exchange Act Release Nos. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52); 76750 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR–NYSEMKT–2015–85); and 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR–NYSEArca–2015–99); and NYSE National Co-location Notice, *supra* note 6, at 26318.

[31] *Id.*

[32] *See* Securities Exchange Act Release Nos. 80311 (March 24, 2017), 82 FR 15749 (March 30, 2017) (SR–NYSE–2016–45); 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63); and 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89); and NYSE National Co-location Notice, *supra* note 6, at 26318.

[33] *See* note 6, *supra.*

space within the data center and could include, for example, a User supporting such other entity's technology, whether hardware or software, through the User's co-location space. A Hosting User would be required to be a User pursuant to the definition of User proposed above. Since only Users could be Hosting Users, a Hosted Customer would not be able to provide hosting services to any other entities in the space in which it is hosted.

Data Center Fiber Cross Connect: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users fiber cross connects for an initial and monthly charge.[34] A User would be able to use cross connects between its cabinets or between its cabinet(s) and the cabinets of separate Users within the data center. A cross connect would be used to connect cabinets of separate Users when, for example, a User receives technical support, order routing, and/or market data delivery services from another User in the data center. Cross connects may be bundled (*i.e.,* multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or several cross connects in multiples of six (*e.g.,* six or 12 cross connects). The Exchange is proposing fees for bundled cross connects that correspond to the number of cross connects in the bundle.

Connection to Time Protocol Feed: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users the option to purchase connectivity to one or more of three time feeds, with monthly and initial charges.[35] Each proposed time feed would provide a feed with the current time of day using one of three different time protocols: GPS Time Source, the Network Time Protocol Feed (''NTP''), and the Precision Time Protocol (''PTP''). Users may make use of time feeds to receive time and to synchronize clocks between computer systems or throughout a computer network, and time feeds may assist Users in other functions, including record keeping or measuring response times. Only the NTP and PTP time feeds would be available to partial cabinet Users, whereas dedicated cabinet Users would have access to all three time feeds. The NTP feed would only be available on the LCN.

Expedite Fee: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users the option to expedite the completion of co-location services purchased or ordered by the User, for which the Exchange would charge an ''Expedite Fee.'' [36]

The Exchange proposes to add the following fees and language to its Fee Schedule:

Type of service	Description	Amount of charge
LCN Access	1 Gb Circuit	$6,000 per connection initial charge plus $5,000 monthly per connection.
LCN Access	10 Gb Circuit	$10,000 per connection initial charge plus $14,000 monthly per connection. A User that purchases 5 10 GB LCN Circuits will receive the 6th 10 GB LCN Circuit without an additional monthly charge.
LCN Access	10 Gb LX Circuit	$15,000 per connection initial charge plus $22,000 monthly per connection.
LCN Access	40 Gb Circuit	$15,000 per connection initial charge plus $22,000 monthly per connection.
Bundled Network Access (2 LCN connections, 2 IP network connections, and 2 optic connections to outside access center).	1 Gb Bundle	$25,000 initial charge plus $13,000 monthly charge.
	10 Gb Bundle	$50,000 initial charge plus $53,000 monthly charge.
Partial Cabinet Solution bundles Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2019: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2019: $6,000 monthly.
	Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2019: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2019: $7,000 monthly.

[34] *See* note 21, *supra.*

[35] *See* note 14, *supra.*

[36] *See* note 21, *supra.*

Type of service	Description	Amount of charge
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb),* 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol. * The LCN connection (10 Gb) will be replaced with an LCN connection (10 Gb LX) on a date to be announced by customer notice, expected to be during the fourth quarter of 2019.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2019: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2019: $14,000 monthly. $10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2019: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2019: $14,000 monthly.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb),* 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol. * The LCN connection (10 Gb) will be replaced with an LCN connection (10 Gb LX) on a date to be announced by customer notice, expected to be during the fourth quarter of 2019.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2019: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2019: $15,000 monthly.
IP Network Access	1 Gb Circuit	$2,500 per connection initial charge plus $2,500 monthly per connection.
IP Network Access	10 Gb Circuit	$10,000 per connection initial charge plus $11,000 monthly per connection.
IP Network Access	40 Gb Circuit	$10,000 per connection initial charge plus $18,000 monthly per connection.
Testing and certification IP Network Access	IP network circuit for testing and certification. Circuit can only be used for testing and certification and testing and certification period is limited to three months.	No charge.
Wireless Connection for Third Party Data	Wireless connection of Cboe Pitch BZX Gig shaped data and Cboe Pitch BYX Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of Cboe EDGX Gig shaped data and Cboe EDGA Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of NASDAQ Totalview-ITCH data.	$5,000 per connection initial charge plus monthly charge per connection of $8,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of NASDAQ BX Totalview-ITCH data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of NASDAQ Totalview Ultra (FPGA).	$5,000 per connection initial charge plus monthly charge per connection of $11,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of NASDAQ Totalview-ITCH and BX Totalview-ITCH data.	$5,000 per connection initial charge plus monthly charge per connection of $12,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of NASDAQ Totalview Ultra (FPGA) and BX Totalview-ITCH data.	$5,000 per connection initial charge plus monthly charge per connection of $14,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of Toronto Stock Exchange (TSX).	$5,000 per connection initial charge plus monthly charge per connection of $8,500.

Type of service	Description	Amount of charge
		Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Port for wireless connection	$3,000 monthly charge per port, excluding first port.
Virtual Control Circuit between two Users	1Mb	$200 monthly charge.
	3Mb	$400 monthly charge.
	5Mb	$500 monthly charge.
	10Mb	$800 monthly charge.
	25Mb	$1,200 monthly charge.
	50Mb	$1,800 monthly charge.
	100Mb	$2,500 monthly charge.
Hosting Fee		$1,000 monthly charge per cabinet per Hosted Customer for each cabinet in which such Hosted Customer is hosted.
Data Center Fiber Cross Connect	Furnish and install 1 cross connect	$500 initial charge plus $600 monthly charge.
	Furnish and install bundle of 6 cross connects	$500 initial charge plus $1,800 monthly charge.
	Furnish and install bundle of 12 cross connects.	$500 initial charge plus $3,000 monthly charge.
	Furnish and install bundle of 18 cross connects.	$500 initial charge plus $3,840 monthly charge.
	Furnish and install bundle of 24 cross connects.	$500 initial charge plus $4,680 monthly charge See General Note 3.
Connection to Time Protocol Feed	Network Time Protocol Feed (Note: LCN only)	$300 initial charge plus $100 monthly charge.
	Precision Time Protocol	$1,000 initial charge plus $250 monthly charge.
	GPS Time Source (Note: dedicated cabinets only).	$3,000 initial charge plus $400 monthly charge.
Expedite Fee	Expedited installation/completion of a User's co-location service.	$4,000 per request.

Service-Related Fees

The Exchange proposes to adopt the same services and fees set forth in the Affiliate SRO Price Lists under ''Change Fee''; ''Initial Install Services''; ''Hot Hands Service''; ''Shipping and Receiving''; ''Badge Request''; ''External Cabinet Cable Tray''; ''Custom External Cabinet Cable Tray'' and ''Visitor Security Escort'' (collectively, the ''Service-related Fees'') and related note, as follows.

Change Fee: As in the Affiliate SRO Price Lists, the Exchange proposes to charge a User a ''Change Fee'' if the User requests a change to one or more existing co-location services that the Exchange has already established or completed for the User.[37] The Change Fee would be charged per order. If a User ordered two or more services at one time (for example, through submitting an order form requesting multiple services) the User would be charged a one-time Change Fee, which would cover the multiple services.

Initial Install Services: As in the Affiliate SRO Price Lists, the Exchange proposes to charge a User an ''Initial Install Services'' fee for the installation of a dedicated or partial cabinet.[38] The proposed fee would be lower for a partial cabinet. The Initial Install Services fee would include initial racking of equipment in the cabinet, provision of cables and labor. The number of hours would depend on whether the cabinet was partial or dedicated.

Hot Hands Service: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users a ''Hot Hands'' service, which would allow Users to use on-site data center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[39] The Hot Hands fee would be charged per half hour.

Shipping and Receiving: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users shipping and receiving services, with a per shipment fee for the receipt of one shipment of goods at the data center from the User or supplier.[40]

Badge Request: As in the Affiliate SRO Price Lists, the Exchange proposes to offer Users the option to obtain a permanent data center site access badge for a User representative. [41]

External Cabinet Cable Tray: As in the Affiliate SRO Price Lists, the Exchange proposes to offer to engineer, furnish and install a Rittal 5″H x 12″W cable tray on a cabinet for a flat fee per tray.[42]

Custom External Cabinet Cable Tray: As in the Affiliate SRO Price Lists, the Exchange proposes to offer to engineer, furnish and install 4″ H x 24″ W custom basket cable tray above a client's cabinet rows for a fee per linear foot. [43]

Visitor Security Escort: As in the Affiliate SRO Price Lists, the Exchange proposes that User representatives be required to be accompanied by a visitor security escort during visits to the data center, unless visiting the User's cage. A fee per visit would be charged.[44] The proposed requirement would include User representatives who have a permanent data center site access badge.

In order to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, if necessary, the Exchange would exercise its right to move some Users' equipment within the

[37] *See id.*

[38] *See* note 18, *supra.*

[39] *See* Securities Exchange Act Release Nos. 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37); 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61); and 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81); and NYSE National Co-location Notice, *supra* note 6, at 26320.

[40] *See* note 7, *supra.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *See* note 15, *supra.*

data center (''Migration''). To manage the process for a future Migration, the Exchange proposes to put the same Migration procedures in place as the Affiliate SROs, as follow:[45]

- First, the Exchange would identify Users that would be required to move in the Migration based on (a) the current location of the User and its current equipment and power requirements and (b) the availability of another location in the Data Center that would accommodate the equipment and power requirements for which such User currently subscribes. No User would be required to move more than once within any 12-month period.
- Second, the Exchange would notify a User in writing (the ''Notice'') that the User's equipment and network connections in the Data Center were to be moved as part of the Migration. The Notice would identify the 90-day period during which the User must move its equipment, which period would commence at least 60 days from the date of the Notice. The exact date or dates for the move for each User would be agreed upon between the User and the Exchange. If a move date or dates cannot be agreed on, the Exchange would schedule the move for a date or dates no later than 180 days after the date of the Notice.
- Third, each User's move would be facilitated by the Exchange in cooperation with the User, including the un-racking and re-racking of all of the User's equipment, and the re-installation of the User's networking connections, and the Exchange would make reasonable efforts to ensure that the moves take place outside of the Exchange's hours for business.
- Fourth, in connection with facilitating each User's move, the Exchange proposes to waive certain fees. Specifically, the Exchange proposes to waive:
  - The monthly recurring fees for the User's existing space, based on the rate of the monthly recurring fees that the User is paying as of the date of the Notice, for the month during which the User's move takes place. This waiver of the monthly recurring fees would mean that the User would not incur these fees for the period of overlapping use of the equipment and services in the old and the new locations, as long as the move is completed within one month.
  - all Service-Related Fees that the User would incur if such a move were to take place at a User's request with respect to the User's existing services and equipment.
  - for the month following the completion of a User's move, the monthly recurring charges for that User, based on the rate of the monthly recurring fees that the User is paying as of the date of the Notice, in consideration for the Migration.

The Exchange proposes to add a note to each Service-Related Fee outlining the Migration process, as in the Affiliate SRO Price Lists.[46] The Exchange proposes to add the following fees and note to its Fee Schedule:

Type of service	Description	Amount of charge
Change Fee ***	Change to a co-location service that has already been installed/completed for a User.	$950 per request.
Initial Install Services *** (Required per cabinet).	Dedicated Cabinet: Includes initial racking of equipment in cabinet and provision of cables (4 hrs)..	$800 per dedicated cabinet.
	Partial Cabinet: Includes initial racking of equipment in cabinet and provision of cables (2 hrs)..	$400 per eight-rack unit in a partial cabinet.
Hot Hands Service ***	Allows Users to use on-site data center personnel to maintain User equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable..	$100 per half hour.
Shipping and Receiving ***	Receipt of one shipment of goods at data center from User/supplier. Includes coordination of shipping and receiving..	$100 per shipment.
Badge Request ***	Request for provision of a permanent data center site access badge for a User representative..	$50 per badge.
External Cabinet Cable Tray ***	Engineer, furnish and install Rittal 5''H x 12''W cable tray on cabinet.	$400 per tray.
Custom External Cabinet Cable Tray ***.	Engineer, furnish and install 4'' H x 24'' W custom basket cable tray above client's cabinet rows..	$100 per linear foot.
Visitor Security Escort ***	All User representatives are required to be accompanied by a visitor security escort during visits to the data center, unless visiting the User's cage. Requirement includes User representatives who have a permanent data center site access badge..	$75 per visit.

*** These fees are waived for the move of a User's equipment within the Data Center when incurred in connection with such a move required by the Exchange (''Migration Move''). A User selected by the Exchange for a Migration Move will receive written notice (the ''Notice''). The Notice will identify the 90-day period during which a User must move its equipment, which period would commence at least 60 days from the date of the Notice. Monthly recurring fees for the User's existing space based on the rate of the monthly recurring fees that the User was paying as of the date of the Notice are also waived for the month during which a User's Migration Move takes place, so the User would not incur these fees for the period of overlapping use of equipment and services in the old and new locations. In addition, the monthly recurring charges are waived for the month following the completion of a User's Migration Move, based on the rate of the monthly recurring fees that the User was paying as of the date of the Notice. No User will be required to move more than once within any 12-month period.

Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchange proposes to adopt the same services and fees set forth in the Affiliate SRO Price Lists under ''Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC.''[47]

Connectivity to Third Party Systems: As in the Affiliate SRO Price Lists, the Exchange proposes to provide that Users may obtain access to the trading and execution services of Third Party markets and other content service providers (''Third Party Systems'') of multiple third party markets and other

[45] *See* Securities Exchange Act Release Nos. 76269 (October 26, 2015), 80 FR 66942 (October 30, 2015) (SR–NYSE–2015–42); 76268 (October 26, 2015), 80 FR 66944 (October 30, 2015) (SR–NYSEMKT–2015–70); and 76270 (October 26, 2015), 80 FR 66958 (October 30, 2015) (SR–NYSEArca–2015–85); and NYSE National Co-location Notice, *supra* note 6, at 26321.

[46] The Exchange notes that, while the other Affiliate SRO Price Lists use three asterisks to identify the Service-Related Fees and the corresponding note, the NYSE Amex Options Fee Schedule uses the numeral ''1''. The Exchange proposes to use three asterisks.

[47] *See* note 32, *supra.*

content service providers for a fee.[48] Users would connect to Third Party Systems over the IP network.

In order to obtain access to a Third Party System, a User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Third Party System. The Exchange would then establish a unicast connection between the User and the relevant third party content service provider over the IP network. The Exchange would charge the User for the connectivity to the Third Party System. A User would only receive, and would only be charged for, access to Third Party Systems for which it enters into agreements with the third party content service provider.

With the exception of the ICE feed, the Exchange would have no ownership interest in the Third Party Systems. Establishing a User's access to a Third Party System would not give the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to a Third Party System would not be through the Exchange's execution system.

The Exchange would charge a monthly recurring fee for connectivity to a Third Party System. Specifically, when a User requested access to a Third Party System, it would identify the applicable third party market or other content service provider and what bandwidth connection it required.

The Exchange proposes to add the following fees and language to its Fee Schedule:

Connectivity to Third Party Systems

Pricing for access to the execution systems of third party markets and other service providers (Third Party Systems) is for connectivity only. Connectivity to Third Party Systems is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to Third Party Systems is over the IP network. Any applicable fees are charged independently by the relevant third party content service provider. The Exchange is not the exclusive method to connect to Third Party Systems.

[48] *See id. See also* Securities Exchange Release Nos. 83706 (July 25, 2018), 83 FR 37033 (July 31, 2018) (SR–NYSE–2018–32; 83707 (July 25, 2018), 83 FR 36985 (July 31, 2018) (SR–NYSEAmer–2018–35); 83708 (July 25, 2018), 83 FR 36980 (July 31, 2018) (SR–NYSEArca–2018–52); and 83709 (July 25, 2018), 83 FR 37028 (July 31, 2018) (SR–NYSENat–2018–15).

Bandwidth of connection to Third Party System	Monthly recurring fee per connection to Third Party System
1 Mb	$200
3 Mb	400
5 Mb	500
10 Mb	800
25 Mb	1,200
50 Mb	1,800
100 Mb	2,500
200 Mb	3,000
1 Gb	3,500

Third Party Systems

Americas Trading Group (ATG)
BM&F Bovespa
Boston Options Exchange (BOX)
Canadian Securities Exchange (CSE)
Cboe BYX Exchange (CboeBYX), Cboe BZX Exchange (CboeBZX), Cboe EDGA Exchange (CboeEDGA), and Cboe EDGX Exchange (CboeEDGX)
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)
Chicago Mercantile Exchange (CME Group)
Credit Suisse
Euronext Optiq Cash and Derivatives Unicast (EUA)
Euronext Optiq Cash and Derivatives Unicast (Production)
Investors Exchange (IEX)
ITG TriAct Matchnow
Miami International Securities Exchange
MIAX PEARL
Nasdaq
NASDAQ Canada (CXC, CXD, CX2)
NASDAQ ISE
Neo Aequitas
NYFIX Marketplace
Omega
OneChicago
OTC Markets Group
TMX Group

Connectivity to Third Party Data Feeds: As in the Affiliate SRO Price Lists, the Exchange proposes to provide that Users may obtain connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'') for a fee.[49] The Exchange would receive Third Party Data Feeds from multiple national securities exchanges and other content service providers at its data center. It would then provide connectivity to that data to Users for a fee. With the exceptions of Global OTC and ICE Data Global Index, Users would connect to Third Party Data Feeds over the IP network.

In order to connect to a Third Party Data Feed, a User would enter into a contract with the relevant third party market or other content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the data provider and User enter into the contract and the Exchange receives authorization from the data provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Third Party Data Feeds for which it entered into contracts.

[49] *Id.*

With the exception of the ICE Data Services, ICE and Global OTC feeds, the Exchange would have no affiliation with the sellers of the Third Party Data Feeds. It would have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds would not provide access or order entry to the Exchange's execution system. With the exception of the ICE feeds, the Third Party Data Feeds would not provide access or order entry to the execution systems of the third party generating the feed. The Exchange would receive Third Party Data Feeds via arms-length agreements and would have no inherent advantage over any other distributor of such data.

The Exchange would charge a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee would be per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated FeedsShared Farm feeds), SR Labs–SuperFeeds and MSCI feeds would vary by the bandwidth of the connection. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in a Third Party Data Feed.

Third Party Data Feed providers may charge redistribution fees. The Exchange proposes that, when it receives a redistribution fee, it pass through the charge to the User, without change to the fee. The fee would be labeled as a pass-through of a redistribution fee on the User's invoice. As in the Affiliate SRO Price Lists, the Exchange proposes to add language to the Fee Schedule accordingly.

The Exchange proposes that it not charge Users that are third party markets or content providers for connectivity to their own feeds, as it understands that such parties generally receive their own feeds for purposes of diagnostics and testing. As in the Affiliate SRO Price Lists, the Exchange proposes to add language to the Fee Schedule accordingly.

The Exchange proposes to add the following fees and language to its Fee Schedule:

Connectivity to Third Party Data Feeds

Pricing for data feeds from third party markets and other content service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to Third Party Data Fees is over the IP network, with the exception that Users can connect to Global OTC and ICE Data Global Index over the IP network or LCN. Market data fees are charged independently by the relevant third party market or content service provider. The Exchange is not the exclusive method to connect to Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees. When the Exchange receives a redistribution fee, it passes through the charge to the User, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the User's invoice. The Exchange does not charge third party markets or content providers for connectivity to their own feeds.

Third party data feed	Monthly recurring connectivity fee per third party data feed
BM&F Bovespa	$3,000
Boston Options Exchange (BOX)	1,000
Canadian Securities Exchange (CSE)	1,000
Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX)	2,000
Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA)	2,000
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)	2,000
CME Group	3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
ICE Data Global Index	100
ICE Data Services Consolidated Feed ≤100 Mb	200
ICE Data Services Consolidated Feed >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed >1 Gb	1,000
ICE Data Services Consolidated Feed Shared Farm ≤100Mb	200
ICE Data Services Consolidated Feed Shared Farm >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed Shared Farm >1 Gb	1,000
ICE Data Services PRD	200
ICE Data Services PRD CEP	400
Intercontinental Exchange (ICE)	1,500
Investors Exchange (IEX)	1,000
ITG TriAct Matchnow	1,000
Miami International Securities Exchange/MIAX PEARL	2,000
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ OMDF	100
NASDAQ UQDF & UTDF	500
NASDAQ Canada (CXC, CXD, CX2)	1,500
NASDAQ ISE	1,000
Neo Aequitas	1,200
Omega	1,000
OneChicago	1,000
OTC Markets Group	1,000
SR Labs—SuperFeed <500 Mb	250
SR Labs—SuperFeed >500 Mb to <1.25 Gb	800
SR Labs—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

Connectivity to Third Party Testing and Certification Feeds: As in the Affiliate SRO Price Lists, the Exchange proposes to provide that Users may obtain connectivity to third party testing and certification feeds.[50] Certification feeds would be used to certify that a User conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data, while testing feeds would provide Users an environment in which to conduct tests with non-live data. Such feeds, which would solely be used for certification and testing and do not carry live production data, would be available over the IP network.

The Exchange proposes to add the following fees and language to its Fee Schedule:

[50] *Id.*

Connectivity to Third Party Testing and Certification Feeds

The Exchange provides connectivity to third party testing and certification feeds provided by third party markets and other content service providers. Pricing for third party testing and certification feeds is for connectivity only. Connectivity to third party testing and certification feeds is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to third party testing and certification feeds is over the IP network. Any applicable fees are charged independently by the relevant third party market or content service provider. The Exchange is not the exclusive method to connect to third party testing and certification feeds.

Connectivity to third party certification and testing feeds.	$100 monthly recurring fee per feed.

Connectivity to DTCC: As in the Affiliate SRO Price Lists, the Exchange proposes to provide Users connectivity to Depository Trust & Clearing Corporation (''DTCC'') for clearing, fund transfer, insurance, and settlement services.[51]

In order to connect to DTCC, a User would enter into a contract with DTCC, pursuant to which DTCC would charge the User for the services provided. The Exchange would receive the DTCC feed over its fiber optic network and, after DTCC and the User entered into the services contract and the Exchange received authorization from DTCC, the Exchange would provide connectivity to DTCC to the User over the User's IP network port. The Exchange would charge the User for the connectivity to DTCC.

Connectivity to DTCC would not provide access or order entry to the Exchange's execution system, and a User's connection to DTCC would not be through the Exchange's execution system.

The Exchange proposes to add the following fees and language to its Fee Schedule:

Connectivity to DTCC

Pricing for connectivity to DTCC feeds is for connectivity only. Connectivity to DTCC feeds is subject to any technical provisioning requirements and authorization from DTCC. Connectivity to DTCC feeds is over the IP network. Any applicable fees are charged independently by DTCC. The Exchange is not the exclusive method to connect to DTCC feeds.

5 Mb connection to DTCC.	$500 monthly recurring fee.
50 Mb connection to DTCC.	$2,500 monthly recurring fee.

Application of Proposed Change

As noted above, none of the proposed services and fees are new or novel. Current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change, for the following reasons.

First, as stated in the proposed Fee Schedule, a User that incurs co-location fees for a particular co-location service would not be subject to fees for the same service charged by the Affiliate SROs.[52] In other words, even though all four Affiliate SROs and the Exchange would offer co-location services, a User that purchased services would only be charged once. This would be true irrespective of whether the User were a member of all, some, or none of the Affiliate SROs and the Exchange.

Second, the Exchange expects that a current User that starts to trade on the Exchange or connect to its market data as a result of the proposed change would not incur any new fees. Access to trade on the Exchange and connectivity to its data products comes with connections to the local area networks in the data center for no additional fee[53]—and Users that trade or connect to market data would already have a connection to the local area networks, either directly or through another User.

Third, the Exchange does not expect any market participants to become Users in order to connect to the Exchange's data feed. Under the proposed change any authorized User would be able to obtain a lower latency connection to the Exchange's data feeds. However, in the first eight months of 2019, the Exchange averaged less than 0.6% market share of executed volume of non-auction equity trading.[54] Given the small volume of trades on the Exchange and the fact that the NMS feeds include NYSE Chicago data, the Exchange does not believe that a lower latency connection to Exchange data would be sufficient reason for a firm to become a User.

Finally, the Exchange believes that, as a practical matter, only Participants[55] would be interested in becoming new Users in order to trade on the Exchange, as non-Participants cannot trade on the Exchange. The pool of relevant Participants is small: Only nine Participants are not also members of one or more of the Affiliate SROs.[56] Of those nine Participants, two are already Users, and therefore, as explained above, would not be subject to any new or different fees as a result of this filing. The Exchange does not expect that any of the remaining seven Participants would opt to become Users in order to trade on the Exchange.[57] Simply put, the Exchange does not expect that low latency access to such a small market would be sufficient reason for a firm to become a User.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant, as co-location is available to any market participant that wishes to be a User. If, contrary to the Exchange's beliefs, a market participant elects to co-locate in response to the proposed change, that new User would be subject to the same fees as all other Users—the same fees it would be subject to today, irrespective of what type or size of market participant it is.

[51] *Id.*

[52] Co-location fees already work in this manner. *See* Securities Exchange Act Release Nos. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59); 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67); and 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80); and NYSE National Co-location Notice, *supra* note 6, at 26314.

[53] *See* 84 FR 10152, 84 FR 10164, 84 FR 10159, and 84 FR 10154, *supra* note 17.

[54] Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019 and August 2019 was 0.52%, 0.52%, 0.56%, 0.50%, 0.50%, 0.48%, 0.46% and 0.43%, respectively. *See http://markets.cboe.com/us/equities/market_share/.*

[55] A ''Participant'' is, except as otherwise described in the Rules of the Exchange, ''any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Authorized Trader or Institutional Broker Representative, respectively.'' Article I, Rule 1(s). A Participant is considered a ''member'' of the Exchange for purposes of the Act. ''Institutional Broker'' means a member of the Exchange who is registered as an Institutional Broker pursuant to the provisions of Article 17 and has satisfied all Exchange requirements to operate as an Institutional Broker on the Exchange. Article 1, Rule 1(n). *See* 84 FR 44654, note 6, *supra,* at notes 7 and 11.

[56] The other Participants are a member of one or more of the Affiliate SROs. The Exchange believes that if such a Participant's business model required co-location, that Participant would already be co-located, given its membership in one or more Affiliate SROs.

[57] The seven Participants are all either Institutional Brokers or trade through a third party clearing firm. Institutional Brokers' usage of the Exchange is largely conducted in a non-automated fashion through manual tools such as the Exchange's Brokerplex interface. *See* Article 17, Rule 3, Interpretations and Policies .01 (''Institutional Brokers essentially are order-entry firms that act primarily as brokers for other broker-dealers or institutional customers''); and 84 FR 44654, note 6, *supra,* at 44661–44662 and 44666. The remaining Participants trade through a third party, which increases latency, suggesting that co-location is not a priority for their business model. For these reasons, the Exchange does not expect the seven Participants to opt to become Users in order to trade on the Exchange.

As with the Affiliate SROs' co-location services, Users that receive co-location services from the Exchange would not receive any means of access to the Exchange's trading and execution systems that is separate from or superior to that of Users that do not receive co-location services.[58] All orders sent to the Exchange would enter the Exchange's trading and execution systems through the same order gateway regardless of whether the sender is co-located in the Exchange's data center or not. In addition, co-located Users would not receive any market data or data service product that is not available to all Users. However, Users that receive co-location services normally would expect reduced latencies in sending orders to the Exchange and receiving market data from the Exchange.

As with the co-location services of the Affiliate SROs, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the proposed co-location services would be completely voluntary and available to all Users on a non-discriminatory basis; and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[59]

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[60] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[61] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [62]

With respect to co-location, the Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services would be constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for colocation services, affected market participants will opt to terminate their colocation arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

Importantly, with respect to co-location services and fees, all market participants can be Users, irrespective of whether or not they are Participants or members of any of the Affiliate SROs.[63] In addition, the proposed changes are neither new nor novel, as the Exchange proposes to adopt the same services and fees set forth in the Affiliate SRO Price Lists, with the non-substantive differences described above. As a result, the proposed rule change would simply offer market participants the same services and fees to which they already have access. The sole substantive change that would result from the Exchange offering co-location services would be that Users would be able to have low latency connections to the Exchange. In other words, the sole change would be a benefit to market participants, with no change in the related costs. If the proposed rule change is not operative, the Exchange will not offer co-location, and market participants will not be able to receive that benefit.

In addition, the Exchange believes that the proposed rule change is reasonable because, for the reasons discussed above, current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change. Even though all four Affiliate SROs and the Exchange would offer co-location services, a User that purchased services would only be charged once. This would be true irrespective of whether the User were a member of all, some, or none of the Affiliate SROs and the Exchange. As noted above, the Exchange expects that a current User that starts to trade on the Exchange or connects to its market data as a result of the proposed change would not incur any new fees. With respect to market participants that are not current Users, the Exchange does not expect any of them to become Users in order to connect to the Exchange's data feed or trade on the Exchange.

The Exchange believes that the proposed co-location services and fees are reasonable because under the proposed change the Exchange would provide market participants with the option to co-locate, but would not require it. The co-location services, including various options for cabinets, LCN and IP network access, connectivity to Included Data Products, Third Party Data Feeds, third party testing and certification feeds, DTCC and Wireless Third Party Data (collectively, ''Connectivity''), access to Exchange Systems and Third Party Systems (together, ''Access''), hosting, and services, would be provided as conveniences to Users.

[58] *See* note 52, *supra.*

[59] *Id.*

[60] 15 U.S.C. 78f(b).

[61] 15 U.S.C. 78f(b)(4) and (5).

[62] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[63] *See* note 6, *supra.*

As is true now, use of any co-location service would be completely voluntary, and each market participant would be able to determine whether to use co-location services based on the requirements of its business operations. If it chose to co-locate, it would be able to determine what size of cabinet, form, and latency of network, would best suit its needs. Users would not be required to use any of their bandwidth for Access or Connectivity unless they wished to do so. Rather, a User would only receive the services it selected, and a User could change what services it receives at any time, subject, in the case of Access and Connectivity, to authorization from the relevant third party system or data provider, Affiliate SRO or the Exchange.

As alternatives to using co-location, a market participant would be able to access or connect to Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, DTCC and Wireless Third Party Data through a Hosting User or a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The market participant could make such connection through a third party telecommunication provider, third party wireless network, the Secure Financial Transaction Infrastructure (''SFTI'') network, or a combination thereof.

The proposed Fee Schedule would set forth: (a) The relevant definitions and General Notes, including a detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network; (b) the Cabinet-Related Fees; (c) the Access and Service Fees; (d) the Service-related Fees; (e) a description of the Migration; and (f) information regarding connectivity to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Such Fee Schedule text would make the description of co-location services and fees accessible and transparent, providing market participants with clarity as to what services were offered within co-location and what the related fees would be.

The Exchange believes that charging distinct fees for different co-location services would be reasonable because not all Users would need, or wish, to utilize the same co-location services. The proposed variety of services would allow Users to select which co-location services to use, based on their business needs, and Users would only be charged for the services that they selected. By charging only those Users that utilize a co-location service the related fee, those Users that directly benefit from a service would support its cost.

Similarly, the Exchange believes the proposed fees are reasonable because they would allow the Exchange to defray or cover the costs associated with offering different co-location services while providing Users the benefit of such services, including the benefits of, among other things, choosing among the array of different options for cabinets, power, LCN and IP network access, Connectivity, Access, hosting and services; having an efficient connection to clearing, fund transfer, insurance, and settlement services; and having an environment in which to conduct tests with nonlive data and to certify conformance to any applicable technical requirements.

The Exchange believes that the proposed charges are reasonable because the Exchange would offer co-location services as conveniences to Users, but in order to do so would have to provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange would need to expand the network infrastructure to keep pace with the number of services available to Users, including any increasing demand for bandwidth, and to establish any additional administrative controls. The Exchange would have to handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds and DTCC, the Exchange would have to maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Exchange believes it is reasonable that redistribution fees charged by providers of Third Party Data Feeds would be passed through to the User, without change to the fee. If not passed through, the cost of the re-distribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the User, allowing the User to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.,* the Exchange's fee and the redistribution fee.

The Exchange believes that it is reasonable to not charge third party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that facilitating such diagnostics and testing would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The Exchange believes that the proposed co-location services and fees are reasonable because under the proposed change the Exchange would provide market participants with the option to co-locate, but would not require it. The co-location services, including various options for cabinets, LCN and IP network access, Connectivity, Access, hosting, and services, would be provided as conveniences to Users.

As is true now, use of any co-location service would be completely voluntary, and each market participant would be able to determine whether to use co-location services based on the requirements of its business operations. If it chose to co-locate, it would be able to determine what size of cabinet, form, and latency of network, would best suit its needs. Users would not be required to use any of their bandwidth for Access or Connectivity unless they wished to do so. Rather, a User would only receive the services it selected, and a User could change what services it receives at any time, subject, in the case of Access and Connectivity, to authorization from the relevant third party system or data provider, Affiliate SRO or the Exchange.

In addition to the co-location services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same co-location services would be available to all Users). All Users that voluntarily elected to receive a co-location service would be charged the same amount for the same service.

Further, by having the Fee Schedule set forth the same co-location services and fees offered by the Affiliate SROs, with only non-substantive differences from the Affiliate SRO Price Lists, Users would benefit from having consistent products and pricing across the

Exchange and the four Affiliate SROs. As is true for the Affiliate SROs and as specified in the proposed Fee Schedule, a User that incurred co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Affiliate SROs.

The Exchange believes that the proposal to establish procedures and waive certain fees in connection with the movement of equipment at the data center in a Migration would provide for the equitable allocation of reasonable fees because, pursuant to the proposed procedures for selecting which Users would be required to move within the data center, a User would be required to move only if the Exchange would be able to accommodate such User's current space and power requirements at the new location, so as to minimize the disruption to the User. The Exchange believes that the waiver of overlapping monthly recurring charges, the waiver of the Service-Related Fees, and the waiver of one month of monthly recurring charges in a Migration would be reasonable because Users would be moving at the Exchange's request and the waivers would help to alleviate the burden on the Users that are required to move.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

As is true now, use of any co-location service would be completely voluntary, and each market participant would be able to determine whether to use co-location services based on the requirements of its business operations. In addition to the co-location services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same co-location services would be available to all Users). All Users that voluntarily elected to receive a co-location service would be charged the same amount for the same service.

The Exchange believes that charging distinct fees for different co-location services is not unfairly discriminatory because not all Users would need, or wish, to utilize the same co-location services. The proposed variety of services would allow Users to select which co-location services to use, based on their business needs, and Users would only be charged for the services that they selected. By charging only those Users that utilize a co-location service the related fee, those Users that directly benefit from a service would support its cost.

The Exchange believes that the proposed charges are not unfairly discriminatory because the Exchange would offer co-location services as conveniences to Users, but in order to do so would have to provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange would need to expand the network infrastructure to keep pace with the number of services available to Users, including any increasing demand for bandwidth, and to establish any additional administrative controls. The Exchange would have to handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds and DTCC, the Exchange would have to maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change relating to co-location would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

The proposed Fee Schedule would set forth: (a) The relevant definitions and General Notes, including a detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network; (b) the Cabinet-Related Fees; (c) the Access and Service Fees; (d) the Service-related Fees; (e) a description of the Migration; and (f) information regarding connectivity to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Such Fee Schedule text would make the description of co-location services and fees accessible and transparent, providing market participants with clarity as to what services were offered within co-location and what the related fees would be.

Providing connectivity to testing and certification feeds would provide Users an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development, and allow Users to certify conformance to any applicable technical requirements.

The Exchange believes that it is reasonable to not charge third party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. Similarly, providing connectivity to DTCC would provide efficient connection to clearing, fund transfer, insurance, and settlement services.

Finally, the Exchange believes that the proposal to establish procedures and waive certain fees in connection with the movement of equipment at the data center in a Migration would allow the Exchange to have sufficient space in the data center to accommodate demand on an equitable basis for the foreseeable future. The Exchange believes that the waiver of overlapping monthly recurring charges, the waiver of the Service-Related Fees, and the waiver of one month of monthly recurring charges in a Migration would be reasonable because Users would be moving at the Exchange's request and the waivers would help to alleviate the burden on the Users that are required to move.

* * * * *

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[64] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

In accordance with Section 6(b)(8) of the Act,[65] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed rule change would not have an impact on intramarket competition because the proposed rule change would simply offer market participants the same services and fees to which they already have access. The sole substantive change that would result from the Exchange offering co-location services would be that Users would be

[64] 15 U.S.C. 78f(b)(8).

[65] 15 U.S.C. 78f(b)(8).

able to have low latency connections to the Exchange. In other words, the only change would be a benefit to market participants, with no change in the related costs. If the proposed rule change is not operative, the Exchange will not offer co-location, and market participants will not be able to receive that benefit.

Further, current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change. Accordingly, the proposed rule change would not have an impact on intramarket competition. Even though all four Affiliate SROs and the Exchange would offer co-location services, a User that purchased services would only be charged once. This would be true irrespective of whether the User were a member of all, some, or none of the Affiliate SROs and the Exchange. As noted above, the Exchange expects that a current User that starts to trade on the Exchange or connects to its market data as a result of the proposed change would not incur any new fees. With respect to market participants that are not current Users, the Exchange does not expect any of them to become Users in order to connect to the Exchange's data feed or trade on the Exchange. Finally, as noted above, the Exchange believes that, as a practical matter, only Participants would be interested in becoming new Users in order to trade on the Exchange, as non-Participants cannot trade on the Exchange. The pool of relevant Participants is small: Only nine Participants are not also members of one or more of the Affiliate SROs.[66] Of those nine Participants, two are already Users, and therefore, as explained above, would not be subject to any new or different fees as a result of this filing. The Exchange does not expect that any of the remaining seven Participants would opt to become Users in order to trade on the Exchange.[67] Simply put, the Exchange does not expect that low latency access to such a small market would be sufficient reason for a firm to become a User.

The proposed co-location services would be available to all Users on an equal basis. All Users that voluntarily selected to receive co-location services, including cabinets, LCN and IP network access, Connectivity, Access and other services, would be charged the same amount for the same services. In the case of a Migration, all Users would be subject to the same proposed procedures for selecting which Users would be required to move within the data center and what fees would be affected.

The proposed co-location services would provide market participants with the option to co-locate, but would not require it. Use of any co-location services would be completely voluntary, and each market participant would be able to determine whether to use co-location services based on the requirements of its business operations. In this way, the proposed changes would enhance competition by providing market participants with additional options for their business operations.

Intermarket Competition

As noted above, the proposed rule change would simply offer market participants the same services and fees to which they already have access, as currently a User that purchases access to the LCN or IP network receives the ability to access the trading and execution systems of the Exchange and connectivity to the Included Data Products of the Exchange. The sole substantive change that would result from the Exchange offering co-location services would be that Users would be able to have low latency connections to the Exchange. As a result, there would be no material burden on competition with respect to other national securities exchanges.

In addition, there would be no material burden on intermarket competition because, for the reasons discussed above, current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change. In the first eight months of 2019, the Exchange averaged less than 0.6% market share of executed volume of non-auction equity trading.[68] Given the small market share of the Exchange, it does not believe that the proposed rule change would affect the competitive landscape among the national securities exchanges.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[69] and Rule 19b–4(f)(6) thereunder.[70] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[71]

A proposed rule change filed under Rule 19b–4(f)(6)[72] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[73] the

[66] *See* note 56, *supra.*

[67] *See* note 57, *supra.*

[68] *See* note 54, *supra.*

[69] 15 U.S.C. 78s(b)(3)(A)(iii).

[70] 17 CFR 240.19b–4(f)(6).

[71] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[72] 17 CFR 240.19b–4(f)(6).

[73] 17 CFR 240.19b–4(f)(6)(iii).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange asserts that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow the Exchange to provide the proposed co-location services immediately upon the Exchange's migration to Pillar. For the same reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[74]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [75] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2019–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2019–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2019–12 and should be submitted on or before November 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8011–01–P

[74] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[75] 15 U.S.C. 78s(b)(2)(B).

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87407; File No. SR–FINRA–2019–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) To Make Substantive, Organizational and Terminology Changes, as Modified by Partial Amendment No. 1

October 28, 2019.

On April 11, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) (''Rule'' or Rule 5110) to make substantive, organizational and terminology changes to the Rule.

The proposed rule change was published for comment in the **Federal Register** on May 1, 2019.[3] On June 12, 2019, the Commission extended to July 30, 2019, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] The Commission received six comment letters on the proposal.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85715 (April 25, 2019), 84 FR 18592 (May 1, 2019) (''Notice'').

[4] *See* Securities Exchange Act Release No. 34–86091 (June 12, 2019), 84 FR 28371 (June 18, 2019).

[5] *See* letter from Suzanne Rothwell, Managing Member, Rothwell Consulting LLC, to Secretary, Commission, dated May 14, 2019; letter from Stuart J. Kaswell, Esq., to Vanessa Countryman, Acting Director, Commission, dated May 17, 2019; letter from Eversheds Sutherland (US) LLP, on behalf of the Committee of Annuity Insurers, to Brent J. Fields, Secretary, Commission, dated May 21, 2019; letter from Aseel Rabie, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa Countryman, Acting Secretary, Commission, dated May 30, 2019 (''SIFMA''); letter from Robert E. Buckholz, Chair, Federal Regulation of Securities Committee, ABA Business Law Section, American Bar Association, to Vanessa Countryman, Acting Secretary, Commission, dated May 30, 2019; letter from Davis Polk & Wardwell LLP, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019.

On July 11, 2019, FINRA responded to the comments and filed Partial Amendment No. 1 to the proposal.[6] On July 29, 2019, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change.[8] The Commission received three comment letters in response to the Order Instituting Proceedings.[9]

Section 19(b)(2) of the Exchange Act[10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register**.[11] The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is October 28, 2019.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as amended by Partial Amendment No.1, comment letters, and FINRA's submission.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act, designates December 27, 2019, as the date by which the Commission shall approve or disapprove the proposed rule change.

[6] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated July 11, 2019. Partial Amendment No. 1 is available at *https://www.finra.org/industry/rule-filings/sr-finra-2019-012.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 86509 (July 29, 2019), 84 FR 37921 (Aug. 2, 2019).

[9] *See* letter from Hardy Callcott and Joseph McLaughlin, to Vanessa Countryman, Secretary, Commission, dated August 14, 2019; letter from Stuart J. Kaswell, Law Office of Stuart J. Kaswell, LLC, to Jill M. Peterson, Assistant Secretary, Commission, dated August 16, 2019; and letter from Aseel Rabie, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated August 23, 2019.

[10] 15 U.S.C. 78s(b)(2).

[11] *See* Notice, *supra* note 3.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–23861 Filed 10–31–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, November 7, 2019 at 9:30 a.m. (ET).

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 9:30 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 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 24, 2019, the Commission issued notice of the Committee meeting (Release No. 33–10721), indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch), and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting.

The agenda for the meeting includes: Welcome remarks; a discussion regarding whether investors use environmental, social, and governance (ESG) data in investment/capital allocation decisions; a discussion regarding the SEC's Concept Release on Harmonization of Securities Offering Exemptions; subcommittee reports; and a nonpublic administrative work session during lunch.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: October 29, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–24053 Filed 10–30–19; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16131 and #16132; Illinois Disaster Number IL–00057]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–4461–DR), dated 09/19/2019.

Incident: Severe Storms and Flooding.

Incident Period: 02/24/2019 through 07/03/2019.

DATES: Issued on 10/24/2019.

Physical Loan Application Deadline Date: 11/18/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 06/19/2020.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Illinois, dated 09/19/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Lee

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–23930 Filed 10–31–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16165 and #16166; California Disaster Number CA–00309]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 10/25/2019.

Incident: Sandalwood Fire.

Incident Period: 10/10/2019 through 10/14/2019.

DATES: Issued on 10/25/2019.

Physical Loan Application Deadline Date: 12/24/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 07/27/2020.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Riverside.

Contiguous Counties:

California: Imperial, Orange, San Bernardino, San Diego.

Arizona: La Paz.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16165 5 and for economic injury is 16166 0.

The States which received an EIDL Declaration # are California, Arizona.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–23931 Filed 10–31–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16149 and #16150; TEXAS Disaster Number TX–00525]

Presidential Declaration Amendment of a Major Disaster for the State of TEXAS

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4466–DR), dated 10/04/2019.

Incident: Tropical Storm Imelda.

Incident Period: 09/17/2019 through 09/23/2019.

DATES: Issued on 10/24/2019.

Physical Loan Application Deadline Date: 12/03/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 07/06/2020.

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: The notice of the President's major disaster declaration for the State of Texas, dated 10/04/2019, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): San Jacinto

Contiguous Counties (Economic Injury Loans Only):

Texas: Trinity

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–23932 Filed 10–31–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 10937]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its January Committee Meeting on Thursday, January 16, 2020, from 9:00 a.m. until approximately 4:00 p.m. in Conference Room 1482, Department of State, 2201 C Street NW Washington, DC. This meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community on improving those American-sponsored schools overseas that are assisted by the Department of State and attended by dependents of U.S. government employees, and the children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. There will be a report and discussion about the status of the Council-sponsored Child Protection Project and discussion on a possible project addressing school based mental health issues. The Council will also receive a report from a representative of the College Board. Moreover, the Regional Education Officers in the Office of Overseas Schools will make presentations on the activities and initiatives in the American-sponsored overseas schools.

Members of the public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the Department of State is controlled, and individual building passes are required for all attendees. Persons who plan to attend should advise the office of Mr. Thomas Shearer, Department of State, Office of Overseas Schools, telephone 202–261–8200, prior to January 9, 2020. Each visitor to the Department of State meeting will be asked to provide his/her date of birth and either driver's license or passport number at the time of registration and attendance, and must carry a valid photo ID to the meeting.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://www.state.gov/wp-content/uploads/2019/05/Security-Records-STATE-36.pdf* for additional information.

Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered, however, requests made after January 9 might not be possible to fill. All attendees must use the 21st Street entrance to the building for Thursday's meeting.

Thomas P. Shearer,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 2019–23896 Filed 10–31–19; 8:45 am]

BILLING CODE 4710–24–P

SURFACE TRANSPORTATION BOARD

AAAHI Regional Acquisition LLC—Acquisition of Control—First Class Tours, Inc. and Sierra Stage Coaches, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: On October 4, 2019, AAAHI Regional Acquisition LLC (ARA), a motor carrier, filed an application to acquire control of two interstate passenger motor carriers, First Class Tours, Inc. (First Class), and Sierra Stage Coaches, Inc. (Sierra), from their owners, Reta Jean (Jean) Rogers, Jeffrey Scott (Jeff) Rogers, and Gregory Bryan (Greg) Rogers (collectively, Sellers). The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules.

DATES: Comments may be filed by December 16, 2019. ARA may file a reply by December 31, 2019. If no opposing comments are filed by December 16, 2019, this notice shall be effective on December 17, 2019.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. MCF 21087, 395 E Street SW, Washington, DC 20423–0001. In addition, send one copy of comments to: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: According to the application, ARA is a motor carrier organized under Delaware law and headquartered in Lakewood, Colo. (Appl. 2.) ARA represents that it obtained interstate operating authority on July 31, 2018, but has not yet conducted either interstate or intrastate operations, and that it does not have a U.S. Department of Transportation (USDOT) Safety Rating. (*Id.*) [1]

ARA states that it is indirectly controlled by Tensile Capital GP LLC (Tensile), a Delaware limited liability company and noncarrier.[2] (*Id.*) ARA states that, in addition to ARA, Tensile indirectly controls the following passenger motor carriers that hold interstate carrier authority (collectively, ARA Affiliated Carriers) (*id.* at 2–4): [3]

- Ace Express Coaches, LLC, which provides regional charter, contract, and casino passenger charter services in Colorado and surrounding areas;
- Hotard Coaches, Inc., which provides local and regional passenger charter services primarily within Louisiana and Mississippi;
- Industrial Bus Lines, Inc., d/b/a All Aboard America, which provides local and regional passenger charter services generally in the states of Arizona, New Mexico, and Texas;
- Lux Bus America Co., which provides local and regional passenger charter services primarily in California and Nevada;
- Sureride Charter Inc., d/b/a Sun Diego Charter Company and Sun Express Charter Co., which provides local and regional passenger charter, tour, and contract shuttle services in south California and surrounding areas; and
- McClintock Enterprises Inc., d/b/a Goldfield Stage & Co., which formerly provided local and regional passenger charter, tour, and contract shuttle services in south California and surrounding areas but is currently inactive.

The application states that First Class is a Texas corporation that provides interstate charter service between Texas and points throughout the United States, Texas intrastate charter service, and intrastate weekday park-and-ride commuter services between The Woodlands, Tex., and points in Houston, Tex. (*Id.* at 6.) The application further states that First Class has full-service maintenance facilities and two terminals in Houston that are used primarily in the operation of daily and overnight individual passenger roundtrips to and from casinos in Louisiana for pre-formed charter groups. (*Id.*) First Class holds interstate operating authority under FMCSA Docket No. MC–346969, it has a ''Satisfactory'' USDOT Safety Rating, and its USDOT number is 774995. (*Id.*) According to the application, First Class uses approximately 66 vehicles and 99 drivers in providing its services. (*Id.*) [4]

The application states that Sierra is a Texas corporation that provides interstate and intrastate passenger group charter motor coach and shuttle services in the Houston area and throughout the United States, as well as weekday park-and-ride commuter services between The Woodlands and points in Houston, and that Sierra often operates under subcontract with First Class. (*Id.* at 7, 10–11.) Sierra holds interstate operating authority under FMCSA Docket No. MC–166321, it has a ''Satisfactory'' USDOT Safety Rating, and its USDOT number is 229351. (*Id.* at 7.) According to the application, Sierra uses approximately 27 vehicles and 25 drivers in providing its services. (*Id.*) [5]

[1] According to ARA, it holds interstate operating authority from the Federal Motor Carrier Safety Administration (FMCSA) under FMCSA Docket No. MC–98597 and has been assigned USDOT Number 3140195. (Appl. 2.)

[2] The application states that ARA is wholly owned by All Aboard America! Holdings, Inc., which in turn is wholly owned by AAAHI Acquisition Corporation. (Appl. 2.) The application further states that AAAHI Acquisition Corporation is wholly owned by AAAHI Intermediate Holdings LLC, which is wholly owned by AAAHI TopCo Corporation, and AAAHI TopCo Corporation is wholly owned by AAAHI Holdings LLC. (*Id.*) According to the application, each of these entities is a noncarrier holding company. (*Id.*) AAAHI Holdings LLC is controlled by Tensile Capital Partners Master Fund LP, a limited partnership and noncarrier, which in turn is controlled by its general partner, Tensile. (*Id.*) According to ARA, none of these companies has motor carrier authority, a USDOT Number, or a USDOT Safety Rating. (*Id.*)

[3] Additional information about these motor carriers, including USDOT numbers, motor carrier numbers, and USDOT safety ratings, can be found in the application. (*See* Appl. 3–4 & Sched. A.)

[4] Additional information about First Class, including information about operations pursuant to state and tribal authority, can be found in the application. (*See* Appl. 6.)

[5] Additional information about Sierra, including information about operations pursuant to state

Continued

The application states that the Sellers collectively own all equity interests in First Class and that Greg Rogers has a 100% equity ownership interest in Sierra. (*Id.* at 5.) The application further states that Jean Rogers and Jeff Rogers have no direct or indirect ownership interests in any interstate passenger motor carrier other than First Class and that Greg Rogers has no direct or indirect ownership interest in any interstate passenger motor carriers other than First Class and Sierra. (*Id.*)

ARA represents that, through this transaction, it will acquire direct control of the interstate and intrastate passenger motor carrier assets and operations of First Class and Sierra. (*Id.* at 1; *see also id.* at 7.) [6]

Under 49 U.S.C. 4303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. ARA has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the ARA Affiliated Carriers, First Class, and Sierra exceeded $2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5).

ARA asserts that the proposed transaction is not expected to have a material, detrimental impact on the adequacy of transportation services available to the public. (Appl. 8.) ARA states that it anticipates that services to the public will be improved by using the business and financial management skills of Tensile, as well as its capital, to enhance and make operations more efficient for First Class and Sierra in their respective marketplaces, thereby ensuring the continued availability of adequate transportation service for the public. (*Id.* at 8, 11.) ARA further states that the continued use of the assets and work force of the Sellers will help maintain a strong competitive bus presence in the eastern Texas area; that the proposed transaction includes the right to use the ''First Class'' and ''Sierra'' names post-closing; and that due to these strong brand names, ARA may also seek approval from the FMCSA to change its name to more closely resemble First Class and/or Sierra. (*Id.* at 8–9.)

ARA claims that neither competition nor the public interest will be adversely affected by the proposed transaction. (*Id.* at 9–11.) ARA asserts that competition is keen in the markets in which First Class operates (*i.e.,* passenger group charter motor coach and shuttle services in the Houston area, including charter transportation between Houston and various Louisiana casinos, and weekday park-and-ride commuter services between The Woodlands and points in Houston). (*Id.* at 10.) Specifically, ARA states that the competition in the charter and shuttle services marketplaces consists of a large number of competitors, ranging from small charter operators to very large corporate charter organizations. ARA also states that special licensing is required to provide direct service to casinos located in Louisiana, and that at least two other carriers operating from within the Houston area have these special permits.[7] (*Id.*) According to ARA, the marketplace of Sierra, like First Class, is primarily passenger group charter motor coach and shuttle services in the Houston area. ARA explains that in many instances, Sierra's marketplace is nearly identical to the marketplace of First Class because Sierra often operates under subcontract with First Class, including charter transportation between Houston and Louisiana casinos and weekday park-and-ride commuter services between The Woodlands and Houston. (*Id.* at 10–11.) Additionally, ARA states that there is little, if any, overlap of market areas served by First Class and Sierra with those served the ARA Affiliated Carriers. (*Id.* at 11.)

ARA states that there are no significant fixed charges associated with the proposed transaction. (*Id.* at 9.) Regarding the interests of employees, ARA claims that the transaction will not have a material impact on employees or labor conditions, nor does ARA anticipate a measurable reduction in force or changes in compensation levels or benefits. (*Id.*) ARA states, however, that staffing redundancies could result in limited downsizing of back-office or managerial-level personnel. (*Id.*)

The Board finds that the acquisition as proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at *www.stb.gov.*

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective December 17, 2019, unless opposing comments are filed by December 16, 2019.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: October 28, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2019–23901 Filed 10–31–19; 8:45 am]

BILLING CODE 4915–01–P

authority, can be found in the application. (*See* Appl. 7.)

[6] ARA also states that, as part of the proposed transaction, it will acquire the rolling stock assets of RJR Leasing LLC (RJR), which owns and leases vehicles to First Class and Sierra and is headquartered in Houston. According to the application, RJR, which is collectively owned by Jean Rogers and the Estate of Lanny Gerald Rogers, does not operate any motor coach or other ground transportation service. (App. 1, 7.) Because RJR does not engage in interstate transportation, RJR is not subject to the Board's jurisdiction, *see* 49 U.S.C. 13501, and the acquisition of RJR is not subject to the Board's acquisition authority, *see* 49 U.S.C. 14303.

[7] ARA also notes that the distance between Houston and these casinos is short enough that people may elect to drive themselves rather than use a bus service. (Appl. 10.)

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36326]

Brookfield Asset Management, Inc. and DJP XX, LLC—Control Exemption—Genesee & Wyoming Inc., et al.

Brookfield Asset Management, Inc. (Brookfield), and DJP XX, LLC (DJP) (collectively, Applicants),[1] filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to allow Applicants to control Genesee & Wyoming Inc. (GWI) and the 106 rail carriers controlled by GWI that are subject to the jurisdiction of the Board (GWI Railroads).[2] As discussed further below, the Board will allow the exemption to become effective. However, Applicants will remain subject to the Board's July 22, 2019 direction to provide periodic updates regarding the status and outcome of the review being conducted by the Committee on Foreign Investment in the United States (CFIUS).

Background

On July 9, 2019, Applicants filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to control GWI, a publicly traded noncarrier holding company that controls, through direct or indirect equity ownership, the GWI Railroads. (Verified Notice 2.) As a result of the proposed transaction, GWI would become a privately held company and a wholly owned subsidiary of DJP. (*Id.*) According to the verified notice, DJP would indirectly control the GWI Railroads through DJP's direct control of GWI, and Brookfield would indirectly control the GWI Railroads through Brookfield's control of DJP and DJP's control of GWI. (*Id.*) Applicants state that Brookfield and DJP are not rail carriers and do not own or control any rail carriers in the United States. (*Id.*) Applicants further state that they each require Board authority pursuant to 49 U.S.C. 11323(a)(4) to consummate the transaction. (*Id.*)

Applicants represent that, pursuant to 49 CFR 1180.2(d)(2): (i) The GWI Railroads do not connect with any rail line owned or controlled by DJP or Brookfield; (ii) the proposed transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by DJP or Brookfield with any GWI Railroad, or that would connect any of the GWI Railroads with each other; and (iii) the proposed transaction does not involve a Class I carrier. (*Id.* at 2–3.) Applicants acknowledge that, under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. (*Id.* at 5.) Applicants further acknowledge that because the transaction involves the control of two Class II carriers and more than one Class III carrier, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(a) and *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979). (Verified Notice 5.)

By decision served on July 22, 2019, and published in the **Federal Register** on July 26, 2019 (84 FR 36157), the effectiveness of the exemption was postponed until further order of the Board to allow sufficient time to consider the issues presented. The decision also directed Brookfield and DJP to provide updates regarding CFIUS review and the outcome of such review, and it invited comments from the Applicants and the public.

In response to its July decision, the Board received numerous comments, including opening and reply comments from the Applicants. Most of the comments relate to the Providence and Worcester Railroad Company (P&W), a Class III railroad controlled by GWI[3] that operates passenger and excursion services between Rhode Island and Massachusetts.[4] The main interests of the P&W Commenters are the continuation of excursion service, completion of a multi-use path, and the need for strong communication and collaboration with Applicants as the prospective new owners of P&W. Some of the P&W Commenters request that the Board condition authorization of the transaction on the Applicants working cooperatively to accommodate completion of the multi-use path. (*See* BHC Comments 3; City of Woonsocket Comments 1–2; National Park Service Comments 1; Honorable Michael O. Moore Comments 1; Town of Grafton Comments 1; Town of Uxbridge Comments 1.)

A comment in opposition to the proposed transaction was received on August 20, 2019, from Victoria Dalrymple, who states that she is a shareholder of GWI. (Dalrymple Comments 1.) Dalrymple argues that the exemption at 49 CFR 1180.2(d)(2) is not applicable to the proposed transaction because Brookfield's management of railroads in other countries, its pyramid-controlled corporate structure, and evidence of its past decapitalization of rail assets suggest the possibility of anticompetitive outcomes. (*Id.* at 1–4, 6–7.) Dalrymple also raises concerns over the possibility of foreign entities—a ''Singapore sovereign wealth fund''[5] and Qatar, both of which have relationships with Brookfield—controlling key domestic infrastructure assets. (*Id.* at 6.)

The Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART/TD) filed a notice of intent to participate, and on September 5, 2019, Samuel J. Nasca, for and on behalf of SMART/TD, New York State Legislative Board (SMART/TD–NY), filed reply comments asserting that the notice of exemption should be rejected or the exemption revoked because of, among other things, the magnitude and nature of the transportation involved. (SMART/TD–NY Reply 3–4.) SMART/TD–NY expresses concern regarding the role of GIC, which it argues is required to be an applicant in addition to Brookfield and DJP, (*id.* at 4–5); asserts that Brookfield controls rail investments in Brazil, a country that produces soybeans that compete globally with U.S. soybeans, (*id.* at 5); and states that GWI controls rail carriers that are located in other countries and are not subject to Board jurisdiction, (*id.* at 8). SMART/TD–NY further comments that SMART/TD employees may be adversely affected by Applicants' prospective management of GWI. (*Id.* at 6)

On September 5, 2019, Applicants filed reply comments. Applicants respond to the P&W Comments and state that they intend to continue to work with GWI, P&W, and the communities and reiterate that they do not plan to change the operations of GWI or the GWI Railroads after consummation of the proposed transaction. (Applicants Reply 3, Sept. 5, 2019.) They further respond that the imposition of conditions on the transaction unrelated to competition would be inappropriate in this case. (*Id.* at 4.) Applicants assert that Dalrymple's comments are inaccurate and argue, among other things, that the proposed transaction will not have anticompetitive impacts because there

[1] Brookfield controls DJP within the meaning of 49 U.S.C. 10102(3).

[2] Two of the GWI Railroads are Class II carriers, and the remainder are Class III carriers. (Verified Notice, Ex. 1.)

[3] *Genesee & Wyoming Inc.—Acquis. of Control Exemption—Providence & Worcester R.R.,* FD 36064 (STB served December 16, 2016).

[4] The following commenters focused on issues pertaining to P&W: Blackstone Valley Tourism Council; the Honorable Donald R. Grebien, Mayor of Pawtucket, R.I.; Northern Rhode Island Chamber of Commerce; Blackstone River Valley National Heritage Corridor, Inc. (BHC); Town of North Smithfield, R.I.; City of Woonsocket, R.I.; U.S. Department of the Interior, National Park Service (National Park Service); the Honorable Michael O. Moore, Massachusetts State Senator; the Honorable James A. Diossa, Mayor of City of Central Falls, R.I.; Town of Grafton, Mass.; and Town of Uxbridge, Mass. (collectively, P&W Commenters).

[5] Dalrymple appears to be referring to GIC Pte. Ltd. (GIC). According to Applicants, GIC is a global investment firm that manages Singapore's foreign reserves and, at closing of the proposed transaction, GIC would have an approximately 27% equity interest in DJP and the same percentage vote on the DJP board of directors. (*See* Applicants Response 2 n.3; 2 n.4 & Verification, Sept. 9, 2019.)

will be no change in relationships with carriers outside the GWI corporate family, or in patterns or types of service by the GWI Railroads. (*Id.* at 5–6.) Applicants argue that Dalrymple mischaracterized Brookfield's ownership of an Australian railroad company and that those claims have no relevance to the applicability of the class exemption process. (*Id.* at 7.) Applicants also respond that no investor in Brookfield's private institutional funds has the ability to exercise control over those funds, no foreign government has any influence over any Brookfield-controlled funds, and such concerns are outside the Board's purview in any event. (*Id.* at 7–8.)

Applicants also filed a response to SMART/TD–NY's September 5 reply comments on September 9, 2019, asserting that its claims are without merit.[6] (Applicants Response 2, Sept. 9, 2019.) Applicants argue that GIC need not obtain the Board's control authority because the proposed transaction will not result in GIC controlling any of the Applicants or GWI Railroads and that GWI's control of carriers in other countries is not relevant to whether Applicants qualify for the § 1180.2(d)(2) exemption. (*Id.*) They also generally assert that no valid competitive concerns have been raised that would warrant rejection of the notice or revocation of the exemption. (*Id.*)

On September 24, 2019, Applicants filed an update regarding the status of the CFIUS review and a motion for protective order.[7] On September 26, 2019, Applicants filed a further update regarding the status of the CFIUS review.

Discussion and Conclusions

Under 49 U.S.C. 11323(a)(4), the Board's approval and authorization is required for a transaction involving the acquisition of control of at least two rail carriers by a noncarrier. The class exemption set forth at 49 CFR 1180.2(d)(2) provides an expedited means of obtaining Board approval and authorization provided that certain required information is submitted and three criteria are met: (i) The railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I carrier.

After considering the comments and other information submitted into the record, the Board will allow the exemption to take effect. The comments submitted do not undermine the applicability of the 49 CFR 1180.2(d)(2) class exemption process.

The P&W Commenters express concerns regarding the excursion services,[8] and four of the P&W Commenters request that the Board impose a condition relating to development of the multi-use path, but none of the P&W Commenters oppose the proposed transaction. Nor do the P&W Commenters suggest that the proposed transaction is not appropriate for a notice of exemption or that it would have anticompetitive effects. The Board appreciates the information and perspective of the P&W Commenters. However, the P&W Comments have not described how the requested condition is relevant to the considerations under 49 CFR 1180.2(d)(2) nor have they provided any legal basis for imposing such a condition. The Board concludes that the requested condition is not warranted and, further, Applicants' September 5 reply comments have sufficiently addressed the concerns expressed by the P&W Commenters. (*See* Applicants Reply 2–4.)

Dalrymple asserts that § 1180.2(d)(2) is inapplicable and suggests that the proposed transaction would result in anticompetitive outcomes, but she does not explain how the assertions raised in her comments (*e.g.,* past decapitalization of an Australian railroad controlled by Brookfield and various negative financial impacts in that country, and concerns about Brookfield's corporate structure) demonstrate that the class exemption criteria are not met, or how the assertions would support a finding of anticompetitive effects. The proposed transaction would change the ownership of GWI, as opposed to changing relationships with carriers outside the GWI corporate family or increasing common control of railroads subject to the Board's jurisdiction.[9]

Similarly, SMART/TD–NY's comments about the magnitude and nature of the transportation at issue do not support rejection of the notice or revocation of the exemption. SMART/TD–NY asserts that the proposed transaction ''raises competitive questions,'' (SMART/TD–NY Reply 8–9), but does not otherwise explain this claim aside from a reference to transportation of soybeans in Brazil for sale in international markets. *But see* 49 U.S.C. 10501(a) (Board jurisdiction applies to transportation in the United States). Finally, except for an assertion that ''GIC is important'' to the proposed transaction, SMART/TD–NY does not state why GIC should be required to be an applicant.[10] (SMART/TD–NY Reply 4–5.)

Accordingly, Applicants' notice of exemption will become effective on the service date of this decision. Because the overall transaction is also subject to CFIUS approval,[11] Applicants will remain subject to the Board's previous direction to provide updates regarding the status of CFIUS review and to provide an update within seven days after they are notified of the outcome of such review.

It is ordered:

1. The exemption will become effective on the service date of this decision.

2. Notice of this decision will be published in the **Federal Register**.

3. This decision is effective on its service date.

Decided: October 28, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman. Board Member Oberman commented with a separate expression.

BOARD MEMBER OBERMAN, commenting:

Because this transaction meets the requirements of 49 CFR 1180.2(d), and because, as stated in the decision, the comments submitted have not undermined the applicability of the class exemption process, I join in approving the transaction's going forward as a class exemption. Nevertheless, I write separately to express my concerns with the use of the class exemption process for transactions of this magnitude.

[6] Under 49 CFR 1104.13(c), a reply to a reply is not permitted. However, in the interest of a more complete record, the Board will accept into the record Applicants' September 9 response, as well as a September 10, 2019 petition for leave to reply and reply to Applicants' response filed by SMART/TD–NY, and an October 2, 2019 petition for leave to reply and reply to Applicants' September 5, 2019 response filed by Dalrymple, regarding Brookfield's corporate structure.

[7] By decision served September 27, 2019, Applicants' motion for protective order was granted.

[8] The City of Woonsocket expressed interest in the return of commuter rail service on P&W lines but did not oppose the proposed transaction.

[9] Regarding the applicability of § 1180.2(d)(2), the control of another rail carrier outside the United States is not within the Board's jurisdiction and does not make an entity a rail carrier. *See* 49 U.S.C. 10501(a); 49 U.S.C. § 11323(a).

[10] As noted above, Applicants included in their September 9 response a verification from James Rickert, President of DJP, that, at closing of the proposed transaction, GIC would have an approximately 27% equity interest in DJP and same percentage vote on the DJP board of directors. (Applicants Response 2 n.4 & Verification, Sept. 9, 2019.)

[11] (*See* Applicants Comment 12, Aug. 16, 2019.)

GWI's North American operations, which will be acquired pursuant to the proposed transaction, include 106 short line and regional railroads subject to Board jurisdiction, (Verified Notice 1), and operations in 41 states with over 13,000 track miles. *See* Genesee & Wyoming Inc., About Us, *https://www.gwrr.com/about_us* (last visited Oct. 28, 2019). GWI's 2018 North American operating revenues totaled $1.36 billion. Genesee & Wyoming, Inc., 2018 Annual Report 7 (2019). GWI's railroads are essential to serving a large number of shippers and receivers and constitute essential links in the national rail network. Most or all of the country's Class I railroads could not serve many of their customers without the service provided by GWI's railroads. Indeed, if GWI were itself a rail carrier, its North American operations would clearly make it a Class I carrier.[1] As it is, GWI is a widespread presence throughout the national rail network, in which it plays an integral role. Thus, this is by far the largest and most geographically diverse collection of railroads impacting the U.S. freight network ever to be processed as a class exemption under the Board's existing regulations.[2]

For these reasons, in my opinion, this proceeding raises significant questions regarding whether transactions of this magnitude were contemplated when the class exemption regulations were adopted, and therefore raises questions as to whether it is appropriate for such major transactions to be eligible under those regulations in the first place. While I agree that, under existing regulations, this transaction may proceed as a class exemption, I do think the Board should consider in the future whether the exemption process should be applicable to transactions of such scale.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–23956 Filed 10–31–19; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Indexing the Annual Operating Revenues of R.R.s,* EP 748 (STB served June 14, 2019) (calculating Class I revenue threshold at $489,935,956).

[2] *Cf. Fortress Inv. Grp. LLC—Control Exemption—RailAmerica, Inc.,* FD 34972 (STB served Dec. 22, 2006) (publishing notice for the acquisition of 30 rail carriers); *Mont. Rail Link, Inc.—Exemption Acquis. & Operation—Certain Lines of Burlington N. R.R.,* FD 31089 (ICC served May 26, 1988) (denying petitions for revocation of notice of exemption permitting acquisition of two non-contiguous segments of rail line totaling 830.62 miles in length in Montana and Idaho); *Wisc. Cent. Ltd.—Exemption Acquis. & Operation—Certain Lines of Soo Line R.R.,* FD 31102 (ICC served Oct. 8, 1987) (vacating stay and permitting consummation of a class exemption for the acquisition of 1,801 miles of rail line in Wisconsin and parts of Michigan, Minnesota, and Illinois; acquisition of 173.6 miles of trackage rights in Wisconsin and parts of Minnesota and Illinois; and assignment of 27.7 miles of trackage rights on third-party carriers in Wisconsin).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36326]

Brookfield Asset Management, Inc. and DJP XX, LLC—Control Exemption—Genesee & Wyoming Inc., et al.

Brookfield Asset Management, Inc. (Brookfield) and DJP XX, LLC (DJP) (collectively, Applicants), filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to allow Applicants to control Genesee & Wyoming Inc. (GWI) and the 106 rail carriers subject to the jurisdiction of the Board that GWI controls (GWI Railroads).[1]

According to the verified notice, GWI is currently a publicly traded noncarrier holding company that controls, through direct or indirect equity ownership, the GWI Railroads; Brookfield is an alternative asset manager; DJP is a limited liability company specially formed to acquire GWI; and Brookfield controls DJP within the meaning of 49 U.S.C. 10102(3). Applicants state that, at consummation of the proposed transaction, DJP's wholly owned subsidiary, MKM XXII Corp., will be merged with and into GWI, which will be the surviving corporation. As a result of the proposed transaction,[2] GWI would become a privately held company and a wholly owned subsidiary of DJP. Therefore, the proposed transaction would cause DJP to indirectly control the GWI Railroads through DJP's direct control of GWI. The proposed transaction would also cause Brookfield to indirectly control the GWI Railroads through Brookfield's control of DJP and DJP's control of GWI. Applicants state that Brookfield and DJP are not rail carriers and do not own or control any rail carriers in the United States. Applicants further certify that the proposed acquisition does not involve an interchange commitment.[3]

The verified notice states that the proposed transaction is expected to close by the end of 2019 or early 2020, subject to customary closing conditions. This exemption is now effective, consistent with the Board's decision served October 29, 2019 in this proceeding.

The verified notice states that: (i) The GWI Railroads do not connect with any rail line owned or controlled by DJP or Brookfield; (ii) the proposed transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by Applicants with any GWI Railroad or connect any of the GWI Railroads with each other; and (iii) the proposed transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the proposed transaction involves the control of one or more Class III rail carriers and two Class II rail carriers, the transaction is subject to the labor protective requirements of 49 U.S.C. 11326(a) and *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C 60 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

All pleadings, referring to Docket No. FD 36326, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants' representatives, Anthony J. LaRocca and Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

According to Applicants, this action is categorically excluded from

[1] According to Applicants, two of the GWI Railroads are Class II carriers, and the remainder are Class III carriers. The GWI Railroads are located in the following states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

[2] A copy of the Agreement and Plan of Merger was filed with the verified notice as Exhibit 2.

[3] By decision served on July 22, 2019, and published in the **Federal Register** on July 26, 2019 (84 FR 36,157), the effectiveness of the exemption was postponed until further order of the Board to allow sufficient time to consider the issues presented. The decision also directed Brookfield and DJP to provide updates regarding review by the Committee on Foreign Investment in the United States (CFIUS) and the outcome of such review, and it invited comments from the Applicants and the public.

environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: October 28, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–23936 Filed 10–31–19; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agency Information Collection Activities; Request for the Office of Management and Budget To Approve Renewal of the Collection of Information Titled '301 Exclusion Requests'

AGENCY: Office of the United States Trade Representative.

ACTION: 30-day notice with a request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is submitting a request to the Office of Management and Budget (OMB) to renew approval for three years of an existing information collection request (ICR) titled *301 Exclusion Requests* under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations.

DATES: Submit comments no later than December 2, 2019.

ADDRESSES: Submit comments about the ICR, including the title 301 Exclusion Requests, to the Office of Information and Regulatory Affairs at OMB, at *oira_submissions@omb.eop.gov,* or 725 Seventeenth Street NW, Washington DC 20503, Attention: USTR Desk Officer.

FOR FURTHER INFORMATION CONTACT: USTR Assistant General Counsels Philip Butler or Benjamin Allen at (202) 395–5725.

SUPPLEMENTARY INFORMATION:

A. Comments

Submit written comments and suggestions to OMB addressing one or more of the following four points:

(1) Whether the ICR is necessary for the proper performance of USTR's functions, including whether the information will have practical utility.

(2) The accuracy of USTR's estimate of the burden of the ICR, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the ICR.

(4) Ways to minimize the burden of the ICR 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.

B. Overview of This Information Collection

Title: 301 Exclusion Requests.

OMB Control Number: 0350–0015, which expires on December 31, 2019.

Form Number(s): 301 Exclusion Request/Response/Reply Form; Exclusion Extension Comment Form.

Description: Following a comprehensive investigation, the U.S. Trade Representative determined that the Government of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation were actionable under section 301(b) of the Trade Act of 1974 (19 U.S.C. 2411(b)). The U.S. Trade Representative determined that appropriate action to obtain the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation included the imposition of additional *ad valorem* duties on products from China classified in certain enumerated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS).

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 32181 (July 11, 2018), 83 FR 33608 (July 17, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 20459 (May 9, 2019), 84 FR 21389 (May 14, 2019), 84 FR 21892 (May 15, 2019), 84 FR 22564 (May 17, 2019), 84 FR 23145 (May 21, 2019), 84 FR 25895 (June 4, 2019), 84 FR 26930 (June 10, 2019), 84 FR 29576 (June 24, 2019), 84 FR 32821 (July 9, 2019), 84 FR 37381 (July 31, 2019), 84 FR 38717 (August 7, 2018), 84 FR 43304 (August 20, 2019), 84 FR 43853 (August 22, 2019), 84 FR 45821 (August 30, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 49564 (September 20, 2019), 84 FR 49600 (September 20, 2019), 84 FR 52567 (October 2, 2019), 84 FR 52553 (October 2, 2019), and 84 FR 57144 (October 24, 2019).

On May 15, 2019, USTR submitted a request to OMB for emergency processing of this ICR. OMB approved the emergency processing request on June 20, 2019, and assigned Control Number 0350–0015, which expires on December 31, 2019.

On June 24, 2019 (84 FR 29576), the U.S. Trade Representative established a process by which U.S. stakeholders could request the exclusion of particular products classified within a covered tariff subheading from the additional duties that went into effect as a result of this Section 301 investigation.

On June 30, 2019, USTR opened an electronic portal for submission of exclusion requests—*http://exclusions.ustr.gov*—using the approved ICR. Requests for exclusion have to identify a particular product and provide supporting data and the rationale for the requested exclusion. Within 14 days after USTR posts a request for exclusion, interested persons can provide a response with the reasons they support or oppose the request. Interested persons can reply to the response within 7 days after it is posted.

On August 22, 2019, USTR requested comments regarding its intent to seek a three-year renewal of the OMB control number for this ICR. *See* 84 FR 43853. As discussed further below, USTR received three submissions in response to the notice.

USTR also anticipates using the ICR to establish a process by which U.S. stakeholders can request and comment on the extension of particular exclusions granted under the December 2018 product exclusion notice.

As indicated above, USTR received three comments regarding the renewal of the ICR. Two comments requested that USTR add additional questions to the ICR; two comments requested the addition of clarifying language to certain questions; one comment identified a question as burdensome; one comment suggested improvements to the user experience for submitting the ICR through the online 301 exclusions portal; and one comment concerned the burden estimate.

USTR is revising the USTR after considering these comments and USTR's experience to date in administering the exclusion process. USTR added a new question (question 3) that asks if the product is subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce. USTR also added additional clarifying language to question 4, indicating that requestors, if necessary, may provide a range of unit values when describing the product at issue. In addition, USTR updates the 301 portal to reduce the burden on submitters and currently is working to improve the user experience by increasing the character limit for certain fields to allow requestors additional space for their comments.

USTR also has created a condensed version of the ICR—the Exclusion Extension Comment Form (Annex B)—that interested parties will use to comment on whether to extend particular exclusions granted in December 2018. The condensed ICR reduces the number of data points in the 301 Exclusion Request/Response/Reply Form (Annex A).

The condensed ICR is comprised of Part A, which collects information that USTR will post for public inspection via *regulations.gov*, and Part B, which collects business confidential information (BCI) via email and will not be publicly available. The condensed ICR updates the collecting period for specific data to the most recent relevant period (*i.e.,* 2018, the first half of 2018, and the first half of 2019 or since 2018).

Part A includes language clarifying that for questions 4 and 5 commenters should ''include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.'' The condensed ICR includes three new questions in Part A. Question 2 asks commenters to provide information necessary to identify the exclusion at issue, including the date of the **Federal Register** notice containing the exclusion, the 10-digit subheading of the HTSUS applicable to the exclusion, and the full article description for the exclusion. Question 3 asks commenters whether they support extending the exclusion and asks that they provide a public version of their rationale. Question 6 asks commenters whether they will submit Part B of the questionnaire.

Part B adds two new questions, asking commenters to discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of the duties and to provide any additional information in support of their comments taking into account the instructions provided in the **Federal Register** notice.

The revised ICR is included as Annex A to this notice. The condensed ICR for exclusion extension comments is included as Annex B.

Affected Public: U.S. stakeholders who want to request, or comment on a request, to exclude particular products from the additional duties on products from China classified in certain enumerated subheadings of the HTSUS and U.S. stakeholders who want to comment regarding the extension of the December 2018 product exclusions.

Frequency of Submission: One submission per request, response, reply, or comment.

Respondent Universe: U.S. stakeholders.

Reporting Burden:

Total Estimated Responses: 45,000 requests to exclude a particular product and/or comments to extend the December 2018 product exclusions; 5,250 responses to a product exclusion request; and 2,250 replies to a response.

Total Estimated Annual Burden: USTR estimates that preparing and submitting a request to exclude a particular product or commenting regarding an exclusion extension will take approximately 120 minutes and will cost about $200 per submission. The total time burden for requests is 90,000 hours and the estimated total cost is $9,000,000.

USTR estimates that preparing and submitting a response to a product exclusion request will take approximately 60 minutes, and will cost about $100 per submission. The total time burden for responses is approximately 5,250 hours at an estimated total cost of $525,000.

USTR estimates that preparing and submitting a reply will take approximately 30 minutes, and will cost about $50 per submission. The total time burden for replies is approximately 1,125 hours and the estimated total cost is $56,250.

USTR estimates that the cost to the Federal government to evaluate each request, and response or reply, if any, is 2.5 hours, for a total time burden of 112,500 hours at an estimated total cost of $6,200,000. The $6.2 million total cost estimate includes the average annual salary plus benefits, for the federal employees and contractors expected to work on the exclusion process. USTR estimates that it will take approximately one year to complete the process.

Status: Pursuant to the PRA and its implementing regulations, USTR is submitting a request to OMB to renew approval of this ICR for three years.

C. Requirements for Submissions

You must submit written comments by the deadline set forth in this notice. Submit comments about the ICR, including the title *301 Exclusion Requests,* to the Office of Information and Regulatory Affairs at OMB, at *oira_submissions@omb.eop.gov,* or 725 Seventeenth Street NW, Washington, DC 20503, Attention: USTR Desk Officer.

Janice Kaye,

Chief Counsel for Administrative Law.

BILLING CODE 3920–F0–P

Annex A

Exclusion Request Form

1. **Submitter Information**

Full Organization Legal Name * **(Public)**

Requestor First Name * **(BCI)**

Requestor Last Name * **(BCI)**

Requestor Mailing Address

Street Address Line 1 * **(BCI)**

Street Address Line 2 **(BCI)**

City * **(BCI)**

State * **(BCI)**

Zip Code * **(BCI)**

Country * **(BCI)**

Requestor E-mail Address * **(BCI)**

Requestor Phone Number * **(BCI)**

Does your business meet the size standards for a small business as established by the Small Business Administration? * **(Public)** YES/NO/Not Sure

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? * **(Public)** YES/NO

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**

Third Party First Name **(BCI)**

Third Party Last Name **(BCI)**

Third Party Mailing Address

Street Address Line 1 **(BCI)**

Street Address Line 2 **(BCI)**

City **(BCI)**

State **(BCI)**

Zip Code **(BCI)**

Country **(BCI)**

Third Party E-mail Address **(BCI)**

Third Party Phone Number **(BCI)**

Who will be the primary point of contact? (Select One) * (BCI)

- Requestor
- Third Party Submitter
- Requestor and Third Party Submitter

2. **Please provide the 10-digit HTSUS item number* for the product you wish to address in this product exclusion request.** ***A 10-digit HTSUS number is required.*** *** (Public)**

Use numerical characters only with no special characters (Example: 1023456789). For help with finding the HTSUS item number associated with your product, see https://hts.usitc.gov/.

3. **Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? ***

4. **Please provide a complete and detailed description of the particular product of concern.** (A detailed description of the product includes, but is not limited to, its physical characteristics (e.g., dimensions, weight, material composition, etc.), whether product is designed to function in or with a particular machine (application), the unit value of the product (please provide a range if necessary), and any unique physical features that distinguish it from other products within the covered 8-digit HTSUS subheading. If needed, please attach images and specification sheets, CBP rulings, court decisions, and previous import documentation below.) **Please also describe the product's principal use.**

Note: USTR will not consider requests that identify the product using criteria that cannot be made available to the public. USTR will not consider requests in which more than one unique product is identified.

Product Name * (Public)

Product Description (e.g. dimensions, weight, material composition, etc.) * (Public)

Product Function, Application, and Principal Use * (Public)

Please upload any relevant attachments that will help identify and distinguish your product (e.g. CBP rulings, photos and specification sheets, and previous import documentation) (Public)

5. **Requestor's relationship to the product (select all that apply) * (Public)**

- Importer
- U.S. Producer
- Purchaser
- Industry Association
- Other

6. **Is this product, or a comparable product, available from sources in the United States? (If you indicate "NO" or "NOT SURE," in the box below, you must explain why the product is unavailable or why you are unsure of the product's availability.) * (Public)**

- YES
- NO
- NOT SURE

Please explain why the product is unavailable or why you are unsure of the product's availability. (Submitter Determines BCI or Public)

7. **Is this product, or a comparable product, available from sources in third countries? (If you indicate "NO" or "NOT SURE," in the box below, you must explain why the product is unavailable or why you are unsure of the product's availability.) * (Public)**

- YES
- NO
- NOT SURE

Please explain why the product is unavailable or why you are unsure of the product's availability. (Submitter Determines BCI or Public)

8. **Please discuss any attempts to source this product from United States or third countries. * (Public)**

9. **Please provide the value in USD and quantity (with units) of the <u>Chinese-origin</u> product of concern that you purchased in 2017, 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. * (BCI)**

2017 Value:	2017 Quantity:
2018 Value:	2018 Quantity:
2019 Value (Jan-Jun):	2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

Are any of these purchases from a related company? * (BCI) YES/NO

Please list the name and relationship of the related company. (BCI)

10. Please provide the value in USD and quantity (with units) of the product of concern that you purchased from any <u>third-country</u> source in 2017, 2018, and the first half of 2019 (Jan-Jun). Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. * (BCI)

2017 Value: 2017 Quantity:

2018 Value: 2018 Quantity:

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

11. Please provide the value in USD and quantity (with units) of the product of concern that you purchased from <u>domestic sources</u> in 2017, 2018, and the first half of 2019 (Jan-Jun). Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. * (BCI)

2017 Value: 2017 Quantity:

2018 Value: 2018 Quantity:

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

12. Please provide information regarding your company's gross revenue in USD for 2018 and the first half of 2019 (Jan-Jun). * (BCI)

Fiscal Year 2018:

First Half of 2019 (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

13. Is the Chinese-origin product of concern sold as a <u>final product</u> or as an <u>input</u> used in the production of a final product or products? * (Public)

a) For imports sold as <u>final products,</u> please provide: (BCI)

% of your company's total, U.S. gross sales in 2018 that the Chinese-origin product accounted for.

b) For imports of <u>inputs</u> used in the production of final products, please provide: (BCI)

% of the total cost of producing the final product(s) the Chinese-origin input accounts for.

% of your company's total, U.S. gross sales in 2018 that sales of the final product(s) incorporating the input accounts for.

14. **Please comment on whether the imposition of additional duties on the product you are seeking to exclude will result in severe economic harm to your company or other U.S. interests. In addressing this factor, please address the number of employees in your company and the number of employees potentially affected.** * (BCI)

15. **Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice.** (Submitter Determines BCI or Public)

16. **Did you submit exclusion requests for the Section 301 $34 billion** (Docket ID: USTR-2018-0025), **the $16 billion** (Docket ID: USTR-2018-0032), **and/or the $200 billion** (Docket ID: USTR-2019-0005) **tariff actions?** * (Public) YES/NO

Please enter the total value of your company's imports applicable to the tariff action for which you submitted one or more exclusion request: (BCI)

Initial $34 Billion Tariff Action:

Additional $16 Billion Tariff Action:

Additional $200 Billion Tariff Action:

17. **Please comment on whether the particular product of concern is strategically important or related to "Made in China 2025" or other Chinese industrial programs. You must explain in the box below why you believe the product of concern is or is not strategically important or related to "Made in China 2025" or other Chinese industrial programs.** * (Public)

18. **Include any additional attachments that should be considered along with this exclusion request (e.g., customs rulings, court decisions, previous import documentation, etc.). Please do not include attachments that contain your written argument.** (Submitter Determines BCI or Public)

OMB Control Number: 0350-0015 Expiration Date: December 31, 2019

Exclusion Extension Comment
Form A

Information in Form A should be submitted on the Public Docket at http://www.regulations.gov.

1. Submitter Information

Full Organization Legal Name **(Public)**

Commenter First Name **(Public)**

Commenter Last Name **(Public)**

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? (Public)

Yes/No

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**

Third Party First Name **(Public)**

Third Party Last Name **(Public)**

Annex B

2.

a) Please provide the publication date of the Federal Register Notice containing the exclusion you are commenting on. (Public)

b) Please provide the 10-digit subheading of the HTSUS applicable to the exclusion you are commenting on. *A 10-digit HTSUS number is required.* (Public)

c) From the Federal Register Notice, please provide the full article description for the exclusion. If the exclusion is a 10-digit code, please indicate. (Public)

d) Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? (Public)

Yes/No/Not Sure

3. Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale, even if you are also submitting a Form B with more detailed, confidential information.) (Public)

Yes/No

4. Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product or any other relevant industry developments.) (Public)

5. Please explain whether the products covered by the exclusion, or comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.) (Public)

6. Will you be submitting Form B? (Public)

Yes/No

Note: Responses to Form A should be submitted to the Public Docket at Regulations.gov (Information submitted in Form A will be posted on the Public Docket).

OMB Control Number: 0350-0015 Expiration Date: December 31, 2019

Exclusion Extension Comment
Form B

Form B should be completed by Importers and Purchasers of the products covered by the exclusion.
Form B should be submitted via email at 301bcisubmissions@ustr.eop.gov and will not be available to the public. Please include Form A with your email submission of Form B.
NOTE: Form A should be submitted both on regulations.gov and with Form B, via email.

1.

a.) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI) Yes/No

Are any of these purchases from a related company? (BCI) Yes/No

Please list the name and relationship of the related company. (BCI)

Name: **Relationship:**

b.) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)

2. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI) Yes/No

3. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI) Yes/No

4. Please discuss any efforts you have undertaken since July 2018 to source this product from the United States or third countries. (BCI)

5. Please provide information regarding your company's gross revenue in USD for 2018, the first half of 2018, and the first half of 2019. (BCI)

Fiscal Year 2018:	
First Half (Jan-Jun) 2018:	
First Half (Jan-Jun) 2019:	

Are the provided figures estimates? (BCI) Yes/No

6. Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? (BCI)

Final Product/Input

7. Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)

8. Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice. (BCI)

[FR Doc. 2019–23938 Filed 10–31–19; 8:45 am]

BILLING CODE 3290–F0–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–66]

Petition for Exemption; Summary of Petition Received; Florida Power & Light Company

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the

legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 21, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0740 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 28, 2019.

Forest Rawls,

Acting Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0740.

Petitioner: Florida Power & Light Company.

Section(s) of 14 CFR Affected: §§ 61.113(a) & (b); 91.7(a); 91.105(a)(2); 91.121; 91.403(b); 91.405(a); 91.407(a)(1); 91.409(a); & 91.417(a) & (b).

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner to operate the Teros, a medium altitude long endurance unmanned aircraft system in the 1,500 pound class, made by the NAVMAR Applied Sciences Corporation. The proposed operation is within line of sight of the pilot in command for the purposes of aerial data collection and training flights in the United States.

[FR Doc. 2019–23952 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0896]

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Flight Attendant Fatigue Risk Management Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves submission of Fatigue Risk Management Plans (FRMP) for flight attendants of certificate holders operating under Title 14 of the Code of Federal Regulations (CFR) part 121. The certificate holders will submit the information to be collected to the FAA for review and acceptance as required by Section 335(b) of Public Law 115–254, the FAA Reauthorization Act of 2018.

DATES: Written comments should be submitted by December 31, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, Policy Integration Branch AFS–270, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Daniel T. Ronneberg by email at: *Dan.Ronneberg@faa.gov;* phone: 202–267–1612.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Flight Attendant Fatigue Risk Management Plan.

Form Numbers: There are no forms associated with this collection.

Type of Review: Clearance of a new information collection.

Background: On October 5, 2018, Congress enacted Public Law 115–254, the FAA Reauthorization Act of 2018 (''the Act''). Section 335(b) of the Act required each certificate holder operating under 14 CFR part 121 to submit to the FAA for review and acceptance a Fatigue Risk Management Plan (FRMP) for each certificate holder's flight attendants. Section 335(b) contains the required contents of the FRMP, including a rest scheme consistent with current flight time and duty period limitations and development and use of methodology to continually assess the effectiveness of the ability of the plan to improve alertness and mitigate performance errors. Section 335(b) requires that each certificate holder operating under 14 CFR part 121 shall update its FRMP every two years and submit the update to the FAA for review and acceptance. Further, section 335(b) of the Act requires each certificate holder operating under 14 CFR part 121 to comply with its FRMP that is accepted by the FAA.

Respondents: 70 Part 121 Air Carriers.

Frequency: Once for initial acceptance of the plan, then every two years for submission of an updated plan.

Estimated Average Burden per Response: 20 hours for air carriers submitting the initial plan for review and acceptance and 5 hours for air carriers submitting an updated plan.

Estimated Total Annual Burden: 20 hours per air carrier submitting the initial plan for review and acceptance, 5 hours every two years for update and resubmission of the plan.

Issued in Washington, DC, on October 29, 2019.

Sandra L. Ray,

Aviation Safety Inspector, FAA, Policy Integration Branch, AFS–270.

[FR Doc. 2019–23958 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Request To Release Surplus Property at the Daniel Field Airport, Augusta, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comment.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47151(d), notice is being given that the Federal Aviation Administration (FAA) is considering a request from the City of Augusta to waive the requirement that 0.13 acres of surplus property located at the Daniel Field Airport be used for aeronautical purposes. Currently, the ownership of the property provides for the protection of FAR Part 77 surfaces and compatible land use which would continue to be protected with deed restrictions required in the transfer of land ownership.

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

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Rob Rau, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Ave., Ste. 220, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed to: David Fields, Chairman, General Aviation Commission, City of Augusta, 1775 Highland Avenue, Augusta, GA 30904.

FOR FURTHER INFORMATION CONTACT: Rob Rau, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Ave., Ste. 220, College Park, GA 30337, *robert.rau@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request to release 0.13 acres of surplus property at the Daniel Field Airport (DNL) under the provisions of 49 U.S.C. 47151(d). On October 11, 2019, the City of Augusta (with concurrence from Georgia Department of Transportation) requested the FAA release 0.13 acres of surplus property for a permanent utility easement. The FAA has determined that the proposed property release at the Daniel Field Airport, as submitted by the City of Augusta, meets the procedural requirements of the FAA and release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the easement, which will be subsequently reinvested in another eligible airport improvement project for aviation facilities at the Daniel Field Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Daniel Field Airport.

Issued in Atlanta, GA, on October 23, 2019.

Larry F. Clark, Manager,

Atlanta Airports District Office.

[FR Doc. 2019–23949 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–37]

Petition for Exemption; Summary of Petition Received; Daniel Waghorne

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 21, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0305 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 28, 2019.

Forest Rawls,

Acting Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0305.

Petitioner: Daniel Waghorne.

Section(s) of 14 CFR Affected: Part 21, subpart H §§ 61.113(a) & (b); 91.7(a); 91.9(b)(2); 91.103; 91.105; 91.109; 91.119; 91.121; 91.151(a); 91.203(a) & (b); 91.405(a); 91.407(a)(1); 91.401(a)(1) & (2); & 91.417(a) & (b).

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner to operate the Watts Innovation MFD–5000 unmanned aircraft system, with a maximum gross weight of up to 78 pounds, including payload, to conduct photography and videography within the United States of America. All operations will be conducted within visual line of sight and in class G airspace during the day. The operations will remain below 400 feet above ground level.

[FR Doc. 2019–23953 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0895]

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Employee Assault Prevention and Response Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves submission of Employee Assault Prevention and Response Plans (EAPRP) for customer service agents of certificate holders conducting operations under Title 14 of the Code of Federal Regulations (CFR) part 121. The certificate holders will submit the information to be collected to the FAA for review and acceptance as required by Section 551 of Public Law 115–254, the FAA Reauthorization Act of 2018.

DATES: Written comments should be submitted by December 31, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, Policy Integration Branch AFS–270, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Daniel T. Ronneberg by email at: *Dan.Ronneberg@faa.gov;* phone: 202–267–1612.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Employee Assault Prevention and Response Plan.

Form Numbers: There are no forms associated with this collection.

Type of Review: Clearance of a new information collection.

Background: On October 5, 2018, Congress enacted Public Law 115–254, the FAA Reauthorization Act of 2018 (''the Act''). Section 551 of the Act required air carriers operating under 14 CFR part 121 to submit to the FAA for review and acceptance an Employee Assault Prevention and Response Plan (EAPRP) related to the customer service agents of the air carrier that is developed in consultation with the labor union representing such agents. Section 551(b) of the Act contains the required contents of the EAPRP, including reporting protocols for air carrier customer service agents who have been the victim of a verbal or physical assault.

Respondents: 70 Part 121 Air Carriers.

Frequency: Once for submission of the plan.

Estimated Average Burden per Response: 20 hours for air carriers submitting the plan for review and acceptance.

Estimated Total Annual Burden: 20 hours per air carriers submitting the plan for review and acceptance.

Issued in Washington, DC, on October 29, 2019.

Sandra L. Ray,

Aviation Safety Inspector, FAA, Policy Integration Branch, AFS–270.

[FR Doc. 2019–23957 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2017–0975]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Information Collection 2120–0768

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 7, 2019. The FAA proposes collecting information related to requests to operate Unmanned Aircraft Systems (UAS) in controlled airspace pursuant to regulations contained in the code of federal regulations. FAA will use the collected information to make determinations whether to authorize or deny the requested operation of UAS in controlled airspace. The proposed information collection is necessary to issue such authorizations or denials consistent with the FAA's mandate to ensure safe and efficient use of national airspace.

DATES: Written comments should be submitted by December 2, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Casey Nair, FAA's Unmanned Aircraft Systems (UAS) Low Altitude Authorization and Notification Capability (LAANC) Program Manager, by email at *Casey.Nair@faa*.gov; phone: 202–267–0369.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0768.

Title: Requests for Comments; Clearance of Renewed Approval of Information Collection: Information Collection 2120–0768, Part 107 Authorizations and Waivers under 14 CFR part 107.

Form Numbers: There are no forms associated with this collection.

Type of Review: Renewal of existing Information Collection.

Background: The **Federal Register** Notice with 60-day comment period soliciting comments on the following collection of information was published on August 7, 2019 (84 FR 38719). The FAA has seen increased operations of small Unmanned Aircraft Systems (UAS) flying under 14 CFR part 107. Section 107.41 states that ''no person may operate a small unmanned aircraft in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless that person has prior authorization from Air Traffic Control (ATC).'' Such authorization may be obtained in the form of either an airspace authorization issued by the FAA or a waiver of the authorization requirements of 14 CFR 107.41 (airspace waiver). Additionally, operators may request waivers of the other operational requirements listed in § 107.205 (operational waivers).

In order to process authorization and airspace waiver requests, the FAA requires the operator's name, the operator's contact information, and information related to the date, place, and time of the requested small UAS operation. This information is necessary for the FAA to meet its statutory mandate of maintaining a safe and efficient national airspace. See 49 U.S.C. 40103 and 44701; 49 U.S.C. 44807.

Additionally, if the operator is seeking an operational waiver from one of the other regulations listed in 14 CFR 107.205, further information is required related to the proposed waiver and any necessary mitigations. The FAA will use the requested information to determine if the proposed UAS operation can be conducted safely.

The FAA proposes to use LAANC and a web portal to process authorization requests from the public to conduct Part 107 flight operations pursuant to § 107.41. The FAA also proposes to use the web portal to process requests from the public to conduct Part 107 flight operations that require an operational waiver or an airspace waiver.

The FAA received no public comments to the 60-day **Federal Register** Notice.

Respondents: Small UAS operators seeking to conduct flight operations under 14 CFR part 107 within controlled airspace or flight operations that require waiver from certain provisions of Part 107. Between 2020–2022, the FAA estimates that it will receive a total of 794,888 requests for airspace authorization. The FAA determines future estimated airspace authorization requests by the ratio of the number of received requests against the total number of registered Part 107 UAS. In the 60-day Notice published on August 7, 2019, the FAA estimated 346,917 airspace authorizations from 2020–2022. This number has increased to 794,888 for two reasons. First, since the 60-day Notice estimate on future airspace authorization requests was made, there have been nearly 30,000 new registrations of UAS, which exceeds all FAA expectations. The FAA has also received a corresponding increase in authorization requests since the 60-day Notice was published. The FAA now expects to see 18% more airspace authorization requests in 2019 than when the 60-day Notice was published, which increases the number of respondents the FAA expects over the next three years. Second, in its 60-day Notice the FAA calculated future UAS use based on the ratio of requests to registrations, but used a ratio based on requests from January 1—May 31, 2019 as opposed to the ratio for the full calendar year. This change reflects only that the FAA anticipates the total number of requests from all Part 107 respondents to be higher than what was estimated in the 60-day Notice. The time required for each individual request will remain the same as the average burden per response remains 5 minutes for respondents using LAANC and 30 minutes for respondents using the web portal as reported in the 60-day Notice.

In the 60-day Notice, the FAA estimated 27,831 requests for airspace waivers and 9,000 requests for operational waivers. When the FAA provided the estimates in the 60-day Notice it transposed the numbers for airspace waivers and operational waivers. The FAA estimates it will receive 8,458 requests for airspace waivers and 24,103 requests for operational waivers between 2020–2022 which reflects the correct burden estimate for compliance with sub-sections of 14 CFR 107.205.

Frequency: The requested information will need to be provided each time a respondent requests an airspace authorization to operate a small UAS under 14 CFR part 107 in controlled airspace. A respondent may reduce the frequency by seeking and obtaining an airspace waiver to conduct recurring operations. For requests for operational waivers, a respondent will need to provide the information once at the time of the request for the waiver. If granted, operational waivers may be valid for up to four (4) years.

Estimated Average Burden per Response: The FAA estimates the respondents using LAANC will take five (5) minutes per request and those using the web portal will take thirty (30) minutes per request. For those submitting requests for airspace or operational waivers through the web portal, the FAA estimates each request will take thirty (30) minutes.

Estimated Total Annual Burden: For airspace authorizations, the FAA estimates that the average annual burden will be 35,251 hours for respondents submitting requests. This includes 19,353 burden hours for 233,167 respondents using the automated LAANC capabilities and 15,898 hours for 31,796 web portal respondents. These revised numbers reflect corrections made as explained above.

For airspace waivers, the FAA estimates that the average annual burden will be 1,410 hours for respondents. For operational waivers, the FAA estimates that the average annual burden will be 5,222 hours for respondents. These revised numbers reflect corrections made as explained above.

Issued in Washington, DC, on October 29, 2019.

Casey Nair,

UAS LAANC Program Manager.

[FR Doc. 2019–23947 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2020 Competitive Funding Opportunity: Mobility for All Pilot Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for approximately $3.5 million in Fiscal Year (FY) 2020 funds under the Innovative Coordinated Access and Mobility (Mobility for All) pilot program; (Catalog of Federal Domestic Assistance number: 20.513). Funding under this pilot program is subject to the availability of a full-year

appropriation. This funding opportunity seeks to improve mobility options through employing innovative coordination of transportation strategies and building partnerships to enhance mobility and access to vital community services for older adults, individuals with disabilities, and people of low income. As required by Federal public transportation law, funds will be awarded competitively to finance innovative capital projects that will improve the coordination of transportation services and non-emergency medical transportation services. FTA may award additional funding that is made available to the program prior to the announcement of project selections.

DATES: Applicants must submit completed proposals for each funding opportunity through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. Eastern Daylight Time on Monday, January 6, 2020. Prospective applicants should register as soon as possible on the *GRANTS.GOV* website to ensure they can complete the application process before the submission deadline. Application instructions are available on FTA's website at *http://transit.dot.gov/howtoapply* and in the ''FIND'' module of *GRANTS.GOV*. The *GRANTS.GOV* funding opportunity ID for the Mobility for All Coordination (MOAC) is FTA–2020–001–TPM. The FTA will not accept mail and fax submissions.

FOR FURTHER INFORMATION CONTACT: Kelly Tyler, FTA Office of Program Management; Phone: (202) 366–3102; Email: *Kelly.Tyler@dot.gov*; Fax: (202) 366–3475.

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A. Program Description

Section 3006(b) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, Dec. 4, 2015) authorizes FTA to award grants for Innovative Coordinated Access and Mobility (Mobility for All) pilot projects for transportation disadvantaged populations that improve the coordination of transportation services and non-emergency medical transportation services. In FY 2020, FTA intends to target funds towards projects that support coordination amongst programs funded by the Coordinating Council on Access and Mobility (CCAM).

The CCAM consists of eleven Federal agencies and coordinates more than 120 Federal programs that may fund transportation. The CCAM's mission is to improve the availability, accessibility, and efficiency of transportation for people who are transportation disadvantaged. The benefits of successful coordinated transportation systems include providing greater access to funding and enabling more cost-effective use of resources, reducing duplication and overlap in human service agency transportation services; filling service gaps in a community or geographic area; serving additional individuals within existing budgets; and providing more centralized management of existing resources.

The Mobility for All pilot program will improve local coordination by encouraging cooperation among grantees of 122 Federal programs that fund human service transportation. A current list of these 122 Federal programs can be accessed at *https://www.transit.dot.gov/ccam/about/partner-agencies.* Successful projects will work collaboratively and leverage partnerships with grantees and constituents of the Federal agencies that are members of the CCAM, such as the Department of Health and Human Services' operating divisions such as the Administration for Community Living, the Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services.

Successful applicants will demonstrate progress towards implementing single same-day, door-to-door service to improve mobility in their community, and increasing efficiency by using the same vehicles to transport passengers whose trips are funded via different Federal programs. Applicants will use innovative cost allocation technology (for example, the cost allocation model developed by the National Rural Transit Assistance Program) to demonstrate how costs can be shared equitably among participating local and regional organizations who receive funding from a variety of Federal agencies. Applicants should show support for coordination by providing letters of commitment from entities such as: Local community service organizations, medical providers and other Federal grantees interested in contracting for transportation trips with the Mobility for All service.

Projects may focus on serving rural areas, and populations affected by healthcare challenges—such as the opioid epidemic, veterans, Medicaid recipients, and/or any population that is currently underserved by non-emergency medical transportation (NEMT).

The Mobility for All pilot program grants will support capital projects that address the challenges the transportation disadvantaged face when accessing healthcare and other essential community services. The goals are to:

(1) Increase access to funding sources that can fund transportation;

(2) fill gaps in service and reduce duplication; and

(3) provide more efficient service to underserved populations in rural and small urban areas.

The Mobility for All grants will operate as pilots for up to 18 months.

Within the first year, projects must be able to demonstrate outcomes that are:

- Effective, in that they get people where they need to go;
- efficient, in that they use public dollars economically; and
- accessible, in that services are easy for travelers to navigate and use.

B. Federal Award Information

Section 3006(b) of the FAST Act (Pub. L. 114–94) authorizes $3,500,000 in FY 2020 for grants under the Mobility for All pilot program. FTA may cap the amount a single recipient or State may receive as part of the selection process. FTA will approve pre-award authority pursuant to 2 CFR 200.458 to incur costs for selected projects beginning on the date FTA announces recipients of the FY 2020 awards. Funds are only available for projects that have not incurred costs prior to the announcement of project selections.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants for awards are States, tribes, designated or direct recipients under 49 U.S.C. 5307, 5310 or 5311.

Applicants must serve as the lead agency of a local consortium that includes stakeholders from the transportation, healthcare, human service or other sectors. Members of this consortium are eligible as subrecipients. Further, applicants must demonstrate that the proposed project was planned through an inclusive process with the involvement of the transportation, healthcare and human service sectors. An implementation plan and schedule must be submitted as part of the proposal.

ii. Cost Sharing or Matching

The maximum Federal share of project costs under the Mobility for All pilot program is 80 percent. The applicant must provide a local share of at least 20 percent of the project cost and must document the source of the local match in the grant application.

Eligible sources of local match include cash and in-kind contributions. In-kind contributions must be documented in the application.

iii. Eligible Projects

Eligible projects are capital projects, as defined in 49 U.S.C. 5302(3). FTA may make grants to assist in financing innovative projects for the transportation disadvantaged that improve the coordination of transportation services and non-emergency medical transportation services including: The deployment of coordination technology; projects that create or increase access to community one-call/one-click centers; and other innovative projects. FTA's goal for these pilot program grants is to identify and test promising, innovative, coordinated mobility strategies other communities can replicate. Only one project may be included in each application.

Funds under the Mobility for All pilot program may be used for capital expenditures only. Additionally, funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to the selection of projects under this NOFO.

D. Application and Submission Information

1. Address To Request Application

Applications must be submitted through *GRANTS.GOV*. Applicants can find general information for submitting applications through *GRANTS.GOV* at *https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding,* along with specific instructions for the forms and attachments required for submission. Mail and fax submissions will not be accepted. A complete proposal submission consists of two forms:

- The SF–424 Mandatory Form (downloadable from *GRANTS.GOV*); and
- Supplemental Form for the FY 2020 Mobility for All Coordination Pilot Program

at *https://www.transit.dot.gov/funding/grants/enhanced-mobility-seniors-individuals-disabilities-section-5310*). Applicants also may attach additional supporting information. Failure to submit the information as requested can delay or prevent review of the application.

2. Content and Form of Application Submission

i. Proposal Submission

A complete proposal submission consists of at least two forms, the SF–424 Mandatory Form, and the Supplemental Form for the FY 2020 Mobility for All Coordination Pilot Program. The application must include responses to all sections of the SF–424 mandatory form and the supplemental form unless a section is indicated as optional. FTA will use the information on the supplemental form to determine applicant and project eligibility for the program and to evaluate the proposal against the selection criteria described in part E of this notice. FTA will accept only one supplemental form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If States or other applicants choose to submit separate proposals for individual consideration by FTA, they must submit each proposal with a separate SF–424 and supplemental form.

Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support, project budgets, fleet status reports, or excerpts from relevant planning documents. Supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicant name, Federal amount requested, local match amount, description of areas served, etc., may be requested in varying degrees of detail on both the SF–424 form and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. If applicants copy information into the supplemental form from another source, they should verify that the supplemental form has fully captured pasted text and that it has not truncated the text due to character limits built into the form. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' buttons on both forms to check all required fields. Applicants should also ensure that the Federal and local amounts specified are consistent.

ii. Application Content

The SF–424 Mandatory Form and the supplemental form will prompt applicants for the required information, including:

a. Applicant Name
b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number
c. Key contact information (including contact name, address, email address, and phone)
d. Congressional district(s) where project will take place
e. Indicate whether the project is in an Opportunity Zone
f. Project Information (including title, an executive summary, and type)
g. A detailed description of the need for the project
h. A detailed description of how the project will support the Mobility for All Coordination Pilot Program objectives
i. Evidence that the project is consistent with local and regional planning documents and/or that the project is consistent with local and regional Services Transportation Plans
j. Evidence that the applicant can provide the local cost share and details on the local matching funds
k. A description of the technical, legal, and financial capacity of the applicant
l. A detailed project budget (up to 18 months or less)
m. An explanation of the scalability of the project (if applicable)
n. A detailed project timeline

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Register in SAM before applying; (2) provide a valid unique entity identifier; and (3) to maintain an active SAM registration with current information during which the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant: (1) Is an individual; (2) is excepted from the requirements under 2 CFR 25.110(b) or (c); or (3) has an exception approved by FTA under 2 CFR 25.110(d). FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. Registration in SAM may take as little as 3–5 business days, but there can be unexpected steps or delays. For example, the applicant may need to obtain an Employer Identification Number. FTA recommends allowing ample time, up to several weeks, to complete all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

The FTA will provide further instructions on registration through an introductory applicant training session. Dates and times for the training session will be posted on FTA's website at *https://www.transit.dot.gov/funding/grants/grant-programs/mobility-all-grants.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern Daylight Time on Monday, January 6, 2020. Late applications will not be accepted. Mail and fax submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to correct any problems that may have caused either *GRANTS.GOV* or FTA systems to reject the submission. Deadlines will not be extended due to scheduled website maintenance. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV*: (1) Confirmation of successful transmission to *GRANTS.GOV*; and (2) confirmation of successful validation by *GRANTS.GOV*. If the applicant does not receive confirmation of successful validation or receives a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, applicants must include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to update their registration before submitting an application. Registration in SAM is renewed annually and persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

Funds under the Mobility for All pilot program may be used for capital expenditures only that are tied to the locally developed Coordinated Public Transit-Human Services Transportation Plan or State Improvement Plan/Transportation Improvement Plan. Eligible projects are capital projects, as defined in 49 U.S.C. 5302(3).

6. Other Submission Requirements

FTA encourages applicants to identify scaled funding options in case insufficient funding is available to fund a project at the fully requested amount. If an applicant indicates that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how a reduced award would affect the project budget. FTA may award a lesser amount regardless of whether the applicant provides a scalable option.

E. Application Review Information

1. Project Evaluation Criteria

Each application submitted for the Mobility for All pilot program must include: (1) A detailed description of the project; (2) an identification of all project partners and their specific role in the eligible project; (3) specific performance measures the project will use to quantify actual outcomes against expected outcomes; and (4) a description of how the project will:

- Increase access to funding sources that can fund transportation;
- fill gaps in service and reduce duplication; and
- provide more efficient service to underserved populations in rural and small urban areas.

FTA will evaluate proposals submitted according to the following criteria: (a) Demonstration of need; (b) demonstration of benefits; (c) planning and partnerships; (d) local financial commitment; (e) project readiness; and (f) technical, legal, and financial capacity. Each applicant is encouraged to provide a succinct, logical, and orderly response to all criteria referenced in this NOFO. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found.

a. Demonstration of Need

FTA will evaluate proposals based on how the proposed project will address the need or challenges to improving coordination of transportation services serving rural or small urban areas, populations affected by healthcare challenges such as the opioid epidemic, veterans, Medicaid recipients, and/or any population that is currently underserved by NEMT. FTA will consider both the scope of the overall need or challenge, and the size of the specific segment of the population served by the proposed project.

b. Demonstration of Benefits

FTA will evaluate proposals on the benefits provided by the proposed project. Benefits will be tied to the Mobility for All pilot program goals of: (1) Increased access to funding sources that fund transportation; (2) filling gaps in service and reducing duplication of service; and (3) better serving underserved populations in rural and small urban areas. Proposals will be judged on the extent to which the proposed project demonstrates a benefit to the transportation need or challenge to mobility and access to services demonstrated above. Projects will be evaluated on the ability of the proposed project to yield data demonstrating impacts on the goals of FTA's Mobility for All pilot program. Proposals must show that the applicant will be able to provide impact data during and after the pilot project. FTA will conduct an independent evaluation of each pilot project. FTA requires each applicant to submit the performance data on a quarterly basis. This data will be used by FTA to produce the required Annual Report to Congress that contains detailed description of the activities carried out under the pilot program, and an evaluation of the program, including an evaluation of the performance measures described.

c. Planning and Partnerships

Applicants must describe the eligible project and outline project partners and their specific role in the project. Successful projects will work collaboratively and leverage partnerships with grantees and constituents of the Federal agencies that are members of the CCAM, such as the Department of Health and Human Services' Administration for Community Living, the Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services. A list of CCAM partners may be accessed by going to *https://www.transit.dot.gov/ccam/*

about/partner-agencies. Partners also may include private and nonprofit entities involved in the coordination of nonemergency medical transportation services for the transportation disadvantaged. Applicants should provide evidence of strong commitment from key partners, including memoranda of agreement or letters of support from relevant local stakeholders and partner organizations. Any changes to the proposed partnerships will require FTA's advance approval and must be consistent with the scope of the approved project. Projects should be derived from a locally developed, coordinated public transit-human services transportation plan.

d. Local Financial Commitment

Applicants must identify the source of the local share and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the local share as evidence of local financial commitment to the project. In addition, an applicant may propose a local share that is greater than the minimum requirement or provide documentation of previous local investment in the project as evidence of local financial commitment.

e. Project Readiness

FTA will evaluate the project on the proposed schedule and the applicant's ability to implement it. Applicants should indicate the short-term, mid-range, and long-term goals for the project. Applicants also must describe how the project will help the transportation disadvantaged and improve the coordination of transportation services and non-emergency medical transportation services. Proposals must provide specific performance measures the eligible project will use to quantify actual outcomes against expected outcomes. FTA will evaluate the project on the extent to which it was developed inclusively, incorporating meaningful involvement from key stakeholders including consumer representatives of the target groups and providers from the healthcare, transportation, and human services sectors, among others. The applicant must show significant, ongoing involvement of the project's target population.

f. Technical, Legal and Financial Capacity

FTA will evaluate proposals on the capacity of the lead agency and any partners to successfully execute the pilot effort. The applicant should have no outstanding legal, technical, or financial issues that would make this a high-risk project. FTA will evaluate each proposal (including the business plan, financial projections, and other relevant data) for feasibility and longer-term sustainability of both the pilot project as well as the proposed project at full deployment. FTA intends to select projects with a high likelihood of long-term success and sustainability.

2. Review and Selection Process

A technical evaluation committee made up of FTA staff will evaluate proposals based on the published evaluation criteria. After applying the above criteria, the FTA Administrator will consider the following key Departmental objectives:

- Supporting economic vitality at the national and regional level;
- Utilizing alternative funding sources and innovative financing models to attract non-Federal sources of infrastructure investment;
- Accounting for the life-cycle costs of the project to promote a state of good repair;
- Using innovative approaches to improve safety and expedite project delivery; and
- Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205, Federal Awarding Agency Review of Risk Posed by Applicants. In determining the allocation of program funds, FTA may consider geographic diversity, diversity in the size of the transit systems receiving funding, the applicant's receipt of other competitive awards, projects located in or that support public transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1, and the percentage of local share provided.

F. Federal Award Administration Information

1. Federal Award Notices

FTA Administrator will announce the final project selections on the FTA website. Project recipients should contact their FTA Regional Office for additional information regarding allocations for projects under each program.

At the time FTA announces project selections, FTA will extend pre-award authority pursuant to 2 CFR 200.458 for the selected projects. There is no blanket pre-award authority for these projects before announcement.

2. Award Administration

There is no minimum or maximum grant award amount; however, FTA intends to fund as many meritorious projects as possible. FTA will only consider proposals from eligible recipients for eligible activities. Due to funding limitations, projects selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable, meet all eligibility requirements, and can be completed with the amount awarded.

3. Administrative and National Policy Requirements

i. Pre-Award Authority

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected, and there are Federal requirements that must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the FY 2019 Apportionments Notice published on July 3, 2019, at *https://www.govinfo.gov/content/pkg/FR-2019-07-03/pdf/2019-14248.pdf*

ii. Grant Requirements

Selected applicants will submit a grant application through FTA's electronic grant management system and adhere to FTA grant requirements. All competitive grants will be subject to the congressional notification and release process. FTA emphasizes that third-party procurement applies to all funding awards, as described in FTA Circular 4220.1F, ''Third Party Contracting Guidance.'' However, FTA may approve applications that include a specifically identified partnering organization(s) (2 CFR 200.302(f)). When included, the application, budget, and budget narrative should provide a clear understanding of how the selection of these organizations is critical for the project and give sufficient detail about the costs involved.

iii. Planning

FTA encourages applicants to engage the appropriate State Departments of Transportation, Regional Transportation Planning Organizations, or Metropolitan Planning Organizations in areas to be served by the project funds available under these programs.

iv. Standard Assurances

By submitting an application, the applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

v. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system. An independent evaluation of the pilot program may occur at various points in the deployment process and at the end of the pilot project. In addition, FTA is responsible for producing an Annual Report to Congress that compiles evaluations of selected projects, including an evaluation of the performance measures identified by the applicants. All applicants must develop an evaluation plan to measure the success or failure of their projects and to describe any plans for broad-based implementation of successful projects. FTA may request data and reports to support the independent evaluation and annual report.

G. Federal Awarding Agency Contact

For questions about applying to the pilot program outlined in this notice, please contact the Program Manager, Kelly Tyler, at Federal Transit Administration, phone: (202) 366–3102, fax: (202) 366–3475, or email, *Kelly.Tyler@dot.gov.* A TDD is available at 1–800–877–8339 (TDDFIRS). Additionally, you may visit FTA's website for this program at *https://www.transit.dot.gov/funding/grants/grant-programs/mobility-all-grants.*

To ensure that applicants receive accurate information about eligibility or the program, applicants are encouraged to contact FTA directly with questions, rather than through intermediaries or third parties. FTA staff also may conduct briefings on the FY 2020 competitive grants selection and award process upon request.

K. Jane Williams,

Acting Administrator.

Address Name
Address Line 2
City, State, Zip
Dear Name:

Thank you for your letter supporting the application submitted by Applicant for funding under the U.S. Department of Transportation's Mobility for All pilot program.

The Federal Transit Administration (FTA) administers the Mobility for All pilot program, authorized by Section 3006(b) of the Fixing America's Surface Transportation Act. This program supports innovative coordinated access and mobility projects that improve the coordination of transportation services and non-emergency medical transportation services for the transportation disadvantaged populations.

All properly submitted applications will receive full and careful consideration. FTA will announce final project selections after the review process is complete.

Your interest in this program is appreciated.

Sincerely,

Signatory

[FR Doc. 2019–23892 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2019–0183]

Renewal of the Voluntary Tanker Agreement Program; Agreement Development Proposal

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of availability; request for comments.

SUMMARY: The Maritime Administration (MARAD) is developing a voluntary agreement necessary to renew the Voluntary Tanker Agreement Program, pursuant to the authority contained in Section 708 of the Defense Production Act of 1950 (DPA), as amended. This notice invites comments on the draft proposed Voluntary Tanker Agreement (VTA). The proposed text is intended to replace the Agreement as it was last published in Volume 73 of the **Federal Register** at page 51692 (September 4, 2008). Because the proposed agreement will contain changes, both former and new participants must submit a new application once the final text is published. VTA applications are available from MARAD. The complete, draft text of the VTA is published below. Copies of the draft text are also available to the public upon request. MARAD will hold an open meeting for the purpose of developing the final text of the VTA at its headquarters located at 1200 New Jersey Avenue SE, Washington, DC 20590. MARAD will announce the open meeting by publication in the **Federal Register**.

DATES: Comments must be received on or before December 2, 2019. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019- 0183 any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0183 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0183, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: William G. McDonald, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone (202) 366–0688; Fax (202) 366–5904, or *william.g.mcdonald@dot.gov.*

SUPPLEMENTARY INFORMATION:

DRAFT Text of the Proposed Voluntary Tanker Agreement

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Preface

Pursuant to the authority contained in Section 708 of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4558), the Maritime Administrator (Administrator), after consultation with the Department of Defense (DoD) and representatives of the tanker industry, has developed this Voluntary Tanker Agreement (VTA). The Agreement establishes the terms, conditions, and procedures under which Participants agree voluntarily to make tankers available to DoD. The Agreement further affords Participants defenses to civil and criminal actions for violations of antitrust laws when carrying out the Agreement. The Agreement is designed to create a close working relationship among the Administrator, the Commander, U.S. Transportation Command (the DoD-designated representative for purposes of this Agreement), and the Participants through which DoD requirements and the needs of the civil economy can be met through cooperative action. The Agreement affords Participants flexibility to respond to defense requirements and adjust their commercial operations to minimize disruption whenever possible.

The Secretary of Defense (SecDef) has approved this Agreement as an Emergency Preparedness Program (EPP) pursuant to 46 U.S.C. 53107.

This Agreement replaces the VTA that was published in Volume 73 of the **Federal Register** at page 51692 (Sept. 4, 2008). Because this replacement contains new substantive provisions, those wishing to participate in the Agreement shall submit new applications.

Voluntary Tanker Agreement

I. Purpose

The Administrator has determined, in accordance with Section 708(c)(1) of the DPA, that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General of the United States (Attorney General) that a standby agreement for the utilization of tanker capacity is necessary for the national defense. The Attorney General, in consultation with the Chairman of the Federal Trade Commission (FTC), has issued a finding that tanker capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having fewer anticompetitive effects or without a voluntary agreement.

The purpose of the Agreement is to provide a responsive transition from peace to contingency operations through procedures agreed upon in advance to provide tanker capacity to support DoD contingency requirements. The Agreement establishes procedures for the commitment of tanker capacity to satisfy such requirements. The Agreement is intended to promote and facilitate DoD's use of existing commercial tanker resources in a manner which minimizes disruption to commercial operations whenever possible.

The Agreement will change from standby to active status upon activation by appropriate authority as described in Section VI.

II. Authorities

A. Maritime Administration (MARAD)

1. Section 708, DPA (50 U.S.C. 4558); 46 U.S.C. 53107; Executive Order (E.O.) 13603, 77 FR 16651 (March 22, 2012); 49 CFR 1.93 (l).

2. Section 401 of E.O. 13603, delegated the authority of the President under Section 708 of the DPA to the Secretary of Transportation (SecTrans), among others. SecTrans delegated to the Administrator the authority under which the Voluntary Tanker Agreement is sponsored in 49 CFR 1.93(l).

B. U.S. Transportation Command (USTRANSCOM)

1. Sections 113, 161–169 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating Commander USTRANSCOM to provide air, land, and sea transportation for the DoD.

III. General

A. Participation

1. Operators of tanker vessels greater than 20,000 deadweight tons (DWT) may become Participants in this Agreement by submitting an executed copy of the form specified in Section VII of this Agreement that is approved by MARAD.

2. Operators of Integrated Tug-Barges (ITBs) and Articulated Tug-Barges (ATBs) greater than 20,000 DWT may become Participants in this Agreement by submitting an executed copy of the form specified in Section VII of this Agreement that is approved by MARAD.

3. Operators of tankers or ITB and ATB vessels of less than 20,000 deadweight tons may also submit an application and become Participants if such vessels are deemed to meet U.S. national security requirements or the needs of MARAD and the U.S. Transportation Command, and MARAD accepts the application.

4. For the purposes of this Agreement, ''Participant'' includes the corporate entity entering into this Agreement and all United States subsidiaries and affiliates of that entity which own or operate ships in the course of their regular business and in which that entity has more than fifty (50) percent control either by stock ownership or otherwise.

5. A list of Participants will be published annually in the **Federal Register**.

6. For the purposes of this Agreement, ''Operator'' shall mean a person that either owns and controls an eligible vessel or that charters and operates an eligible vessel through a demise charter that transfers virtually all the rights and obligations of the vessel owner to the demise charterer, such as that of crewing, supplying, maintaining, insuring, and navigating the vessel.

B. Effective Date and Duration of Participation

This Agreement is effective upon execution of the application form (see Section VII below) by the Participant and the Administrator or their authorized designees and shall remain in effect until terminated in accordance with 44 CFR 332.4.

C. Withdrawal From the Agreement

Participants may withdraw from this Agreement, subject to the fulfillment of obligations incurred under the Agreement prior to the date such withdrawal becomes effective, by giving written notice to the Administrator. Withdrawal from this Agreement will not deprive a Participant of an antitrust defense otherwise available to it in accordance with Section 708 of the DPA for the fulfillment of obligations incurred prior to withdrawal.

D. Rules and Regulations

Participants acknowledge and agree to abide by all provisions of Section 708 of the DPA, as amended, and regulations related thereto which are promulgated by the SecTrans, the Attorney General, the FTC, and the Federal Emergency Management Agency. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

E. Amendment of the Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman of the FTC, SecTrans, through her representative MARAD, and SecDef, through his representative, Commander USTRANSCOM. The Administrator, Commander USTRANSCOM, and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman of the FTC.

2. A Participant may propose amendments to the Agreement at any time.

F. Administrative Expenses

Administrative and out-of-pocket expenses incurred by Participants shall be borne solely by Participants.

G. Record Keeping

1. MARAD and the DoD have primary responsibility for maintaining records in accordance with 44 CFR part 332.

2. The Director, Office of Sealift Support, MARAD, shall be the official custodian of records related to the carrying out of this Agreement, except records of direct dealings between the DoD and Participants.

3. For direct dealings between the DoD and Participants, the designee of the SecDef shall be the official custodian of records, but the Director, Office of Sealift Support, MARAD shall have complete access thereto.

4. In accordance with 44 CFR 332.3(d), each Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Participants or with any other member of the industry, related to the carrying out of this Agreement. Each Participant agrees to make available to the Administrator, the Commander USTRANSCOM, the Attorney General, and the Chairman of the FTC for inspection and copying at reasonable times and upon reasonable notice any item that this section requires the Participant to maintain. Any record maintained under this section shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1), (3) or (4) or identified as privileged and confidential information in accordance with Section 705(e) of the DPA, as amended, and 44 CFR part 332.5.

H. Requisition of Ships of Non-Participants

The Administrator, upon Presidential authorization, may requisition ships of non-Participants to supplement capacity made available for defense operations under this Agreement and to balance the economic burden of defense support among companies operating in U.S. trade. Non-Participant owners of requisitioned tankers shall not participate in the Tanker Requirements Committee and shall not enjoy the immunities provided by this Agreement.

I. Waivers

In situations where the activation of the Agreement deprives a Participant of all or a portion of its [U.S. coastwise qualified vessel capacity] and, at the same time, creates a general shortage of U.S. coastwise qualified vessel capacity on the market, the Administrator may request that the Assistant Commissioner, Office of Regulations and rulings, U.S. Customs and Border Protection, Department of Homeland Security, grant a temporary waiver pursuant to section 501 of title 46, to permit a Participant to charter or otherwise utilize non-U.S. coastwise qualified vessel capacity. The capacity for which such waivers are requested will be approximately equal to the U.S. coastwise qualified vessel capacity chartered to the DoD. Any waiver that may be granted pursuant to this paragraph shall be effective for the period that the U.S. coastwise qualified vessel capacity is on charter to the DoD plus a reasonable time for termination of the replacement capacity charters as determined by the Administrator.

J. Temporary Replacement Vessel

Notwithstanding 10 U.S.C. 2631, 46 U.S.C. 55304, 55305, 55312 or any other cargo preference law of the United States—

1. A Participant that is also a contractor under the Maritime Security Program, 46 U.S.C. 53101, *et seq.,* (MSP) may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated by the SecDef under this Agreement.

2. Such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to 10 U.S.C. 2631, and 46 U.S.C. 55304, 55305, or 55312 to the same extent as the eligibility of the vessel or vessel capacity replaced.

IV. Antitrust Defense

Under the provisions of Subsection 708(j) of the DPA, each Participant in this Agreement shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws with respect to any act or omission to act to develop or carry out this Agreement, that such act or omission to act was taken by the Participant in the course of developing or carrying out this Agreement, that the Participant fully complied with the provisions of the DPA and the rules promulgated thereunder, and that the Participant acted in accordance with the terms of this Agreement. This defense shall not be available to the Participant for any act or omission occurring after the termination of this Agreement, nor shall it be available, upon the modification of this Agreement, with respect to any subsequent act or omission that is beyond the scope of the modified Agreement, except that no such termination or modification shall be accomplished in a way that will deprive Participants of this antitrust defense for the fulfillment of obligations incurred. This defense shall be available only if and to the extent that the Participants asserting it demonstrate that the action, which includes a discussion or agreement, was within the scope of the Agreement. The person asserting the defense bears the burden of proof. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws of the United States.

V. Terms and Conditions

A. Agreement by Participants

1. Each Participant agrees to contribute tanker capacity as requested by the Administrator in accordance with Section V. B. below at such times and in such amounts as the Administrator, as requested by DoD, shall determine to be necessary to meet the essential needs of the DoD for the transportation of DoD petroleum and petroleum products in bulk by sea.

2. Each Participant further agrees to make tankers and tanker capacity available to other Participants when requested by the Administrator, on the advice of the Tanker Requirements Committee, in order to ensure that contributions to meet DoD requirements are made on a proportionate basis whenever possible or to ensure that no participating tanker operator is disproportionately hampered in meeting the needs of the civil economy.

B. Proportionate Contribution of Capacity

1. Any entity receiving payments under the MSP shall become a Participant with respect to all tankers enrolled in the MSP at all times until the date the MSP operating agreement would have terminated according to 46 U.S.C. 53104(a). Such participation shall satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in 46 U.S.C. 53107.

2. Participants hereto not receiving MSP payments under the MSP, agree to contribute tanker capacity under the Agreement in the proportion that its ''controlled tonnage'' bears to the total ''controlled tonnage'' of all Participants. Because exact proportions may not be feasible, each Participant agrees that variances are permissible at the discretion of the Administrator.

3. ''Clean Tankers'' and ''Clean Tonnage'' shall mean tankers that are inspected and approved by DLA Energy Quality Assurance Representatives (QAR), capable of meeting DoD quality standards, and able to carry refined petroleum products.

a. Chemical tankers and tankers in dirty trade may contribute Clean Tanker capacity only after being certified as being able to meet DoD quality standards to carry refined petroleum products to meet DoD requirements.

4. ''Controlled Tonnage'' shall mean tankers, ITBs, and ATBs of over 20,000 DWT capacity, which are:

a. Militarily useful in the transportation of refined DoD cargoes pursuant to the requirements of associated warplans;

b. Vessels in which, as of the effective date of the activation of this Agreement, the Participant or any of its U.S. subsidiaries or affiliates has a controlling interest and which are registered in any of the following countries: The United States, Liberia, Panama, Honduras, the Bahamas, or the Marshall Islands; and shall include:

i. Vessels on charter or under contract to such Participant for a period of six (6) months or more from the effective date of activation of the Agreement, regardless of flag of registry, exclusive of tonnage available to the Participant under contracts of affreightment and consecutive voyage charter; provided that, in the event an owner of a vessel terminates a time charter in accordance with a war clause, the affected tonnage will be excluded from the chartering Participant's Controlled Tonnage; and

ii. Any other non-U.S.-flag tonnage which a Participant may offer to designate as Controlled Tonnage and which the Tanker Requirements Committee accepts;

c. And shall not include:

i. Tankers described in subparagraph b. which are chartered out or under contract to others for a remaining period of six (6) months or more from the effective date of activation of this Agreement; or

ii. Certain vessels which are fitted with special gear and are on permanent station for the storage of crude oil from a production platform and vessels which may have a dual role of production storage and transportation use to a limited location.

5. This Agreement shall not be deemed to commit any vessel with respect to which the law of the country of registration requires the approval of the government before entering into this Agreement of furnishing such vessel under the terms of this Agreement until such time as the required approval has been obtained.

6. The obligations of Participants to contribute Clean Tanker capacity under the Agreement shall be calculated on a proportionate basis wherever possible among the Participants by the Tanker Requirements Committee.

7. A vessel on charter to a Participant shall not be subject to a relet to the DoD in the case where the period of the relet would be longer than the term of the Participant's charter or in the case where the relet would otherwise breach the terms of the charter, but such tonnage shall be included in the calculation of the Participant's Controlled Tonnage.

8. The Administrator retains the right under law to requisition ships of Participants. A Participant's ships which are directly requisitioned by the U.S. Government or which are called up pursuant to other U.S. Government voluntary arrangements shall be credited against the Participant's proportionate contribution under this Agreement. Ships on charter to the DoD when this Agreement is activated shall not be so credited.

C. Reports of Controlled Tonnage

Twice annually, or upon request of the Administrator and in such form as may be requested, each Participant shall submit information as to ''controlled tonnage'' necessary for the carrying out of this Agreement. Information which a Participant identifies as privileged and confidential shall be withheld from public disclosure in accordance with Sections 708(h)(3) (50 U.S.C. 4558) and 705(e) (50 U.S.C. 4555) of the DPA, as amended, and 44 CFR part 332.5.

D. Freight Rates Under the Agreement

1. The rate of charter hire applicable to each charter under this Agreement shall be the ''prevailing market rate'' effective at the time of the proposed loading of the vessel. The ''prevailing market rate'' shall be determined by the Military Sealift Command (MSC) Contracting Officer utilizing the price analysis techniques set forth in FAR Part 15.4 to determine that the negotiated rates are fair and reasonable, utilizing market or previous contract prices. Time charter hire rates, for either U.S. or foreign-flag tankers, shall be expressed in terms of a per diem rate(s).

2. The rate of charter hire fixed with respect to each charter shall apply for the entire period of the charter, except that:

a. For a consecutive voyage charter, the rate of charter shall be increased or decreased to reflect increases or decreases in the price of bunker fuel applicable in the area of the vessel's trade; and

b. Reimbursement for increased war risk insurance premiums will be made in accordance with Section V.E.

E. War Risk Insurance

1. Increased War risk insurance premiums for time chartered vessels will be paid by DoD, or MARAD war risk insurance policies will be implemented.

2. For voyage and consecutive voyage charters, the Participant shall be

reimbursed for increases in war risk insurance premiums that are applicable to the actual voyage but are announced after the charter rate is established by the broker panel.

3. For any ship chartered under this Agreement, the SecDef may procure from the SecTrans war risk insurance on hull and machinery, war risk protection and indemnity insurance, and Second Seaman's War Risk Insurance, subject to 46 U.S.C. 53905.

VI. Activation of the Agreement

A. Determination of Necessity

This Agreement may be activated at the request of the Commander USTRANSCOM, with the approval of SecDef, to support Contingency operations when there is a tanker capacity emergency. A tanker capacity emergency shall be deemed to exist when the Commander USTRANSCOM finds that tanker capacity required to support operations of U.S. forces outside the continental United States cannot be supplied through the commercial tanker charter market in accordance with applicable laws and regulations or other voluntary arrangements. The Administrator shall notify the Attorney General and the Chairman of the FTC when such a finding is made.

B. Tanker Requirements Committee

1. There is established a Tanker Requirements Committee (the ''Committee'') to provide USTRANSCOM, MARAD, and Participants a forum to:

a. Analyze DoD Contingency tanker requirements;

b. Identify commercial tanker capacity that may be used to meet DoD requirements related to Contingencies and, as requested by USTRANSCOM, exercises and special movements;

c. Develop and recommend Concepts of Operations (CONOPS) to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements; and

d. Advise the Administrator on the tanker capacity that each Participant controls which is capable of meeting Contingency requirements.

2. The Committee will be co-chaired by MARAD and USTRANSCOM and will convene as jointly determined by the co-chairs.

3. The Committee will not be used for contract negotiations and/or contract discussions between carriers and DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

4. The Committee will consist of designated representatives from MARAD, USTRANSCOM, to include Military Sealift Command, Defense Logistics Agency-Energy, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs. Representatives will provide technical advice and support to ensure maximum coordination, efficiency, and effectiveness in the use of Participants' resources. All Participants will be invited to open Committee meetings. For selected Committee meetings, attendance may be limited to designated Participants to meet specific operational requirements.

5. The Committee co-chairs shall:

a. Notify the Attorney General, the Chairman of the FTC, and all Participants of the time, place, and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Agreement;

b. Provide for publication in the **Federal Register** of a notice of the time, place, and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed;

c. Establish the agenda for each meeting and be responsible for adherence to the agenda;

d. Provide for a written summary or other record of each meeting and provide copies of transcripts or other records to the Attorney General, the Chairman of the FTC, and all Participants; and

e. Take necessary actions to protect from public disclosure any data discussed with or obtained from Participants which a Participant has identified as privileged and confidential in accordance with Sections 708(h)(3) and 705(e) of the DPA, as amended, or which qualifies for withholding under 44 CFR part 332.5.

C. Tanker Charters

MSC, as designated by USTRANSCOM, will deal directly with tanker operators in the making of charter parties and other arrangements to meet the defense requirement, keeping the Administrator informed. To reduce risk to owners and to control cost to the government, all government charters shall be time charters, unless specifically designated as voyage charters by the Contracting Officer. If vessels are chartered between Participants, Participants shall keep the Administrator informed. The Administrator shall keep the Attorney General and the Chairman of the FTC informed of the actions taken under this Agreement.

D. Termination of Charters Under the Agreement

MSC, as the contracting officer, shall notify the Administrator as far as possible in advance of the prospective termination of the need for tanker capacity under this Agreement.

VII. Application and Agreement

The Administrator has adopted and makes available a form on which tanker operators may apply for and become Participants in this Agreement (''Application and Agreement to Participate in the Voluntary Tanker Agreement''). The form shall incorporate by reference the terms of this Agreement.

Application and Agreement To Participate in the Voluntary Tanker Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Tanker Agreement.'' The text of said Agreement is published in ____ **Federal Register** ______, ______, 2018. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended. Regulations governing this Agreement appear at 44 CFR part 332 and as reflected at 49 CFR 1.93(l).

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Tanker Agreement published in ____ **Federal Register** ______, ______, 2019, as though said text were physically recited herein.

The applicant, as Participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR part 332 and as reflected at 49 CFR 1.93(l), and the terms of the Voluntary Tanker Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make vessels or capacity available for use by the Department of Defense and to other Participants for the purpose of meeting national defense requirements.

____

(Corporate Secretary)

____

(Applicant-Corporate Name)

____

(Name, please print)

(CORPORATE SEAL or Notary)

By: ______________________________

(Signature)

(Position Title, please print)

Effective Date: ____________

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION

(MARAD Secretary)

By: ____________

Maritime Administrator

(SEAL)

* * * * *

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2019–0183 or visit us in person at the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–302, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 50 U.S.C. 4558, 49 CFR 1.93(a) and (l), 44 CFR 332.

* * * * *

Dated: October 29, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–23908 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0130; Notice No. 2019–07]

Hazardous Materials: Unapproved Foreign-Made DOT Cylinders

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

ACTION: Safety advisory notice.

SUMMARY: PHMSA is issuing this safety advisory notice to inform the public, industrial gas stakeholders, and relevant government officials of the risks associated with requalifying, filling, and transporting cylinders bearing the DOT specification markings ''DOT 4E'' or ''DOT 4BA'' that were produced by a company located in Thailand by the name of Metal Mate. Metal Mate does not have an approval from PHMSA to manufacture cylinders to DOT specifications; therefore, cylinders marked with the Metal Mate name are not DOT specification cylinders. They must not be used to transport hazardous materials in commerce to, from, or within the United States, or on a United States-registered aircraft. These cylinders may not perform to the marked DOT performance standard and may not be safe for commercial transportation or consumer use.

FOR FURTHER INFORMATION CONTACT: The Hazardous Materials Information Center, (202) 366–4488 or 1–800–467–4922; *infocntr@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has become aware that a company located in Thailand by the name of Metal Mate has been producing and selling propane cylinders that were marked as ''DOT 4E'' without an approval from PHMSA. PHMSA is aware of two cylinders found in Australia that were marked as ''DOT 4E 240'' with Metal Mate's name marked as the manufacturer. Third party testing revealed that the cylinders may not meet the DOT 4E standard. Additionally, another cylinder produced by Metal Mate and marked as ''DOT 4E'' has been found in Colombia. Metal Mate cylinders can be identified by the name ''Metal Mate'' and ''MM'' logo stamped into the cylinder collar adjacent to other cylinder markings (water capacity, test pressure, serial number, original test date).

PHMSA has also received information that Metal Mate is producing cylinders that are being marked as ''DOT 4BA 240.'' Evidence indicates that Metal Mate has shipped cylinders as marked to both Bangladesh and New Zealand.

Federal hazardous materials transportation law (49 U.S.C. 5101–5128) authorizes the Secretary of Transportation (Secretary) to establish regulations to safely transport hazardous materials in intrastate, interstate, and foreign commerce. It also authorizes the Secretary to apply these regulations to persons who manufacture or maintain a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce (see 49 CFR 171.1). The Secretary delegated this authority to PHMSA in 49 CFR 1.97(b). As stated in 49 CFR 178.2(b), marking a packaging with a DOT specification, *e.g.*, ''DOT 4E 240,'' means that all requirements of the marked DOT specification have been met and each action performed by, or for, the person whose name or symbol appears on the cylinder marking meets the requirements specified in part 178. These requirements include multiple tests for DOT 4BA and DOT 4E cylinders. For DOT 4E cylinders, the specification also requires a chemical analysis (see 49 CFR 178.51 for the specification requirements for DOT 4BA cylinders, and § 178.68 for the specification requirements for DOT 4E cylinders).

Pursuant to 49 CFR 107.807(a), a foreign manufacturer who seeks to manufacture DOT specification cylinders must obtain an approval from PHMSA that permits that manufacturer to perform the required chemical analyses and tests outside the United States. Metal Mate does not possess any such approval from PHMSA, and is therefore not authorized to mark cylinders that it manufactures as complying with DOT specifications. Any cylinder produced by Metal Mate marked as meeting a DOT specification is not approved, is not a DOT specification cylinder, and may not meet DOT performance standards.

The PHMSA approval process [1] involves the careful review and onsite inspection of the applicant company's product documentation, cylinder manufacturing process, employee training records, and the presence and effectiveness of quality control measures at various stages during the cylinders' production. Since this review and inspection was not performed, DOT has no evidence that these cylinders are designed to withstand pressurization during filling and use and to safely contain hazardous materials transported in commerce. Improper design and manufacturing could potentially lead to a release of hazardous materials or failure of the cylinder.

Consequently, as a safety measure, PHMSA wants to inform consumers that cylinders manufactured by Metal Mate, even if bearing a DOT specification marking, must not be used to transport hazardous materials in commerce to, from, or within the United States, or on a United States-registered aircraft. These cylinders may not perform to DOT performance standards, and may not be safe to use as one would use a DOT specification cylinder.

Issued in Washington, DC, on October 28, 2019.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–23878 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–60–P

[1] *https://www.phmsa.dot.gov/hazmat/pressure-vessels-approvals/pressure-vessels-overview.*

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2015–0076]

Agency Information Collection Activities: Request for Comments; Clearance of a New Information Collection(s): U.S. Department of Transportation, Individual Complaint of Employment Discrimination Form

AGENCY: Office of the Secretary, U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the U.S. Department of Transportation (DOT) will forward the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for renewal of a previously approved collection. The ICR describes the nature of the information collection and its expected cost and burden hours. The OMB approved the form in 2017 with its renewal required by January 31, 2020.

DATES: Comments on this notice must be received by December 31, 2019.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2015–0076] by any of the following methods:

Fax: 202–493–2064.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590.

Hand Delivery: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name (Office of the Secretary, DOT) and docket number for this rulemaking. You should provide two copies of your comments if you submit them by mail or hand delivery. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided, and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For internet access to the docket to read background documents and comments received, go to *www.regulations.gov.* Background documents and comments received may also be viewed at DOT, 1200 New Jersey Avenue SE, Docket Operations, West Building, Room W12–140, Washington, DC 25090, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Beverly Onwubere, Associate Director, EEO Complaints and Investigations Division (S–34), U.S. Department of Transportation, Departmental Office of Civil Rights, W78–316, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–5988 (office), *beverly.onwubere@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0556.

Title: Individual Compliant of Employment Discrimination Form.

Form Numbers: DOT–F 1050–8.

Type of Review: Extension of a Previously Approved Collection.

Abstract: The DOT will utilize the form to collect information necessary to process EEO discrimination complaints filed by individuals who are Federal employees, former employees or applicants for employment with the Department. These complaints are processed in accordance with the U.S. Equal Employment Opportunity Commission's regulations, Title 29, Code of Federal Regulations, Part 1614, as amended. The DOT will use the form to: (a) Request requisite information from the applicant for processing his/her EEO discrimination complaint; and (b) obtain information to identify an individual or his or her attorney or other representative, if appropriate. An applicant's filing of an EEO discrimination complaint is solely voluntary. The DOT estimates that it takes an applicant approximately one hour to complete the form.

Respondents: Federal employees, former employees or applicants for employment with the Department.

Estimated Number of Respondents: 100 per year.

Estimated Total Burden on Respondents: 100 hours per year.

Comments Are Invited on: (a) Whether the proposed collection of information is reasonable for the proper performance of the EEO functions of the Department, and (b) the accuracy of the Department's estimate of the burden of the proposed information collection. All responses to the notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on October 23, 2019.

Beverly Onwubere,

Associate Director, EEO Complaints and Investigations Division Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2019–23882 Filed 10–31–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection Activity Under OMB Review: Clearance for A–11 Section 280 Improving Customer Experience Information Collection

AGENCY: Veterans Experience Office, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Experience Office, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 2, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''Clearance for A–11 Section 280 Improving Customer Experience Information Collection'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''Clearance for A–11 Section 280 Improving Customer Experience Information Collection'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: OMB Circular A–11 (2018), Section 280.

Title: Clearance for A–11 Section 280 Improving Customer Experience Information Collection.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector. A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. Veterans Experience Office will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. Veterans Experience Office will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. Veterans Experience Office may also utilize observational techniques to collect this information.

Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for profit institutions; State, local or tribal governments; Federal government; and Universities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 149 on August 2, 2019, pages 37953 and 37954. No comments on this data collection request were submitted by the public.

Affected Public: Individuals or Households.

Estimated Annual Burden: 625,000.

Estimated Average Burden per Respondent: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 2 minutes or up to 2 hours to participate in an interview.

Frequency of Response: Varied, dependent upon the data collection method used.

Estimated Number of Respondents: 2,500,000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–23850 Filed 10–31–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Education

34 CFR Parts 600, 602, 603, et al.

Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 602, 603, 654, 668, and 674

RIN 1840–AD36, 1840–AD37

[Docket ID ED–2018–OPE–0076]

Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility, as well as makes various technical corrections.

DATES: These regulations are effective July 1, 2020.

Implementation date: For the implementation dates of the included regulatory provisions, see the *Implementation Date of These Regulations* section of this document.

FOR FURTHER INFORMATION CONTACT: For further information related to recognition of accrediting agencies, Herman Bounds at *herman.bounds@ed.gov* or (202) 453–7615 or Elizabeth Daggett at *elizabeth.daggett@ed.gov* or (202) 453–6190. For further information related to State authorization, Scott Filter at *scott.filter@ed.gov* or (202) 453–7249 or Sophia McArdle at *sophia.mcardle@ed.gov* or (202) 453–6318. For all other information related to this document, Barbara Hoblitzell at *barbara.hoblitzell@ed.gov* or (202) 453–7583 or Annmarie Weisman at *annmarie.weisman@ed.gov* or (202) 453–6712. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: Through this regulatory action, the Department of Education (Department or we): (1) Strengthens the regulatory triad by more clearly defining the roles and responsibilities of accrediting agencies, States, and the Department in oversight of institutions participating in the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs); (2) establishes ''substantial compliance'' with regard to recognition criteria as the standard for agency recognition; (3) increases academic and career mobility for students by eliminating artificial regulatory barriers to work in a profession; (4) provides greater flexibility for institutions to engage in innovative educational practices more expeditiously and meet local and national workforce needs; (5) protects institutional autonomy, honors individual campus missions, and affords institutions the opportunity to build campus communities based upon shared values; (6) modifies ''substantive change'' requirements to provide greater flexibility to institutions to innovate and respond to the needs of students and employers, while maintaining strict agency oversight in instances of more complicated or higher risk changes in institutional mission, program mix, or level of credential offered; (7) clarifies the Department's accrediting agency recognition process, including accurate recognition of the geographic area within which an agency conducts business; (8) encourages and enables accrediting agencies to support innovative practices, and provides support to accrediting agencies when they take adverse actions; and (9) modifies the requirements for State authorization to clarify the responsibilities of institutions and States regarding students enrolled in distance education programs and students enrolled in programs that lead to licensure and certification.

Summary of the Major Provisions of This Regulatory Action

These regulations—

- Revise the requirements for accrediting agencies in their oversight of member institutions and programs to be less prescriptive and provide greater autonomy and flexibility to facilitate agility and responsiveness and promote innovation;
- Revise the criteria used by the Secretary to recognize accrediting agencies to focus on education quality and allow competition;
- Revise the Department's process for recognition and review of accrediting agencies;
- Clarify the core oversight responsibilities among each entity in the regulatory triad—accrediting agencies, States, and the Department—to hold institutions accountable;
- Establish the roles and responsibilities of institutions and accrediting agencies in the teach-out process;
- Establish that the Department recognizes an institution's legal authorization to operate postsecondary educational programs when it is exempt from State authorization under the State constitution or by State law as a religious institution with a religious mission;
- Revise the State authorization requirements for institutions offering distance education or correspondence courses; and
- Remove the regulations related to the Robert C. Byrd Honors Scholarship Program, which has not received funding in many years.

Authority for this Regulatory Action: Section 410 of the General Education Provisions Act provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e–3. Furthermore, under section 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474. These authorities, together with the provisions in the HEA, permit the Secretary to disclose information about title IV, HEA programs to students, prospective students, and their families, the public, taxpayers, the Government, and institutions. Further, section 431 of the Department of Education Organization Act provides authority to the Secretary, in relevant part, to inform the public about federally supported education programs and collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes. 20 U.S.C. 1231a.

Costs and Benefits: As further detailed in the Regulatory Impact Analysis, the benefits of these regulations include increasing transparency and improving institutional access for students, honoring the autonomy and independence of agencies and institutions, restoring focus and clarity to the Department's agency recognition process, integrating risk-based review into the recognition process, improving teach-outs for students at closed or closing institutions, allowing accrediting agencies to focus greater attention on student learning and the student experience, and restoring public trust in the rigor of the accreditation process and the value of postsecondary education. These regulations reduce regulatory burden on institutions that wish to develop and implement innovative programs and on accrediting agencies because of greater flexibility to make low-risk decisions at the staff level. In addition, these regulations significantly reduce the regulatory burden associated with preparing and submitting accrediting agency petitions for recognition or renewal of recognition since some of this review will now occur through a site visit, thereby eliminating the need to upload perhaps thousands of pages of documents.

The potential costs associated with the regulations include some burden associated with required disclosures and the need for accrediting agencies to develop new polices for accreditation decision-making, enforcement of standards, and substantive change reporting requirements. While not the anticipated or desired outcome, it is also possible that agencies would avail themselves of reduced regulatory burden without redeploying resources towards greater oversight of program quality, student learning, and the student experience at institutions and programs; or some agencies could lower their standards. It is, therefore, incumbent on the Department and National Advisory Committee on Institutional Quality and Integrity (NACIQI or Advisory Committee) to use new accountability and oversight tools provided for in these regulations to properly mitigate these risks and monitor agencies to ensure they are upholding their mission-based standards for educational quality.

Implementation Date of These Regulations: Section 482(c) of the HEA requires that we publish regulations affecting programs under title IV of the HEA in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and the conditions for early implementation.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the following new regulations at title 34 of the Code of Federal Regulations included in this document for early implementation beginning on November 1, 2019, at the discretion of each institution, or each agency, as appropriate:

(1) Section 600.2.
(2) Section 600.9.
(3) Section 668.43.
(4) Section 668.50.

The final regulations included in this document are effective July 1, 2020.

Public Comments: In response to our invitation in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on June 12, 2019 (84 FR 27404), we received 195 comments on the proposed regulations. We do not discuss comments or recommendations that are beyond the scope of this regulatory action or that would require statutory change.

Analysis of Comments and Changes

We developed these regulations through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee reached consensus on the proposed regulations that we published on June 12, 2019. The Secretary invited comments on the proposed regulations by July 12, 2019, and 195 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

General Comments

Comments: Several commenters supported the Department's proposals to amend the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility. Specific support was conveyed regarding regulations that advance innovation, strengthen student protections through enhanced disclosures and teach-out requirements, preserve State reciprocity agreements, and mitigate the unjustified stigma that has been associated with attending nationally accredited institutions and the impact that has had on the transferability of credits students earned at these institutions. One commenter opined that trade schools, community colleges, apprenticeships, and other programs that are significantly shorter and less costly than a traditional bachelor's degree are alternative pathways for students' financial stability and success. The commenter stated that these programs deserve the same respect as programs at prestigious institutions, and that the proposed regulations would make dramatic steps forward for this often-overlooked form of higher education.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: Many commenters expressed general opposition to the proposed regulations, suggesting that the Department was weakening both its oversight of accrediting agencies and the accrediting agencies' oversight of institutions, reducing transparency, and putting students and taxpayers at risk. Others stated that we should withdraw the proposed regulations. The commenters were concerned that the proposed changes would erode the value of accreditation, make it difficult for prospective students to assess the quality of an institution of higher education, render postsecondary credentials and degrees meaningless, and negatively impact the competitiveness of the United States in the global economy.

Discussion: In response to the commenters requesting that the proposed regulations be strengthened, completely revised, or withdrawn, we believe these final regulations strike the right balance between our goals of encouraging innovation and ensuring accountability, transparency, clarity, and ease of administration, while providing sufficient oversight of accrediting agencies and institutions and, at the same time, protecting students, the Federal government, and taxpayers. These regulations enable accrediting agencies and institutions to be nimbler and more responsive to changing economic conditions and workforce demands, and they permit agencies to convey their intention to take negative action earlier by providing a period of time during which an institution may remain accredited and still participate in title IV programs in order to graduate students near the end of their programs or help students transfer to new institutions. The changes to the criteria used by the Secretary to recognize accrediting agencies by placing increased focus on education quality strengthen the value and effectiveness of accreditation. Additional tools available to accrediting agencies to hold institutions and programs accountable will also increase the value of accreditation. We believe that the regulations are in the best interest of students, consumers, and taxpayers, and will improve the quality of the education offered at institutions by ensuring that all institutions and programs meet a threshold of quality. Finally, we have taken heed of the Academy of Arts and Sciences recommendation in *The Future of Undergraduate Education,* that ''while the most vigorous critique of regulation has focused on federal rules, state agencies and accrediting bodies should also engage in a thoughtful review to identify regulations and other policy barriers that may impede the spread of innovation across colleges and universities. We should review and roll back, where possible, regulations that do not contribute to protecting students by insisting that providers meet rigorous quality standards. Conversely, we should direct greater regulatory attention and compliance at institutions that are chronically poor performers. A better relationship between important regulatory protections and the promotion of innovation can be achieved through thoughtful action at the State, Federal, accreditation, and institutional level.'' [1] This sentiment is endorsed by the Task Force on Federal Regulation of Higher Education, a group of college and university presidents and chancellors, created by a bipartisan group of U.S. Senators, who recently released an analysis recommending that regulation not related directly to institutional quality and improvement be identified and, where possible, eliminated.[2]

Changes: None.

Comments: Several commenters stated that the negotiated rulemaking process, by which we developed the proposed regulations, was flawed. Many commenters opined that condensing an expansive agenda with over a dozen topics into a single negotiated rulemaking provided inadequate time for the full negotiated rulemaking committee to meaningfully discuss the complete scope of regulatory changes. Some commenters objected to the Department's decision to use subcommittees, with some objecting specifically to the use of a subcommittee to develop definitions that informed the proposed changes to the accreditation regulations. Others objected to the simultaneous scheduling of subcommittee meetings, asserting that this made it impossible for negotiators to physically attend all meetings, and opined that the subcommittee meetings were not open to the public, as required by the HEA. Another commenter wrote in support of the Department's use of subcommittees, noting that they served to provide a foundation on the issues for which the negotiating committee was able to thoughtfully consider and develop the language found in the proposed regulations.

Discussion: We disagree with the commenters who said that the Department's rulemaking process was flawed. It is not uncommon for the Department to address multiple topics with a single negotiated rulemaking committee,[3] nor was this the first time that the Department utilized non-voting subcommittees to delve more deeply into a specific topic and provide recommendations to the main committee. The recommendations of the subcommittees were not binding on the members of the main committee who were free to discuss the issues in as much detail as they required to come to agreement. For example, the members of the main committee discussed in detail and made edits to the recommended definitions of terms provided to them by the subcommittee before reaching consensus.

Although the subcommittee meetings were scheduled simultaneously, the negotiators and the public were provided both live-streamed and recorded access to the subcommittees' deliberations, fulfilling the legal requirements of HEA section 492. Finally, we believe that there was enough time for the full negotiated rulemaking committee to meaningfully discuss the complete scope of regulatory changes. Specifically, the committee voted to extend the meeting times of each of the four days in the third session by two hours. The committee also voted to extend negotiations to include a fourth session of four additional days, which also included extended hours.

Changes: None.

Comments: Some commenters expressed concern that States lacked adequate representation on the negotiating committee, noting that a representative from the State Higher Education Executive Officers (SHEEO) was added following self-nomination, and that the Department cast the sole dissenting vote on the self-nomination of a representative of State attorneys general (AGs), suggesting that a critical consumer protection and State enforcement voice was omitted from the discussion. A group of commenters echoed this complaint, adding that the omission of State AGs prevented a critical voice for protecting students from being heard. Other commenters asserted that the interests of students, student veterans, and consumers were not adequately represented. Another commenter stated that no single member of the committee had expertise on all topics under consideration, asserting that section 492 of the HEA, 20 U.S.C. 1098a(b)(1), requires negotiators to have expertise in all subjects under negotiation.

Discussion: The negotiated rulemaking process ensures that we consider a broad range of interests in the development of regulations. Specifically, negotiated rulemaking is designed to enhance the rulemaking process through the involvement of all parties significantly affected by the topics for which we will develop the regulations. Accordingly, section 492(b)(1) of the HEA, 20 U.S.C. 1098a(b)(1), requires that the Department choose negotiators from groups representing many different constituencies. The Department selects individuals with demonstrated expertise or experience in the relevant subjects under negotiation, reflecting the diversity of higher education interests and stakeholder groups, large and small, national, State, and local. In addition, the Department selects negotiators with the goal of providing adequate representation for the affected parties while keeping the size of the committee manageable.

Students, student veterans, and consumers were all ably represented by non-Federal negotiators on the negotiating committee with primary and alternate representatives for each of these constituencies, as well as in the subcommittees.

The Department's decision to not include a representative of State AGs on the main committee was predicated on the fact that the topics for negotiation did not include issues that are specifically related to their work. In addition, several negotiators commented that adding a State AG to the full committee would have created conflicts and perhaps even silenced discussion, since some negotiators were the subject of one or more State AG inquiries or investigations. In fact, there were multiple members of the committee who rejected the idea of adding a State AG to the committee during the first two attempts to vote on the self-nomination of a State AG. In some prior rulemakings, the Department has determined that State AGs were an affected constituency. In those cases, the Department has included them as

[1] *amacad.org/sites/default/files/academy/multimedia/pdfs/publications/researchpapersmonographs/CFUE_Final-Report/Future-of-Undergraduate-Education.pdf.*

[2] *acenet.edu/news-room/Documents/Higher-Education-Regulations-Task-Force-Report.pdf.*

[3] *www.federalregister.gov/documents/2013/11/20/2013-27850/negotiated-rulemaking-committee-negotiator-nominations-and-schedule-of-committee-meetings-title-iv* and *www.federalregister.gov/documents/2014/12/19/2014-29734/negotiated-rulemaking-committee-negotiator-nominations-and-schedule-of-committee-meetings-william-d.*

negotiators. However, the Department did not believe that State AGs were a particularly relevant constituency group for this rulemaking effort and determined that SHEEOs were the more appropriate representative of State interests, especially with regard to the topics negotiated. However, at the request of an AG who nominated himself and an additional AG, the committee voted to add a representative of State AGs to the Distance Education and Innovation subcommittee and provided the opportunity for that representative to contribute to the deliberations that informed the main committee's work.

It would be highly unusual for any individual negotiator to have expertise on all the topics under consideration in any negotiated rulemaking. The Department relies upon the collective expertise of the non-Federal negotiators to inform the discussions and deliberations, recognizing that some members of the committee will be more knowledgeable about certain topics or elements of topics than others based on their area of expertise and the constituency they represent. The HEA does not require the Department to select specific entities or individuals to be on the committee, nor does it require non-Federal negotiators be an expert in all areas under discussion, but rather, that they are ''individuals with demonstrated expertise or experience in the relevant subjects under negotiation, reflecting the diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets.'' [4] Non-Federal negotiators representing students, student veterans, and consumers, for example, provide important perspectives on this and other negotiated rulemaking committees, but are unlikely to have the same kind of expertise as financial aid administrators. The Department agrees that it overlooked an important member of the triad by inadvertently neglecting to include a representative of the SHEEOs as one of the categories of negotiators required for this rulemaking. The Department appreciates the nomination of a representative of this constituency and the support of the other negotiators to include him as a non-Federal negotiator.

Changes: None.

Comments: A group of commenters stated that the negotiated rulemaking process failed to provide students and consumers with enough opportunity to be heard.

[4] HEA section 492, 20 U.S.C. 1098a(b)(1).

Discussion: We believe that the negotiated rulemaking process provided students and consumers with sufficient opportunity to be heard. The negotiated rulemaking committee included primary and alternate negotiators representing students, student veterans, and consumer advocates. Moreover, the Department conducted three public hearings before the negotiated rulemaking began and provided time for public comment on each of the 12 days the main committee met.

Changes: None.

Comments: Several commenters asserted that the Department failed to provide evidence to support the need for the proposed regulatory changes during the negotiated rulemaking. Several commenters objected to the proposed changes that affect religious institutions of higher education, asserting that the Department had failed to adequately substantiate the need for such changes. Another commenter stated that the Department failed to present enough evidence that accreditation is a barrier to innovation. One commenter petitioned for correction and disclosure under the Information Quality Act (IQA), arguing that the Department failed to disclose underlying sources or methodologies to support our policy proposals.

Discussion: We disagree with the commenters who stated that the Department failed to provide data or evidence to support the need for the proposed regulatory changes during the negotiated rulemaking. We acknowledge that the Department was unable to fulfill several of the specific data requests made by negotiators because they sought information that is not available. The changes to the regulations are based on many factors, including feedback we received from the public, studies conducted by higher education associations, and emerging trends in postsecondary education. Specifically, the Department developed a list of proposed regulatory provisions based on advice and recommendations submitted by individuals and organizations as testimony in a series of three public hearings in September of 2018, as well as written comments submitted directly to the Department. Department staff also identified topics for discussion and negotiation. We developed the proposed regulations that we negotiated during negotiated rulemaking with specific objectives for improvement, including updating the requirements for accrediting agencies in their oversight of member institutions or programs; establishing requirements for accrediting agencies to honor institutional mission; revising the criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality; encouraging accrediting agencies and States that collect job placement data to do so using publicly available administrative datasets to increase their reliability and comparability; simplifying the Department's process for recognition and review of accrediting agencies; and promoting greater access for students to high-quality, innovative programs.

Changes: None.

Comments: An association and other commenters asserted that the decision to publish three separate NPRMs, rather than a single NPRM encompassing the entirety of the consensus language, made it impossible to submit informed comments on the partial provisions included because the public is unaware of other changes the Department intends to propose to related provisions on the agenda from this rulemaking. Another commenter asserted that there is no guarantee that the Department will propose the remaining regulations from the negotiation's consensus, suggesting that this would prevent the proposed regulations from functioning coherently.

Discussion: It is possible for members of the public to submit informed comments on the provisions that we included in the NPRM. We discussed and negotiated the topics in the proposed regulations included in the NPRM in their entirety during negotiated rulemaking. As the rulemaking sessions considered numerous topics, we separated the subject matter into groups. We included one set of topics in the first NPRM and plan to publish two additional NPRMs including the remaining topics within the next few months. Moreover, because the negotiated rulemaking committee reached consensus, the totality of the proposed regulatory changes was available to the public at the conclusion of the negotiations.

We appreciate commenters' concerns about how these regulations would function without the other regulatory pieces moving forward. However, since we achieved consensus on all topics included in negotiated rulemaking, we anticipate that the other regulations that were part of this rulemaking effort will similarly become final regulations soon.

The preparation of the NPRM included a review of other regulations in the consensus language that were dependent on the accreditation regulations, and those sections of the amended regulations were included in this regulatory package. These included any regulatory changes to definitions and regulations pertaining to State authorization of institutions and programs.

Changes: None.

Comments: One commenter noted that the final vote occurred with little time left to negotiate, rushing a consensus vote.

Discussion: The final vote in negotiated rulemaking frequently occurs at the end of the last day of negotiations. Negotiators who are not satisfied with the proposed regulations when the final vote occurs may vote against consensus or withhold their support.

Changes: None.

Comments: Some commenters alleged that negotiators who opposed the Department's proposed regulations were coerced into reaching consensus by other negotiators who suggested that, absent consensus, the Department would propose regulations that were less reflective of the negotiators' interests.

Discussion: The Department acknowledges that negotiated rulemaking can be a stressful endeavor, as each member of the committee works hard to represent the best interests of their constituency, and, by virtue of its design, consensus requires a give-and-take from all parties. However, primary committee members have independent authority to vote and should do so in keeping with their assessment of the proposed regulatory changes. Although it is true that, absent consensus, the Department may propose regulations that differ from the language developed by the negotiating committee, those proposed regulations would still be subject to public comment and could change based on that input.

Changes: None.

Comments: Some commenters opined that the public comment period was too short and did not permit a meaningful opportunity to comment, noting that when a proposed regulation—such as this one—is classified as ''economically significant'' and ''major'' by the Office of Information and Regulatory Affairs, section 6(a) of Executive Order 12866 requires the Department to ''afford the meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.'' These commenters noted that the comment period included a Federal holiday and eight weekend days.

Discussion: We believe that the 30-day public comment period was an adequate time period for interested parties to submit comments. Because we reached consensus during negotiated rulemaking, the proposed regulatory language was available to the public at the conclusion of the final negotiating session, which afforded interested parties additional time to begin formulating their comments.

Prior to issuing the proposed regulations, the Department conducted two public hearings and four negotiated rulemaking sessions, where stakeholders and members of the public had an opportunity to weigh in on the development of much of the language reflected in the proposed regulations. In addition, we believe that the 30-day public comment period was necessary to allow us to meet the HEA's master calendar requirements. Under those requirements, the Department must publish final regulations by November 1, 2019, for them to be effective on July 1, 2020. The recognition process for accrediting agencies is lengthy and the changes to these regulations will require significant planning and coordination on the part of agencies and Department staff. Delaying the effective date of these regulations would unnecessarily delay the realization of the benefits associated with these changes.

Changes: None.

Institutional Eligibility

Definitions (§ 600.2)

Comments: Several commenters expressed support for the Department's proposed addition of a definition of ''additional location'' and its proposed revision of the term ''branch campus,'' indicating that the clarifications provided in those definitions resolved confusion regarding the two terms.

Several other commenters expressed support for the student protections included in the proposed definitions of ''teach-out'' and ''teach-out agreement,'' including prohibitions on misrepresentation of the nature of teach-out plans, teach-out agreements, and transfer of credit. The commenters also supported the proposed stipulation in the definition of ''teach-out'' that we should always permit a student to access a closed school discharge if the student chooses not to pursue the teach-out option.

Discussion: The Department thanks the commenters for their support. After further review, the Department is making minor clarifications to the definition of ''teach-out'' in § 600.2. First, we are clarifying that a teach-out is a process rather than a time period. Because teach-outs can continue for years to allow every enrolled student the opportunity to complete his or her program, it is important to clarify that it is the set of activities that define a teach-out, not necessarily the period of time.

We are also removing from the definition language that asserts that a student who chooses at the time of the teach-out announcement to leave the school and pursue a closed school loan discharge is able to do so, as this is not a definitional issue. Students who withdraw from a closing school may still be eligible for a closed school loan discharge when the formal teach-out is not completed until well after the 180 days generally associated with closed school loan forgiveness. Section 685.214(c) affirms that a borrower may be eligible for a closed school loan discharge when the borrower's school closes and the borrower does not complete the program of study or a comparable program through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school.

While not a change, we are emphasizing in § 668.26(e)(2) that an institution is prohibited from misrepresenting the nature of its teach-out plans, teach-out agreements, and transfer of credit, and that any such misrepresentation may provide the basis for a borrower's claim of defense to repayment.

Changes: We have modified the wording of the definition of ''teach-out'' in § 600.2 to clarify that it is an activity, rather than a period of time. The teach-out activity may be conducted by the closing institution in order to provide an opportunity to enrolled students to complete their programs or may be conducted by other institutions who permit students from the closing or closed institution to complete their programs at their institution.

Comments: Several commenters requested additional clarification regarding the definition of ''additional location,'' indicating that confusion remained regarding how to apply the definition to an urban campus where buildings are located close together, but not directly adjacent to one another. One commenter noted as an example that some buildings on an urban campus might be on the same city block, others might be nearby, while still others could be a 30-minute drive or more. The commenter offered another example of a location that was in a different State than the main campus yet separated from the main campus by only a few miles. The commenter stated that it was unclear whether the Department would consider any of those locations a ''facility that is geographically apart'' from the main campus.

Another commenter noted that the regulations did not require State authorizing agencies to adopt similar definitions of the terms ''branch campus'' and ''additional location'' and noted that any such requirements could have significant impacts on States' authorizing and approval processes.

Discussion: The Department relies upon the reasonable judgment of the institution and its accrediting agency to determine whether a facility is ''geographically apart'' from the institution's main campus. The Department agrees that its regulations do not require State authorizing agencies to define ''branch campus'' or ''additional location'' the same way the defines Department defines those terms. The Department does not have the authority to impose its definitions for these terms on States but encourages States to adopt conforming definitions to reduce confusion.

Changes: None.

Comments: One commenter requested that the Department explain the connection between an institution's main campus and a ''branch campus.'' The commenter noted that the definition contains many requirements that are characteristic of an independent institution, including an independent fundraising and corporate structure, and stated that it was therefore unclear what relationship such a campus should have with its parent institution.

Discussion: A ''branch campus'' is a type of additional location that meets specific criteria, including retaining permanence and autonomy with respect to faculty, administration, and budgetary and hiring authority. The Department does not require any specific type of connection between a main campus and a branch campus except that both campuses must be accredited as a single entity and both must share the fiduciary responsibility for administration of the title IV, HEA programs. We consider a campus that is separately accredited to be a standalone institution for purposes of eligibility for the title IV, HEA programs. Coordination between a main campus and a branch campus remains at the institution's discretion and is subject to any applicable standards set by its accrediting agency or State authorizing agency.

Changes: None.

Comments: One commenter objected to the proposed definitions of ''additional location'' and ''branch campus'' on the grounds that the Department has failed to provide any examples of ''occasional inconsistent usage,'' or any data about the problems caused by such usage that would warrant making these revisions to current regulations.

Discussion: As explained in the preamble to the NPRM (page 27411), the Department's reason for adding a definition of ''additional location'' and revising the definition of ''branch campus'' was to avoid confusion caused by inconsistent usage among the Department, States, and various accrediting agencies. Clear definitions of ''additional location'' and ''branch campus'' will promote consistency, improve the efficiency of Department, State, and accrediting agency review of applications to add additional locations or branch campuses, and ensure fair and equitable treatment of those applications.

Regarding the commenter's assertion that the Department should provide examples of where inconsistencies in the review of additional locations or branch campuses occurred, as well as other unspecified data, the Department does not characterize specific eligibility decisions related to additional locations and branch campuses as ''inconsistencies'' for inclusion on a database (or other list) that we could query for this purpose. However, we are aware of accrediting agencies that use the term ''branch campus'' for campuses that the Department considers to be additional locations, though we are not sure how many campuses this impacts. Notwithstanding the absence of such data, we do not believe a report such as the one requested by the commenter is necessary to justify these proposed revisions, which will codify long-established Department practices. We further seek to promote consistency in terminology, as accrediting agency use of these terms varies.

Changes: None.

Comments: One commenter recommended we revise the proposed definition of ''teach-out'' to limit access to a closed school discharge, as provided in § 685.214, to eligible borrowers who are not afforded the opportunity or are unable to avail themselves of teach-out options to complete their programs. The commenter argued that it is important for the Department to clarify that the best policy course when closing an institution is for the institution's leadership to take all appropriate steps to provide a student with a soft landing and clear path to completion. In the commenter's opinion, permitting borrowers who attended an institution that offered a proper teach-out to seek a closed school discharge disincentivizes institutions from offering teach-outs.

Discussion: We agree with the commenter that it is in the best interest of students for a closing institution to provide a well-designed teach-out structured to offer a clear path to program completion. However, while those borrowers who accept a teach-out are not then eligible for a closed school discharge under the provisions of § 685.214, the mere availability of a teach-out, however robust, is not a disqualifying factor for such a discharge. Although the Department is firmly committed to the concept of teach-outs as the best option for students affected by an impending school closure to complete their programs of study, we believe it is appropriate that the choice to accept a teach-out in lieu of a closed school discharge rest with each student and that our regulations make clear the availability of that choice. However, we also agree that when an institution commits the time and expense required to conduct an orderly teach-out, a student who chooses to participate in that teach-out is not also eligible for a closed school loan discharge unless the institution fails to provide a teach-out that is materially consistent with what is described in the teach-out plan.

Changes: None.

Comments: One commenter asserted that the Department has failed to explain the reasoning associated with proposed revisions to the definition of ''teach-out plan'' and ''teach-out agreement.''

Citing as an example in the current § 668.14(b)(31), requiring an institution to submit a ''teach-out plan'' to an accrediting agency in compliance with § 602.24(c) upon the occurrence of certain events, the commenter further contended that the Department has failed to explain how the modified definition of ''teach-out plan'' will impact other regulations that presently use that term. Finally, the commenter questioned whether the Department has considered the ramifications of amending the definition of ''teach-out plan,'' including whether it will have a positive, negative, or neutral impact on students and suggests that, taken together, this has deprived the public of a meaningful opportunity to comment on the Department's proposals.

Discussion: We disagree that the Department has failed to explain its proposal to revise the definitions of ''teach-out plan'' and ''teach-out agreements.'' In the preamble to the June 12, 2019 NPRM (page 27411) the Department explained its proposal to revise the definition of ''teach-out plan'' to clearly distinguish a teach-out plan from a teach-out agreement and to clarify that teach-outs can be conducted by the closing institution as well as another continuing institution. A teach-out agreement is a written contract between two or more institutions; a teach-out plan is developed by an institution and may or may not include agreements with other institutions. The Department also believes that the definition of ''teach-out plan'' should include plans for teaching-out students during orderly closures in which an institution plans to cease operating but has not yet closed.

We are uncertain of the commenter's point in suggesting that the Department has failed to explain how the modified definition of ''teach-out plan'' will impact other regulations that presently use that term. In the example cited by the commenter, per § 668.14(b)(31), where an institution must submit a ''teach-out plan'' to an accrediting agency in compliance with § 602.24(c) upon the occurrence of certain events, the teach-out plan submitted by the institution must, upon the effective date of these final regulations, meet the revised definition of ''teach-out plan.'' The same logic applies throughout the regulations wherever we reference the term ''teach-out plan.'' With regard to whether the Department considered the ramifications of amending the definition of ''teach-out plan,'' we carefully considered the potential ramifications, including the impact on students, and this was in the forefront both in the development stage of the proposed regulations and during negotiated rulemaking. We believe that students are best served when their institution engages in an orderly closure that permits students who are close to completing their programs an opportunity to do so. Students who are close to completing their programs may find it particularly challenging to transfer all of their credits to another institution because receiving institutions may require that a student completes a minimum number of credits at the institution awarding the credential. We also believe an orderly teach-out provides more opportunities for students to complete the term in which the teach-out announcement is made and receive assistance from the institution, the State, or the Department to find a new institution to attend.

Finally, we disagree with the commenter's conclusion that we failed to justify proposed revisions to the definitions in § 600.2 and, accordingly, deprived the public of a meaningful opportunity to comment on the Department's proposals. We have provided our rationale in the NPRM for all changes the Department proposed to part 600 of the current regulations.

Changes: None.

Comments: One commenter stated that the Department has failed to explain why it proposes to move the definitions of ''teach-out agreement'' and ''preaccreditation'' from the accreditation regulations in part 602 to § 600.2 rather than inserting a cross-reference to those definitions in parts 600 and 668. The commenter further noted that the Department failed to propose changes to the current cross-references to those definitions in part 602.

Discussion: The Department explained its proposal to move the definitions of ''teach-out agreement'' and ''preaccreditation'' to § 600.2 in the June 12, 2019 NPRM (page 27411) where we stated, ''The Department proposes to move the definitions of ''teach-out agreement'' and ''preaccreditation'' from the accreditation regulations in § 602.3 to the institutional eligibility regulations in § 600.2 for consistency, and because the use of those terms extends to regulations in §§ 600 and 668.''

With respect to the commenter's assertion that the Department failed to propose changes to the current cross-references in part 602, we note that the amendatory text in § 602.3 states, ''The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.'' ''Teach-out agreement'' and ''preaccreditation'' are included among the definitions listed in this section.

Changes: None.

Comments: Several commenters stated that the definition of ''religious mission'' is overly broad and would prohibit accrediting agencies from enforcing any provisions, including well-established standards and nondiscrimination protections, against religious institutions. Commenters indicated that the definition, in combination with other provisions in the regulations, would allow an institution to overcome barriers to accreditation by including a reference to religion in its mission statement. One commenter indicated that religious missions are no more important than secular missions and that we should not elevated them to a higher status under the law. Another commenter indicated that this definition will undermine the separation of religion and government. Several commenters speculated that these regulations will encourage secular institutions to adopt religious missions and for religious institutions to expand the religious components of their missions to avoid scrutiny by accrediting agencies. Commenters also indicated that institutions will be allowed to adopt discriminatory practices and policies, especially towards LGBTQ students and women, which are justified by the institution's religious mission, even if their accrediting agencies have standards barring such practices. Commenters noted that the Department failed to provide evidence of an institution denied accreditation because of its adherence to its religious mission, and that there is therefore no legitimate reason to include the proposed definition.

Discussion: In light of the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order 13798, the Department believes that it should provide protection for faith-based institutions in situations in which their ability to participate in Federal student aid programs may be curtailed due to their religious mission or policies, practices, and curricular decisions that enact or are consistent with the tenets of the faith. Allowing accrediting agencies to make negative decisions because of the institution's exercise of religion could violate the Free Exercise Clause of the United States Constitution. In addition, under the Religious Freedom Restoration Act of 1993 (RFRA) the government may only substantially burden a person's exercise of religion if the application of that burden to the person is the least restrictive means of furthering a compelling governmental interest. If access to Federal student aid depends upon accreditation decisions that do not respect the religious mission of an institution, the religious institution's exercise of religion could be substantially burdened, and removing Federal aid may not be the least restrictive means of furthering a compelling governmental interest. Thus, both the Constitution and RFRA protect religious activities in ways that they do not protect other institutional missions. Based on recent Supreme Court decisions, the Department believes that protections such as the ones in these regulations are advisable given the Free Exercise Clause and RFRA and that the Establishment Clause of the Constitution does not prohibit them. Institutions will continue to be subject to anti-discrimination laws, unless they are otherwise exempt. While we do not believe that institutions will change their missions to evade oversight by accrediting agencies, we believe that it would raise constitutional concerns if the Federal government were to decide whether a religious mission is legitimate or whether the reason that an institution decides to exercise its religious rights is appropriate.

Changes: None.

State Authorization Reciprocity Agreement (§ 600.2)

Comments: Commenters generally supported the Department's proposal to maintain the definition of a ''State authorization reciprocity agreement'' as promulgated in the Program Integrity and Improvement regulations published in the **Federal Register** on December 19, 2016 (81 FR 92232). However, commenters had differing views regarding the part of the definition that requires reciprocity agreements to permit a member State to enforce its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions. Some commenters felt that this language supports the States' consumer protection role in the triad and enables States to provide the same protections to online students in their States as they provide to students attending brick-and-mortar institutions. Commenters noted that allowing for reciprocity agreements that do not protect the State's authority would undermine the regulatory triad and create a race to the bottom in consumer protections and that the Department should stress that online institutions are subject to a State's consumer protection laws. Other commenters were concerned that the language undermines reciprocity agreements by allowing a State to enforce additional requirements regardless of an agreed-upon set of requirements established in a reciprocity agreement and that we should not allow States to override a reciprocity agreement's regulations. Some of these commenters recommended that the regulations provide that a State authorization reciprocity agreement may require a State to meet requirements and terms of that agreement so that the State could participate in that agreement. A couple of commenters stated that if the concern about a State authorization reciprocity agreement is that it could be interpreted to supplant all of a State's laws, then the most direct way to prevent this from happening would be to revise the definition of ''State authorization reciprocity agreement'' to provide that the agreement cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. Commenters suggested that their proposed definition of ''State authorization reciprocity agreement'' referencing ''general-purpose State laws and regulations'' should replace the language in the current definition that maintains a member State's authority to enforce its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions, while still maintaining a State's authority to enforce its other, non-State authorization related, statutes and regulations. The commenters stated that failure to streamline the definition in this way would continue to cause confusion about the definition, and since the Department has recognized State authorization reciprocity agreements as a method by which State authorization distance education requirements can be met, adjusting the definition in their proposed way is a needed clarification. In addition, the commenters said that, with respect to the concern that the scope of a State reciprocity agreement could be interpreted to extend beyond the scope of State authorization of distance education and impact a State's exercise of its other general oversight activities, by clarifying that States could continue to enforce their general purpose laws—those that do not relate to the State authorization of distance education programs—in addition to the reciprocity agreement, those concerns should be alleviated.

One commenter stated that there needs to be an appropriate due process in place when a State authorization reciprocity organization acts against an institution and this should be a factor that the Department considers regarding the acceptance of reciprocity agreements.

Discussion: The Department appreciates the comments in support of the proposal to maintain the definition of ''State authorization reciprocity agreement.'' However, we are persuaded by the commenters who suggested that we modify the definition to clarify that such an agreement cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. A reciprocity agreement may supersede a State's own requirements related to State authorization of distance education and may prohibit a State voluntarily participating in that agreement from adding additional requirements on institutions that also participate in the agreement. It would not be acceptable, for example, for a State to participate in a reciprocity agreement in order to advantage its own public institutions and yet apply additional or alternate requirements related to State authorization of distance education to institutions that participate in the reciprocity agreement but may be located in a different State. Adopting this suggestion will alleviate confusion about the definition, clarify that the scope of a State authorization reciprocity agreement cannot be interpreted to extend beyond the scope of State authorization of distance education or to impact a State's exercise of its other general oversight activities, and permit a member State of the agreement to enforce its own general-purpose State laws and regulations outside of the State authorization of distance education, while replacing the confusing and potentially conflicting language in the current definition that maintains a member State's authority to enforce its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

We decline the recommendation regarding due process when a State authorization reciprocity organization acts against an institution, as we believe that this is a function of the reciprocity agreement, and thus, the members of the reciprocity agreement should address it.

In addition, we note that the definition of ''State authorization reciprocity agreement'' was unintentionally omitted from the NPRM. At the time, this definition had not been added to the U.S. Code of Federal Regulations due to the delayed implementation of the Department's 2016 State Authorization regulations. However, the 2016 definition of a State reciprocity agreement was published in the **Federal Register** on July 29, 2019 (84 FR 36471) and was discussed during the negotiated rulemaking that led to this final regulation. The comments we received on this definition indicate that the public was aware of the proposed definition based on the consensus language made available to the public on the Department's website.

In the proposed regulations, as part of the amendments to the State authorization regulations under § 600.9(c), we removed the concept of a student's ''residence'' and replaced it with ''location'' (see discussion under State authorization in the preamble to the NPRM and under § 600.9(c) below). To ensure consistency between these amendments to § 600.9(c) and the definition of ''State authorization reciprocity agreement,'' which also refers to students ''residing'' in other States, we are making a conforming change to the ''State authorization reciprocity agreement'' definition and replacing the word ''residing'' with ''located.''

Changes: We revised the definition of ''State authorization reciprocity agreement'' in § 600.2 to define a State authorization reciprocity agreement to be an agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement. We further revised this definition to provide that it does not prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. Finally, we have replaced the word ''residing'' with the word ''located.''

Institution of Higher Education, Proprietary Institution of Higher Education, and Postsecondary Vocational Institution (§§ 600.4, 600.5, and 600.6)

Comments: One commenter supported the Department's proposed clarification of initial arbitration requirements but stipulated that, in the interest of transparency, arbitration proceedings should be public.

Discussion: We appreciate the support of the commenter. However, we do not agree that the Department should require that arbitration take place in public and such a requirement is not contained in HEA section 496(e), 20 U.S.C. 1099b(e), the statutory section to which this regulatory provision is closely tied. As we explained in the NPRM, although arbitration hearings are less transparent than court proceedings, the Department believes that existing and proposed requirements for notice to students and the public in §§ 602.26 and 668.43 will ensure both are timely made aware of accreditation disputes and their resolutions.

Changes: None.

Comments: Two commenters expressed opposition to proposed changes regarding initial arbitration. One of those commenters asserted that by relying on arbitration, the Department potentially ''extends the clock'' for a problem institution, because that arbitration may be followed by a likely costly lawsuit, and suggested that the Department has failed to show evidence either that institutions have routinely not followed the statutory requirement of initial arbitration prior to initiating any other legal action, or that initial arbitration, when used, has resulted in fewer lawsuits. The commenter expressed the opinion that it is incumbent upon the Department to present evidence based on data acquired from agencies on the frequency of arbitration in the event of adverse actions, the percentage of lawsuits that have occurred without first going through arbitration, the percentage of lawsuits that have occurred after arbitration, and the relative costs of both arbitration and lawsuits to agencies. Additionally, the commenter requested that the Department explain how the final rule will ensure that institutions and agencies are meeting the requirements under this section. Finally, the commenter asked that the Department protect students by placing restrictions on enrollment or receipt of Federal financial aid in the event of arbitration proceedings, since the accrediting agency has already ruled the institution should not be accredited at all.

Another commenter asserted that current initial arbitration requirements do not adequately account for issues and concerns raised by the United Negro College Fund (UNCF) about the fairness of the accreditation review process in a May 9, 2019 white paper (*Biases in Quality Assurance: A Position Paper on Historically Black Colleges and Universities and SACSCOC*).[5] Specifically, they noted the lack of black peer reviewers, the lack of transparent or unambiguous financial standards, a faulty peer reviewer selection process, and problems with inter-reviewer reliability and bias among peer reviewers. Arguing that proposed changes to §§ 600.4, 600.5, and 600.6 would exclude the litigation option as the only means of redress available to Historically Black Colleges and Universities (HBCUs) in the face of the bias inherent in the accreditation review process, the commenter asked that these changes not be made until such time as the issues identified in the UNCF white paper can be addressed.

Discussion: HEA section 496(e) provides that the Secretary may not recognize the accreditation of any institution of higher education unless it agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action. As a result, the proposed changes need not be substantiated with data from accreditation agencies indicating the exact number of initial arbitration proceedings or the number of adverse actions that resulted in litigation without recourse to initial arbitration. We made these changes to align with statutory requirements. Current regulations in §§ 600.4(c), 600.5(d), and 600.6(d), consistent with the HEA, already require institutions to submit to initial arbitration before initiating any other legal action. The proposed regulations establish no additional requirements with respect to initial arbitration. As we explained in the NPRM, the statutory requirement has not changed; however, the Department's regulations heretofore have neglected to fully implement the statutory requirement, which we are correcting with these final regulations. Through the final regulations, the Department seeks to highlight the initial arbitration requirement to raise awareness of it and to clarify the current regulations.

Concerning the question of what additional measures the Department might take to ensure that institutions and agencies comply with the requirements of this section, the Department does not intend to establish a new compliance or enforcement protocol. As previously noted, the statute and current regulations already require institutions to enter initial arbitration with their accrediting agencies before taking additional legal action. We expect institutions and agencies to comply with those requirements. Certainly, when we know an institution or accrediting agency ignored or refused to comply with applicable statutory and regulatory guidelines relevant to initial arbitration, the Department will act under its current authority. We do not believe that restricting student enrollment at an institution involved in initial arbitration or limiting an institution's access to title IV, HEA funds is either appropriate or beneficial to students. Such measures would constitute an adverse action against the institution before it has had the benefit of due process with respect to the potential revocation of its accreditation.

In response to the commenter who expressed concerns over the fairness of the accreditation review process as it has been applied to HBCUs, the Department does not, in any way, dismiss the issues raised in the UNCF white paper on this matter cited by the commenter. We believe that where bias is shown to have been a factor in any aspect of the accreditation process, including initial arbitration, it should be brought to the Department's attention. Moreover, the use of arbitration could prove to be a lower-cost and quicker way for an institution that believes it was treated unfairly by its accrediting agency to seek and achieve resolution. However, the breadth of what the UNCF white paper addressed far exceeds the largely procedural issue of initial arbitration discussed among negotiators

[5] *uncf.org/wp-content/uploads/Biases-in-Quality-Assurance_UNCF-Accreditation-White-Paper-Updated.pdf.*

and clarified in these regulations. Finally, it is not the case, as suggested by the commenter, that the regulations would restrict or foreclose any of the legal options available to institutions in opposing adverse actions taken by an accrediting agency.

Changes: None.

Comments: Regarding the proposed changes to the definition of a ''program leading to a baccalaureate degree in liberal arts'' in § 600.5(e), one commenter expressed concern that the definition would allow the Department to bypass accrediting agencies, making it possible for institutions to designate as ''liberal arts programs'' those composed partially of courses that are not taught by faculty. Specifically, the commenter cited a Bachelor of General Studies program offered at a public four-year university, the requirements of which permit students to earn credits by passing College Level Examination (CLEP) or similar exams in lieu of attending classes taught by faculty. Another commenter contended that the Department has not offered adequate explanation or justification for the proposed changes, in violation of the Administrative Procedure Act (APA). The commenter elaborated that the Department proposes to substitute its own judgment, as well as remove a descriptive list of the categories of ''general instructional program[s]'' that typically qualify, including programs in the ''liberal arts subjects, the humanities disciplines, or the general curriculum.''

Discussion: One commenter may have misinterpreted the context and applicability of § 600.5(e). The commenter opposed the proposed changes to the definition of a ''program leading to a baccalaureate degree in liberal arts,'' based on concerns that the revised definition will facilitate the introduction of liberal arts programs at the baccalaureate level that permit alternative means of earning credits (including successful completion of a test). This definition applies only to the extent that a liberal arts program offered by a proprietary institution of higher education may potentially be an exception to the general requirement that all programs offered by this type of institution lead to gainful employment in a recognized occupation. The change does not expand the ability of proprietary institutions to offer liberal arts programs; rather, it more clearly defines the breadth of programs that a proprietary institution could not offer without first qualifying for the statutory exception. A program leading to a degree at a public or private not for profit institution, such as the one cited by the commenter, would not be subject to the definition of a ''program leading to a baccalaureate degree'' in current or proposed § 600.5(e). The applicability of § 600.5(e) notwithstanding, whether a student may earn credits through testing, life experience, or some other alternative means, or how many, is not subject to regulation by the Department.

We disagree with the commenter who believed the Department has violated the APA by failing to provide an adequate justification for proposing changes to § 600.5(e). As explained in the NPRM, in § 600.5(e), we propose to clarify the definition of ''program leading to a baccalaureate degree in liberal arts'' to establish the Department's responsibility for determining what types of programs qualify, and to tighten up the regulatory definition of the term, while maintaining and respecting the grandfathering requirements in the statute. The proposed changes meet this stated objective.

We further disagree with the commenter that in establishing its responsibility for determining what types of programs qualify, the Department is substituting its judgment for what is in the current regulations. The proposed regulations merely eliminate in this section the redundant requirement that an institution's accrediting agency determine a liberal arts program to fall within the generally accepted instructional categories. Contrary to the assertions of the commenter, we retained this requirement in proposed §§ 600.5(e)(1) through (4).

Changes: None.

State Authorization (§ 600.9)

State Authorization—Religious Institution (§ 600.9(b))

Comments: Some commenters agreed with the proposed changes to the definition of ''religious institution'' used for purposes of § 600.9(b). Others opined that the Department did not provide sufficient justification for removing the current definition. Commenters expressed concern that removing the Federal definition of ''religious institution'' would create an inconsistent standard and would leave each State to define the term independently, thus allowing institutions with very little religious connection to qualify for favored treatment under one State's definition while institutions in other States could be held to a stricter definition under which they might not qualify as a ''religious institution.'' In another vein, commenters expressed concern that classification as a religious institution in a State could allow the institution to evade consumer protection requirements. Other commenters believed that the Department should not eliminate the current regulations because they are limited enough in scope to safeguard the separation of church and State (First Amendment Establishment Clause), as well as prevent abuse of exemptions while protecting students.

Discussion: The Department appreciates all comments in support of the proposed regulations. We disagree, however, that we should maintain the current definition. With respect to concerns expressed by commenters who contended we should keep the current definition, the current Federal definition of a religious institution for State authorization purposes may conflict with a State's definition for the same, which is troubling because State authorization is the mechanism by which States oversee institutions and perform their role within the triad. This disconnect has further required such institutions to seek an alternative way to meet State authorization requirements. The Department believes that, if the institution is physically located in or operating in a given State, the State has the authority to determine, for the purpose of State authorization, how that institution will be authorized by the State. Furthermore, to meet State authorization requirements and be legally authorized by a State, a religious institution is subject to the requirements under 34 CFR 600.9(a)(1) that require the State to have a process to review and appropriately act on complaints concerning the institution, which would provide consumer protection. As States define ''religious institution'' in varied ways, we believe that the most effective approach to ensure our State authorization regulations are aligned with the First Amendment is to require States to meet the requirements based on their existing definitions, rather than create a new one. We believe that, for the purpose of State authorization, States have the right to make their own decisions regarding whether an institution is a religious institution or not. States continue to have an incentive to protect their students, and students will have access to a State complaint process.

Changes: None.

State Authorization (§ 600.9(c))

Student Location and Determinations of a Student's Location

Comments: Most commenters generally supported the proposed change that specifies that institutions should determine which State's authorization laws are applicable to an institution based on a student's location and not a student's residence. Commenters noted that using a student's location rather than residency was more appropriate because this framework matches the approach that States take. While residency requirements vary by State, a State's authorization jurisdiction is based upon the location of the educational activity. Commenters also felt that this change would allow students who have not established a legal or permanent residency in a State to benefit from State requirements for an institution to offer distance education in that State. Some commenters noted, however, that there is a risk that, because institutions already have to do more than the proposed regulations would require to meet State or National Council for State Authorization Reciprocity Agreements (NC–SARA) reporting requirements, an institution would solely follow the Federal standard, believing this standard supersedes State requirements, and could thus be found to be out of compliance in a State or with NC–SARA. On the other hand, other commenters felt that their existing process and procedures allow them to comply with State and NC–SARA reporting requirements.

Commenters generally supported the proposal to require institutions to have policies or procedures to make determinations about the States in which its students are located. Many commenters also agreed with having policies and procedures that set how the institution will determine a student's location at the time of initial enrollment, as well as for updating its records if a student's location changes, in order to ensure that the correct State authorization is obtained. Commenters believed the proposed requirements would reduce confusion about where the student is located for State authorization distance education purposes. Many commenters noted their appreciation that the proposed regulations allow institutions to develop the process for determining location that is best suited to their organization and the student population they serve. One commenter was concerned that the Department's proposal would grant institutions the authority to determine a student's location based on undefined policies or procedures, and that since there is no mechanism for students or States to learn how institutions determine which State laws apply, this could result in institutions minimizing their regulatory burdens. The commenter believed that the States alone should determine which State laws apply, rather than rely on institutions to do so. Another commenter believed that, instead of leaving it up to an institution's discretion, there should be a definition for the concept of ''location'' but did not propose what the definition should be. Yet another commenter felt the Department should require an institution to determine a location for all enrolled students not less than annually and that the institution update its determination of a student's location when the institution should reasonably know about the change.

Many commenters believed that the proposed regulations simplify the institutional processes needed to establish and document a student's location at the time of initial enrollment and later through a formal notification process for student change of address. Some commenters sought clarification on how to determine ''time of enrollment'' for determining a student's location because there could be a time lag between when a student enrolls at a location and where the student is located once the course begins. Other commenters also asked for clarification on what constitutes a ''formal receipt of information.'' One commenter asked for clarification about whether the Department would expect that institutions use a uniform location-reporting procedure in all instances across all individual units within a single institution.

Discussion: The Department appreciates the comments in support of the proposed regulations. Regarding the concern that, because institutions already have to do more than the proposed regulations would require to meet State or NC–SARA reporting requirements, an institution would solely follow the Federal standard, believing this standard supersedes State requirements, and could thus be found to be out of compliance in a State or with NC–SARA, these final regulations do not absolve institutions from complying with State laws nor do they require participation in reciprocity agreements or override the requirements of such agreements. Furthermore, we disagree with the comment that the States should determine which State laws apply rather than institutions. It is an institution's responsibility to determine in which State a student is located at the time of initial enrollment, and based on this information, the institution determines which State's authorization requirements apply.

We also disagree that an institution determines a student's location completely at its discretion. The institution determines the student's location at the time of initial enrollment based on the information provided by the student, and upon receipt of information from the student that their location has changed, in accordance with the institution's procedures. Institutions may, however, develop procedures for determining student location that are best suited to their organization and the student population they serve. For instance, institutions may make different determinations for different groups of students, such as undergraduate versus graduate students. We also do not believe it is necessary to determine location for all enrolled students annually, but rather believe that determination at the time of a student's initial enrollment and upon a formal notification by the student of his or her change of address to another State, in accordance with the institution's procedures, is sufficient to ensure that students will receive information they need while not being overly burdensome or costly to institutions. As discussed in the preamble to the NPRM, we believe that we should avoid subjecting an institution to unrealistic and burdensome expectations of investigating and acting upon any information about a student's whereabouts that might come into its possession. It is in the interest of both institutions and students to have understandable, explicit policies that pertain to the maintenance of student location determinations.

With respect to determining ''time of enrollment'' for determining a student's location, we specify in the NPRM that the location is determined at the time of a student's initial enrollment in a program (as opposed to the time of a student's initial application to the institution). We did not attach any further conditions to this determination. We also provided that, with respect to a ''formal receipt of information'' regarding change of location, this information would come from the student to the institution in accordance with the institution's procedures for changing their location to another State. The institution would need to establish or maintain and document the change of address process. Finally, as we discuss in the preamble to the NPRM, we expect institutions to consistently apply their policies and procedures regarding student location to all students, including students enrolled in ''brick-and-mortar'' programs.

Changes: None.

State Requirements

Comments: Many commenters supported the requirement that distance education programs should be required to meet any State authorization requirements in States where they do not maintain a physical presence but enroll students. Some commenters asked that the Department define what an institution must do to meet the requirement in § 600.9(c)(1)(i) that an institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, as well as what documentation is required. A couple of commenters were concerned about the impact on the reciprocity agreement of the proposed requirement in § 600.9(c)(1)(ii), under which an institution would be ''subject to any limitations in that agreement and to any additional requirements of the State'' because, if States are able to require institutions to meet State requirements outside of the reciprocity agreement, these requirements could contradict or go beyond the scope of existing NC–SARA provisions and institutions would have to engage in research and fulfill any additional requirements, which would undermine a key purpose of the reciprocity agreement. One commenter felt that the Department should recognize a State's prerogative to establish exemptions from formal approval and to consider exempt institutions as authorized to offer distance education.

Discussion: The Department appreciates the comments in support of the proposed regulations. Institutions are required to know what State requirements exist for an educational program to be offered to a student in a particular State, and the required approvals that constitute what is needed for the program to be authorized by that State. Documentation should reflect that the institution has met these applicable State requirements, which could include evidence that a State waives direct authorization of the particular institution or institutions of its type. These requirements would not have any bearing on reciprocity agreements. As we stated in the preamble of the December 19, 2016, final regulations (81 FR 92232), each State in which an institution is offering distance education remains the ultimate authority for determining whether an institution is operating lawfully in that State, regardless of whether a non-State entity administers the agreement, including whether an institution in a reciprocity agreement is operating in that State outside the limitations of that agreement. The regulations further provide that an institution offering distance education in a State in which the institution is not physically located or in which the institution is otherwise subject to a State's jurisdiction, as determined by the State, must meet any of that State's requirements to be legally offering distance education in that State. However, even if the State does not have any specific approval requirements for an institution to be offering distance education in that State, § 600.9(a)(1) requires that, for an institution that has physical presence in a State, that State must offer a process to review and appropriately act on complaints concerning the institution, including enforcing applicable State laws, for the institution to meet the State authorization requirements. We agree with commenters that it is important to revise § 600.9(c)(1)(ii) for consistency with the revised definition of the term ''State authorization reciprocity agreement,'' in which we provide that a reciprocity agreement does not prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. Accordingly, we have revised the provision to provide that, in the case of an institution covered by a reciprocity agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in the State, subject to any limitations in that agreement and to any additional requirements of the State not relating to authorization of distance education.

Changes: We have revised § 600.9(c)(1)(ii) to provide that, for an institution covered by a reciprocity agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in the State, subject to any limitations in that agreement and to any additional requirements of the State not relating to authorization of distance education.

State Complaint Process

Comments: Some commenters supported eliminating the State complaint process requirement to protect the eligibility of students who are located in States that do not offer a complaint process to receive title IV, HEA assistance to attend distance education programs, agreeing that § 600.9(a)(1) already addresses the State complaint process and that the State complaint process requirement under § 600.9(c)(2) is duplicative of the requirements under § 668.43(b). Other commenters believed that the State complaint process requirement is not redundant because, even though the Department states that eliminating the requirement would allow students to receive Federal student aid even if the State they are located in does not have a State complaint process, this change would conflict with the definition of ''State authorization'' under § 600.9(a)(1), which provides that State authorization requirements include that the State have ''a process to review and appropriately act on complaints concerning the institution, including enforcing applicable State laws.'' Since the only entity that can enforce a specific State's laws is that State, institutions would not be able to comply with the State authorization requirements if there is not a complaint process available to students in their own States. The commenter argued that the final regulations should reflect a State's authority to accept, investigate, and act on complaints both from students located in that State and from students enrolled at institutions physically located in that State. In a similar vein, another commenter opined that nothing in § 668.43(b) requires that, as a condition of State authorization, an institution only be permitted to operate in a jurisdiction in which there is a complaint process. The commenter also indicated that States should collect complaint records and make these publicly available in a central database. Another commenter recommended that the Department require States in which an institution is located to share a copy of complaints with other States whose residents are enrolled in that institution.

Discussion: The Department appreciates the comments in support of the proposed regulations. With respect to the other comments, nothing in the regulations prevents a State from providing a State complaint process that an institution offering distance education would have to comply with in order to operate in that State, unless the State and institution have joined a reciprocity agreement that provides an alternate means for addressing student complaints. Furthermore, with respect to the disclosures under § 668.43(b), it follows that for an institution to provide a student or a prospective student with contact information for filing complaints with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint, the institution would need to have such information to provide or it would be out of compliance with the regulations. Regarding the suggestion that States collect complaint records and house them in a publicly available central database and that States in which an institution is located share a copy of complaints with other States whose residents are enrolled in that institution, we decline this suggestion. Such complaints generally fall under the jurisdiction of the States and the accrediting agencies. Additionally, the Federal Trade Commission maintains a database of consumer complaints. While the Department declines to take these recommendations, nothing in these regulations prevents States from taking these actions if they wish to do so.

The Department clarifies that the contact information provided may be for whichever entity or entities the State designates to receive and act upon student complaints. Contact information is not necessarily required for each of the following: A State approval entity, a State licensing entity, and another relevant State official or agency. If the State has only designated one of these types of entities, contact information for that one entity is sufficient.

Changes: We have included an amendatory instruction to remove the text of current § 600.9(c)(2). We also have redesignated proposed § 600.9(c)(1)(ii)(A), (B), and (C) as § 600.9(c)(2)(i), (ii), and (iii).

Special Rules Regarding Institutional Accreditation or Preaccreditation (§ 600.11)

Comments: One commenter expressed concern that the proposed changes to the regulations would permit institutions to more easily switch to a new accrediting agency or maintain a back-up agency, enabling them to skirt enforcement. The commenter opined that this change is inconsistent with the statutory requirement in HEA section 496(h), 20 U.S.C. 1099b(h), that the Secretary not recognize the accreditation of an institution seeking to change accrediting agencies, unless the institution can demonstrate reasonable cause and submits all relevant materials; as well as the statutory requirement in HEA section 496(i), 20 U.S.C. 1099b(i), that the Secretary not recognize the accreditation of an institution that maintains accreditation from more than one agency unless the institution demonstrates reasonable cause and submits all relevant materials, and designates one agency as its accrediting agency for title IV purposes.

Discussion: We disagree with the commenter that the changes to § 600.11 are inconsistent with the statutory requirements of HEA section 496(h) and (i).

HEA section 496(h) provides that ''The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution is in the process of changing its accrediting agency or association, unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including material demonstrating reasonable cause for changing the accrediting agency or association.'' The new regulations in § 600.11(a) continue to require an eligible institution to submit to the Secretary all materials related to its prior accreditation or preaccreditation. Moreover, the new regulations require additional documentation, including substantiation of reasonable cause for the change.

The ''dual accreditation rule'' provision in HEA section 496(i) states that ''The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is accredited, as an institution, by more than one accrediting agency or association, unless the institution submits to each such agency and association and to the Secretary the reasons for accreditation by more than one such agency or association and demonstrates to the Secretary reasonable cause for its accreditation by more than one agency or association. If the institution is accredited, as an institution, by more than one accrediting agency or association, the institution shall designate which agency's accreditation shall be utilized in determining the institution's eligibility for programs under this chapter.'' The new regulations in § 600.11(b) continue to require the eligible institution to submit to the Secretary all materials related to its prior accreditation or preaccreditation, and clarify the conditions under which the Secretary would not determine the institution's cause for multiple accreditation to be reasonable, including when the institution has had its accreditation withdrawn, revoked, or otherwise terminated in the prior two-year period and when the institution has been subject to a probation or equivalent, show cause order, or suspension. The new regulation does provide that the Secretary may consider an institution's interest in obtaining multiple accreditation to be reasonable if it is based on geographic area, program-area focus, or mission, but the institution must provide evidence to explain or substantiate its request.

Changes: None.

Comments: Two commenters objected to the provisions in this section, arguing that they create a loophole in violation of the HEA and are contrary to law and in excess of the Department's statutory jurisdiction within the meaning of section 706 of the APA. The commenters note that under HEA section 496(j), an institution ''may not be certified or recertified'' for purposes of title IV if the institution has had its ''accreditation withdrawn, revoked, or otherwise terminated for cause,'' unless such action has been ''rescinded by the same accrediting agency.'' One commenter opined that the Department failed to provide sufficient evidence to support this change. One commenter suggested that, in the event an institution seeks multiple accreditations and has been subject to any kind of action, the Department should require that a problem raised by one agency should trigger automatic review by the other agency with a higher evidentiary bar to show why a similar sanction should not be applied.

Discussion: We disagree with commenters that § 600.11 creates a loophole that would violate the HEA and is contrary to law and in excess of the Department's statutory jurisdiction within the meaning of section 706 of the APA. As discussed above, the new provisions are consistent with HEA section 496(h) and (i). HEA section 496(j) addresses the impact on an institution from the loss of accreditation. Again, as described above, we continue to hold institutions to the limitations imposed when accreditation has been withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months pursuant to § 600.11(a)(1)(ii)(B).

We further disagree with the commenter who asserted that the Department has failed to provide enough evidence to support this change. As explained in the NPRM (84 FR 27414), the proposed regulation seeks to maintain guardrails to ensure that struggling institutions cannot avoid the consequences of failing to meet their current accrediting agency's standards by attaining accreditation from another agency, while maintaining recourse for institutions that have been treated unfairly or have legitimate reasons for seeking multiple accreditation unrelated to findings or allegations of noncompliance with the quality standards of its current accrediting agency. The potential for an institution to face loss of its accreditation without being afforded its due process rights as defined in § 602.25, or as the result of an agency's failure to respect the institution's stated mission, supports the need for this change.

Regarding the suggestion from a commenter that, where an institution seeking multiple accreditations has been subject to any kind of action, the Department should require the problem raised by one to trigger an automatic review by the other agency to show why a similar sanction should not be applied, we believe such a requirement would be superfluous. The applicable amendatory language as proposed already stipulates that the Secretary will not determine the cause for seeking accreditation from a different or second accrediting agency to be reasonable if the institution has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months or has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months. Any action initiated by the institution's current agency would necessarily be reviewed by the Department and, unless found to be related lack of due process, inconsistently applied standards or criteria, or failure to respect the institution's stated mission not considered reasonable cause to seek additional accreditation. At that point, we would not recognize the additional accreditation.

We also disagree with the commenters who stated that the Department failed to provide data or evidence to support the need for the proposed regulatory changes during the negotiated rulemaking. As we stated previously in this preamble, the changes to the regulations are based on many factors, including feedback we received from the public, studies conducted by higher education associations, and emerging trends in postsecondary education. For example, concerns have been raised about the lack of innovation in accreditation, the challenges that new agencies have in gaining recognition, and the difficulties that new institutions have in becoming accredited and gaining access to title IV funds.[6] One challenge new accrediting agencies face in gaining recognition is the need to serve as a Federal gatekeeper for at least one institution or program. Accredited institutions or programs are unlikely to leave a well-established accrediting agency, thereby risking their access to title IV funds, even if a new agency may be more appropriate to the mission of the institution, support educational innovation at lower cost, have higher standards for academic excellence, or enable an institution to meet the needs of its students. This regulatory change to permit dual accreditation will allow institutions to have greater choice in selecting an accrediting agency that best aligns with the institution's mission, demonstrates educational excellence to potential students, peer institutions, or employers, and supports innovative pedagogical approaches. In addition, in order for new accrediting agencies to have the ability to become recognized, they need to be able to attract respected institutions to their membership, which is unlikely if an institution is required to abandon its current agency first. Finally, as we eliminated geography from an accrediting agency's scope, it is important to permit dual accreditation during the period in which an institution is undergoing review to change its agency.

Furthermore, the Department developed a list of proposed regulatory provisions based on advice and recommendations submitted by individuals and organizations as testimony in a series of three public hearings in September of 2018, as well as written comments submitted directly to the Department. Department staff also identified issues for discussion and negotiation. We developed the proposed regulations that we negotiated during negotiated rulemaking with specific objectives for improvement, including addressing the requirements for accrediting agencies in their oversight of member institutions or programs; establishing requirements for accrediting agencies to honor institutional mission; revising the criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality; developing a single definition for purposes of measuring and reporting job placement rates; simplifying the Department's process for recognition and review of accrediting agencies; and promoting greater access for students to high-quality, innovative programs. We believe the changes to the regulations in this section align with these objectives.

We do not think it is appropriate for the Department to require that an action taken by one agency should trigger automatic review by another agency, with a higher evidentiary standard, to show why a similar sanction should not be applied, since our current regulations do not require this and an institution could be compliant with the standards of one agency even if not compliant with the standards of another. Currently, § 602.28 requires an agency to investigate an institution if another accrediting agency subjects it to any adverse action or places it on probation. A higher evidentiary standard is not appropriate.

Changes: None.

Comments: One commenter suggested that a provision be added to this section to permit an accrediting agency to prohibit its recognized institutions from maintaining accreditation by more than one recognized agency.

Discussion: We disagree with the commenter's suggestion to permit an accrediting agency to prohibit its recognized institutions from maintaining accreditation by more than one recognized agency as it could have an anticompetitive impact and prevent innovative changes in higher education delivery. We will serve institutions and students better when accrediting agency standards align with the institution's educational objectives and stated mission. In some cases, this may require an institution to seek accreditation from more than one accrediting agency or to change accrediting agencies.

Changes: None.

Special Rules Regarding Institutional Accreditation or Preaccreditation (§ 600.11)

Multiple Accreditation (§ 600.11(b))

Comments: One commenter opined that the changes to § 600.11(b) provide too much discretion to determine that an accrediting agency acted improperly and allows an institution to seek alternate accreditation when the institution does not meet its original accrediting agency's standards. The commenter agreed that we should permit an institution to select a comprehensive institutional accrediting agency as its title IV gatekeeper and seek mission-based institutional accreditation as well.

Discussion: We disagree with the commenter that the changes to § 600.11(b) provide too much discretion for the Department to determine that an accrediting agency acted improperly or to allow an institution to seek a new accrediting agency when the institution does not meet its original accrediting agency's standards. The institution seeking a change of accrediting agencies or multiple accreditation must demonstrate to the Secretary a good reason for seeking accreditation by a different or additional agency in order for that request to be approved. Moreover, the regulations limit the ability of institutions that have been subject to a probation or equivalent, show cause order, or suspension order or that have had their accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, from making such a change.

We thank the commenter for support of the provision that enables an

[6] *https://www.educationnext.org/college-accreditation-explained-ednext-guide-how-it-works-whos-responsible/.*

institution to select a comprehensive institutional accrediting agency as its title IV gatekeeper and seek accreditation from a mission-based institutional accrediting agency.

Changes: None.

Comments: Two commenters objected to the provisions of § 600.11(b)(2)(i)(B) that enable the Secretary to determine an institution's justification for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on its mission. The commenters asserted that this grants exemptions for institutions with a ''religious mission'' from rules preventing agency-shopping if the institution claims an accrediting agency was not respecting its religious mission.

Discussion: The proposed regulations provide latitude to the Secretary to determine that an institution's interest in seeking multiple accreditation is reasonable if it seeks accreditation by more than one accrediting agency as a result of its mission, geographic area, pedagogical focus, or program area focus. The Secretary will not be required to make such a determination. An institution seeking multiple accreditation would need to convince the Secretary of the reasonableness of its request. If an institution appears to be avoiding compliance with its current accrediting agency's standards by seeking accreditation from a new or additional accrediting agency, the Secretary could determine that the agency's request is not reasonable and deny that request.

Changes: None.

Severability (§ 600.12)

Comments: None.

Discussion: We have added § 600.12 to clarify that if a court holds any part of the regulations for part 600, subpart A, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 600.12 to clarify that we designed the regulations to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Change in Ownership Resulting in a Change in Control for Private Nonprofit, Private For-Profit, and Public Institutions (§ 600.31)

Comments: One commenter expressed support for the changes to § 600.31 that clarify the terms of a change of ownership or ownership interest. Another commenter suggested that we clarify that the term ''ownership'' is meant to include changes in management or control of public institutions.

Discussion: We thank the commenter who supported the changes to this section. Further, we agree with the commenter who suggested that the term ''ownership'' as defined in § 600.31 requires clarification with respect to public institutions. Accordingly, we clarify that ''change in ownership'' as applied in this section includes changes in management or control of public institutions. Such a change in management could include instances in which public institutions are merged into a new system or merged with another institution, or instances when boards of trustees are merged to provide joint oversight of more than one institution, among other things. This does not include instances when a new president or chancellor is hired or appointed, or when there is a change in the individual who holds the position of SHEEO.

Changes: None.

Eligibility of Additional Locations (§ 600.32)

Comments: Several commenters objected to the proposed change that would allow an entity acquiring a closing location to be liable only for improperly spent title IV funds and unpaid refunds from the prior and current academic years. Some argued that the Department is attempting to solve the problem of institutions closing without sufficient resources to repay outstanding liabilities by reducing the requirement for these institutions to make students, the Department, and taxpayers whole, rather than fulfilling its enforcement responsibility by requiring institutions to post letters of credit in certain circumstances to protect the Federal fisc. Others asserted that the change could result in students being duped into thinking they are being offered a new educational opportunity, while potentially losing access to closed school loan discharges in the process. The commenters requested that the Department require that purchasers accept all past liabilities for the locations they acquire, except as determined by the Secretary on the strength of the purchaser's change of ownership application with the Department,[7] arguing that such action would enable the Department to retain some discretion to prevent inappropriate or high-risk purchases.

Discussion: We disagree that § 600.32 should be amended to require purchasers to accept all past liabilities for the school locations they acquire, except as determined by the Secretary on the strength of the purchaser's application. We believe it is reasonable to require new owners to accept liability for all financial aid credit balances (See § 685.216 regarding unpaid refunds) owed to students who received title IV, HEA program funds and for all improperly expended or unspent title IV, HEA program funds received during the current academic year and up to one academic year prior by the institution that has closed or ceased to provide educational programs. This timeline mirrors the period of time during which the Department typically conducts program reviews, which includes the current year and the prior year. Program reviews focus on the current and prior year because they provide a more accurate picture of the institution's current administrative strength and function. This provision provides the same window to an outside entity to evaluate the extent to which potential liability exists due to the actions of a prior, unrelated owner, or to secure financing. There may be cases when the acquisition of a closing school by a new owner or entity serves the best interest of students, the local community, and taxpayers. Limiting the potential liability for which a new owner or entity is responsible does not relieve the past owner or entity of its liability for funds owed to the Department as a result of past actions, insufficiencies, or borrower defense to repayment claims.

We also disagree that the changes to this section would ''dupe'' students into thinking they are being offered a new educational opportunity and deprive them of a closed school loan discharge. While it is true that this regulatory change may precipitate fewer school closings and, as a result, fewer closed school loan discharges, students will have the option of completing their program or transferring to a new institution to do so, rather than losing the time and effort they have invested at one institution by starting over, repeating classes, or earning additional credits elsewhere. This regulation does not interfere with a borrower's right or

[7] Application for Approval to Participate in Federal Student Financial Aid Programs is available at *eligcert.ed.gov/ows-doc/eapp.htm.*

ability to submit a borrower defense to repayment claim and seek relief from the Department in the event that misrepresentations occurred under prior ownership; however, it does limit the liability that a new owner assumes for actions that the prior owners took or failed to take.

Changes: None.

Severability (§ 600.33)

Comments: None.

Discussion: We have added § 600.33 to clarify that if a court holds any part of the regulations for part 600, subpart C, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 600.33 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Termination and Emergency Action Proceedings (§ 600.41)

Comments: Several commenters favored the changes to § 600.41. These commenters did not provide additional details other than to note their support.

Discussion: We thank the commenters for their support to delete an outdated reference formerly located in § 600.41(a)(1)(ii)(B) that allowed for termination of an institution's eligibility under a show-cause hearing, if the institution's loss of eligibility resulted from the institution's having previously qualified as eligible under the transfer of credit alternative to accreditation. This alternative has not been possible since its repeal in 1992.

We further thank the commenters for their support of updating the terminology in § 600.41(d) that changes the word ''certify'' to ''originate,'' which is used in the Direct Loan Program, the only program under which the Department currently makes loans.

Changes: None.

Severability (§ 600.42)

Comments: None.

Discussion: We have added § 600.42 to clarify that if a court holds any part of the regulations for part 600, subpart D, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 600.42 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

The Secretary's Recognition of Accrediting Agencies

What definitions apply to this part? (§ 602.3)

Comments: Two commenters opposed the proposed changes in § 602.3(b) that permit accrediting agencies to retain recognition if they meet a newly proposed definition of ''substantial compliance,'' rather than requiring them to be fully compliant with all applicable standards. The commenters asserted that this proposed definition is inconsistent with HEA section 496 and makes it virtually impossible for the Department to hold an agency accountable when it fails to perform.

Discussion: We disagree with the commenters that the proposed definition of ''substantial compliance'' is inconsistent with the statute and makes it virtually impossible for the Department to hold an agency accountable when it fails to perform. For many years the Department relied on the ''substantial compliance'' standard in making recognition determinations and, currently, some accrediting agencies already recognize ''substantial compliance'' in their own standards.[8] The statute requires the accrediting agency or association to demonstrate the ability and experience necessary to operate as an accrediting agency or association. It does not require that the accrediting agency demonstrate that it has applied each and every one of its standards, as evidenced by the fact that an accrediting agency must accredit or preaccredit only one institution prior to petitioning the Department for recognition. It also does not require the Department to deny recognition to an otherwise well-performing accrediting agency simply because of minor administrative omissions or errors, or because the agency had to make a minor exception to its regular policies in order to serve the needs of students. We see a significant difference between ''substantial compliance,'' which means that an agency is essentially compliant with the purpose or objective of the regulations, versus a finding of failing to perform or being noncompliant, for which the Department would make a finding of noncompliance.

In fact, by providing for ''substantial compliance'' and a process for monitoring institutional improvement, the Department may address minor concerns before they become major concerns and ensure that they are resolved quickly and appropriately. The monitoring report will afford accrediting agencies that are in substantial compliance with the criteria for recognition the opportunity to implement corrected policies or update policies to align with compliant practices. The monitoring report provides the Department with an additional oversight tool to ensure integrity in accreditation, in cases where the accrediting agency deficiency does not rise to the level of non-compliance or a full compliance report.

Changes: None.

Comments: One commenter suggested that we could improve the definition of ''programmatic accrediting agency'' by beginning with the word ''usually'' or adding the phrase, ''this does not include agencies which accredit freestanding institutions offering a specific educational program.'' The commenter asserted that the proposed definition does not address situations in which closely related educational programs enable students to enter a broad spectrum of graduate and professional schools, and to embark on a variety of careers. Another commenter remarking on the definition of ''programmatic accrediting agency'' encouraged the Department to ensure that programmatic accrediting agencies have the autonomy to focus on institutional quality.

Discussion: While we recognize that some programmatic agencies accredit schools with programs that prepare students to enter a broad spectrum of graduate and professional schools, and to embark on a variety of careers, we believe the definition does not preclude them from continuing to do so, nor does it require that a program lead to only one career pathway or option. The Department appreciates the commenter's request that we ensure programmatic accrediting agencies have the autonomy to focus on quality, especially when programmatic accrediting agencies also serve as institutional accrediting agencies at

[8] *www.wscuc.org/book/export/html/924.*

institutions that offer a single program or closely related programs that align with the programmatic accrediting agency's mission. We are confident that these regulations provide that autonomy.

Changes: None.

Comments: Several commenters requested additional time to come into compliance with the change from national and regional accreditation to institutional accreditation. The commenters did not object to this change but noted that entities that distinguish between national and regional accreditation in some of their policies will need to amend those policies. They cited, for example, some State laws and regulations that distinguish between national and regional accreditation and reported that those State regulators would need time to amend those laws and adjust the procedures in implementing those laws. Some commenters noted that the legislature in their State is not slated to meet again until 2021.

Discussion: We appreciate the commenters' support and believe the State policies referenced provide further evidence for the need to eliminate the artificial distinction between regional and national accreditation because some of those policies deny opportunities for successful students to enter certain fields, it is incumbent upon State regulators to ensure the laws pertaining to an academic institution's required accreditation to qualify graduates for licensure and the procedures used to implement those laws do not disadvantage students who enroll in and complete programs at institutionally accredited institutions. While we cannot compel a State to act, we hope that States will recognize the Department's revised accrediting agency designations and make the necessary changes in their own laws or regulations.

Changes: None.

Severability (§ 602.4)

Comments: None.

Discussion: We have added § 602.4 to clarify that if a court holds any part of the regulations for part 602, subpart A, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 602.4 to clarify that we designed the regulations to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Link to Federal Programs (§ 602.10)

Comments: One commenter objected to the change in this section, stating that the Department proposes to remove a requirement that accrediting agencies demonstrate their worth as gatekeepers to Federal aid and fails to explain or justify why it believes that simply sharing an institution with an accrediting agency recognized as a gatekeeper to Federal aid qualifies a brand-new accrediting agency to immediately gain access to full gatekeeping authority.

Discussion: Section 602.10 does not eliminate any requirements. Rather, it provides that if an agency accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, the agency satisfies the Federal link requirement, even if the institution currently designates another institutional accrediting agency as its Federal link.

The significance of a Federal link is that it provides the basis for the Department's recognition of an accrediting agency. A Federal link, in and of itself, does not ensure recognition, nor does it ensure participation in title IV programs. A Federal link simply affirms that the agency's accreditation is a required element in enabling at least one of the institutions or programs it accredits to establish eligibility to participate in some other Federal program.

Changes: None.

Geographic Area of Accrediting Activities (§ 602.11)

Comments: Several commenters wrote in support of the Department's proposal, stating that it will ultimately relieve students of the burden to advocate for the quality of their education if their institution of record is nationally accredited. Another commenter agreed that it is problematic when students are treated disparately based on accrediting agency, especially since all agencies adhere to the same Department requirements. One commenter thanked the Department for clarifying that an agency must conduct its activities within a region or group of States, and for emphasizing that we would not require any institution or program to change to a different accrediting agency as a result of these regulatory changes.

Discussion: We appreciate the commenters' support. The Department continues to require accrediting agencies to clarify the geographic area in which they operate, including all branch campuses and additional locations.

Changes: None.

Comments: One commenter objected to the elimination of the distinction between national and regional accrediting agencies based on a belief that there are differences in their standards for general education and faculty quality.

Discussion: The change in nomenclature is intended specifically to counter this prevalent misconception. In fact, the Department applies the same standards for recognition to both national and regional accrediting agencies. Accrediting agencies, both regional and national, are often termed ''nationally recognized,'' including in the HEA and Department materials, which can also lead to confusion.[9] Accrediting agencies do establish their own standards for general education and faculty quality and there is some variation in the standards they have set. For example, many agencies already allow for instructors in applied or vocational programs to substitute years of experience for academic credentials, which may not exist in some fields. However, those standards do not differ based on the agency's geographic scope or prior classification as a national or regional accrediting agency.

Changes: None.

Comments: One commenter expressed concern that the Department's actions may interfere with academic freedom, while providing little or no relief to students whose academic credits are not accepted for transfer to another institution. The commenter asserted that State and Federal regulations create a floor in which an institution can operate, and an institution may choose to have a higher ceiling. The commenter remarked that institutions will still conduct their own evaluation of transfer credits, and the Department should not have a role in setting policy on academic determinations such as transfer credits. Other commenters echoed the position that the decision whether to accept credits for transfer falls on the institution based on its independent assessment of the quality of the prior learning.

Discussion: The Department agrees that the determination of whether to accept credits for transfer falls on the institution based on its independent assessment of the quality of the prior

[9] 20 U.S.C. 1001.

learning. The change to this regulation is designed not to interfere with academic freedom, but rather, to counter a detrimental myth that institutions that are regionally accredited are of higher academic quality than institutions that are nationally accredited. A recent review of regional accrediting standards points to a pervasive lack of focus on student learning and student outcomes among those agencies, although the same is not true among national accrediting agencies.[10] Therefore, it is hard to make the case that regional accrediting agencies do more to ensure academic quality or place higher demands upon the institutions they accredit than national accrediting agencies. That said, because many of the most selective institutions in the United States are accredited by regional accrediting agencies, these agencies benefit from the reputations of a small number of their member institutions that are highly competitive and serve only the most well-qualified applicants.

The Department believes that, regardless of the historical role that accrediting agencies have played, or the institutions that comprise the membership of a given accrediting agency, each student is entitled to an unbiased review of his or her academic record and learning accomplishments when applying for transfer, employment, or graduate school, and that no student should be disadvantaged because of the geographic scope of an institution's accrediting agency.

Changes: None.

Comments: One commenter asserted that the proposed regulatory change represents an unreasonable interpretation of HEA section 496(a)(1) and is, therefore, not in accordance with the APA, which prohibits arbitrary and capricious changes to regulations, and is in excess of statutory jurisdiction under 5 U.S.C. 706(2)(C). Another commenter agreed that the proposed change does not adhere to the statutory language and suggested that, if regional accrediting agencies are not truly regional because of the manner in which they operate, and are instead national, the Department should classify them as such.

Discussion: HEA section 496(a)(1) states that ''the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate.'' Section 602.11 specifies that the agency must demonstrate that it conducts accrediting activities within a State, if the agency is part of a State government; a region or group of States chosen by the agency in which an agency provides accreditation to a main campus, a branch campus, or an additional location of an institution; or the United States (*i.e.,* the agency has accrediting activities in every State). However, the HEA does not require the Department to consider the agency's historic footprint to be part of its scope, which the Department has previously done through regulation. Rather, the HEA refers to all accrediting agencies recognized by the Secretary as ''nationally recognized'' without reference to the number and location of States in which an agency accredits institutions. *See* HEA section 101(a)(5).

We disagree that this change is arbitrary and capricious. To the contrary, the Department believes this change is critically important given the expansion of distance learning, which allows students to attend an institution accredited by an agency whose geographic scope does not include the student's home State. This can often lead to confusion from students looking to contact their institution's accrediting agency, only to find out that the accrediting agency claims to not do business in their State. In addition, given the growth of institutions that have additional locations and branch campuses across the country, most accrediting agencies that originally accredited institutions only in a well-defined and geographically proximate group of States are now accrediting institutions in multiple States that are outside of their historic footprint. The Department recognizes that accrediting agencies previously described as ''regional'' are, in fact, conducting business across much of the country. Therefore, the Department seeks to realign its regulatory definitions with the statute to distinguish among agencies that have activities in one State, some or most States, and every State. As always, the Department uses the definition of ''State'' in § 600.2 for these purposes.

One non-Federal negotiator illustrated the need for this change with a map showing all of the States in which her agency has activities. The map (see Chart 2) revealed that the agency operates across most of the country, with activities in 48 States including the District of Columbia, as well as 163 ''international activities,'' even though the agency was historically classified as a regional agency with activities supposedly confined to 19 States. The Department's prior classifications inaccurately describe where that agency performs its work. To reduce confusion and to recognize that, in any given State, there may be schools accredited by more than one accrediting agency, the Department will require every accrediting agency to list the States in which it performs accrediting activities. This list could include one, some, most, or all States. However, the Department will align its nomenclature more closely with the HEA by referring to all of the agencies it recognizes as ''nationally recognized'' accrediting agencies.

Although the historic distinction between regional and national accrediting agencies is irrelevant given the expansion of many accrediting agencies' work to States outside of their historical footprint, there is a meaningful and clear distinction between institutional agencies and programmatic agencies. The Department will continue to recognize that distinction, including that a programmatic accrediting agency could also be considered an institutional accrediting agency if it accredits single-program institutions. We also disagree that this change is outside of the Department's statutory authority and believe instead that it is required of the Department to more accurately describe the changing nature of accrediting agencies' work. The Department will continue fulfilling its statutory responsibility under 20 U.S.C. 1099b to recognize accrediting agencies or associations and it will continue to require accrediting agencies to publish a list of the States in which they perform their work.

The negotiating committee considered reclassifying some regional accrediting agencies with broad geographic scope as national accrediting agencies but did not achieve consensus on this approach. Instead, consensus was achieved on relying upon statutory language that refers to all accrediting agencies recognized by the Secretary as nationally recognized agencies, and adhering to § 602.11 by requiring each accrediting agency to list the States in which it performs accrediting activities.

Changes: None.

Accrediting Experience (§ 602.12)

Comments: One commenter was generally supportive of the proposed changes in this section that provide additional flexibility to accrediting agencies to accredit main campuses in States in which they currently or may plan to accredit branch campuses or additional locations. However, this commenter requested the Department require an agency seeking an expansion of scope into an area where it does not

[10] *www.americanprogress.org/issues/education-postsecondary/reports/2018/04/25/449937/college-accreditors-miss-mark-student-outcomes/.*

have prior experience to demonstrate in the application process the ability and capacity necessary to justify and support such expanded scope. Another commenter who was generally supportive of the proposed changes in this section objected to the significant additional Federal oversight, as it pertains to the number of institutions or programs that a new agency or organization may accredit, and monitoring by the Department of the agency's accrediting decisions.

Discussion: We appreciate the commenters' support for the change. However, the Department will no longer consider the accrediting agency's historical geographic footprint to be part of its scope. Instead, the geographic area (*i.e.,* list of States) in which the agency performs its work must be reported to the Department and made available to the public.

In instances in which an agency applies for a change of scope, the regulations continue to require an agency to demonstrate in the application process that it has the ability and capacity necessary to carry out that expansion of scope. However, we also recognize that an agency is not permitted to perform accrediting activities that are not yet part of its scope, which makes it a violation of the Department's regulations for an agency to gain experience doing something it is not approved to do. Therefore, since an agency is unlikely to be able to demonstrate *experience* in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope, the application may be reviewed to determine the agency's *capacity* to make decisions under the expanded scope. This provides an opportunity for an agency to gain experience making accreditation decisions in the area of expanded scope, which the Department may wish to limit to a small number of institutions or programs until the agency can then demonstrate, through experience, that it has the capacity to make additional decisions under the expanded scope. The purpose of this regulatory change is to grant limited authority for an agency that has the capacity to make decisions under an expanded scope to make such decisions and acquire—and demonstrate that it has acquired—experience doing so. Without these changes, the Department's existing regulations could be interpreted to contain circular logic (*i.e.,* an agency cannot receive approval without prior experience, but cannot obtain that experience without the authority to do so). The Department will require monitoring reports to assure progress toward demonstrating the necessary experience.

We do not agree that these regulations impose significant additional Federal oversight pertaining to the number of institutions or programs that a new agency can accredit and the monitoring of accrediting decisions. It is the responsibility of the Department to ensure that accrediting agencies are able to successfully determine the quality of the institutions or programs it accredits, and it is wholly appropriate to limit any potential risk until such time as the Department is satisfied that the agency has demonstrated through experience that it is capable of making those determinations.

Changes: None.

Comments: Several commenters objected to the removal of the requirement that accrediting agencies seeking recognition demonstrate two years of prior experience conducting accrediting activities, and that they are trusted by peer organizations, practitioners, and other stakeholders.

The commenters argued that the proposed change to require the agency seeking recognition to cite at least one institution that uses the agency as a gatekeeper for Federal dollars is not an effective proxy for the current requirements. The commenters asserted that the Department failed to explain or justify why it believes that simply sharing an institution with an accrediting agency recognized as a gatekeeper to Federal aid qualifies a brand-new agency to immediately gain access to full gatekeeping authority.

One commenter wrote that the Department does not define what it means to be ''affiliated,'' nor does it propose any meaningful criteria to determine whether an accrediting agency is ''affiliated'' with a recognized agency. The commenter added that the Department provided no evidence of how difficult it has been for new accrediting agencies to meet the two-year rule in the past, nor how many agencies have been unable to obtain initial recognition as a result.

One commenter suggested changes to strengthen this provision, including: Placing restrictions on new agencies that gain recognition until they can demonstrate adequate experience and success in approving and reviewing programs or institutions and demonstrate financial stability, since an agency that is dependent on a small number of institutions as its revenue base creates a moral hazard wherein the agency has an incentive to maintain institutions among its membership that might not meet quality standards while also having an incentive to quickly approve new institutions to help build its financial base; a shortened recognition period instead of the full five years; limits on the number of institutions the agency can accredit; limits on growth in enrollment among the institutions it accredits; and restrictions on the ability to approve complex substantive changes such as change of ownership or control.

Discussion: We disagree with the commenters who expressed concern that requiring at least one institution that uses the agency as a gatekeeper for Federal dollars is not an effective proxy for the current requirements. This is the requirement of the current regulations, so no changes were made to that requirement. The effect of this regulation is to permit an accrediting agency that accredits an institution that is also accredited by another accrediting agency that serves as the Federal link for that agency to obtain recognition. This is necessary to allow new agencies to gain recognition since institutions that already have an established agency are unlikely to change to a new accrediting agency until we recognize that agency.

We also disagree with the commenters' assertion that the regulation would create a situation in which sharing an institution with an accrediting agency recognized as a gatekeeper to Federal aid would qualify a brand-new agency to immediately gain access to full gatekeeping authority. First, an agency would not be ''sharing'' an institution with another accrediting agency. Instead, an agency would be seeking dual accreditation, while identifying one agency to serve as its Federal gatekeeper, as our regulations require. As we explained in our response to comments in § 602.10, the significance of a Federal link is that it provides a threshold minimal criterion to enable the Department to consider recognizing an accrediting agency, but a Federal link, in and of itself, does not ensure recognition, nor does it guarantee that an institution may participate in title IV programs, since other requirements also apply to such institutions. A Federal link simply affirms that the agency's accreditation is, or could meet, a required element in enabling at least one of the institutions or programs it accredits to establish eligibility to participate in some other Federal program.

The Department believes that the term ''affiliated'' is not ambiguous and is commonly understood to mean closely associated with another entity, typically in a dependent or subordinate position. The Department interprets the term to mean an entity that is closely associated with the recognized accrediting agency seeking to establish a new accrediting agency.

As the Department noted during negotiated rulemaking, we do not have evidence to demonstrate how difficult it has been for new accrediting agencies to meet the two-year rule in the past, other than that there have been very few new institutional accrediting agencies recognized under the current regulations. New agencies face a difficult situation in that, under the current regulations, they need to convince an already-accredited institution to leave its established accrediting agency in the hope that the new agency gets recognized. This adds uncertainty that can harm students if their institution has any lapse in its accreditation. Alternatively, the new agency would need to identify institutions not already accredited to pursue accreditation with the new agency. That could be seen as a sign of the new agency's weakness since an institution new to accreditation is not likely to have the resources and experience of traditional institutions that have been accredited for many years. We cannot determine how many would-be agencies do not apply because they cannot identify institutions that are committed to using them for Federal gatekeeping purposes, as such an agency would never apply for recognition. Therefore, we do not have data to quantify how many agencies have been unable to obtain initial recognition as a result. We believe the dearth of new agencies shows that the barriers to entry for new accrediting agencies were so significant that they discouraged new entrants. We hope that by minimizing unnecessary barriers, new accrediting agencies will seek recognition from the Department.

We appreciate the commenter's suggestions to strengthen the regulation in this part. However, we believe that sufficient guardrails and oversight are provided throughout these regulations, and specifically within the procedures located at §§ 602.31 and 602.32, as to render these additional limitations unnecessary. The Department will continue to evaluate the agency's adherence to Federal requirements, including its financial strength, the quality and sufficiency of its staff, and its administrative capability.

Changes: None.

Comments: Many commenters expressed concern that the proposed changes that permit recognized accrediting agencies to re-organize or spin off a portion of their accrediting business by setting up a separate agency present too much risk to Federal student aid dollars. They recommended that the Department amend the proposed regulations to more narrowly define the term ''is affiliated with or is a division of'' as it is used in this section. One of these commenters suggested that the definition require the new agency to have the same policies, staff, and financial and administrative capability of the original agency, or otherwise meet the requirement of two years accrediting experience in its own right. Another commenter recommended that the Department prohibit any new agency from ''spinning off'' of a recognized agency if that recognized agency has had any compliance issues during the last review period.

Discussion: As we discussed previously in this preamble, we use the term ''affiliated'' to mean an entity that is closely associated with the recognized accrediting agency seeking to establish a new accrediting agency. We do not believe a narrower definition is required, as this establishes the appropriate conditions for consideration under this section.

We do not expect that permitting affiliated entities to leverage the recognition of an accrediting agency will generate unacceptable risk to Federal student aid. The affiliation provision only satisfies the Federal link requirement for the new agency and does not provide an accelerated path to recognition. The new agency would still be responsible for satisfying the remaining requirements imposed by the Department for recognition.

Similarly, we also do not believe it is necessary to prohibit any new agency from ''spinning off'' of a recognized agency if that recognized agency has had any compliance issues during the last review period, since the new agency is responsible for satisfying the requirements for recognition imposed by the Department.

We do not think it is appropriate to require an affiliated agency to have the same policies, staff, and financial and administrative capability. The reason for creating an affiliated agency is likely to be based on the need to establish policies that differ in important ways in order to meet the unique needs of a subset of postsecondary institutions. Moreover, it may be impractical to expect the new agency to use staff who are fully employed by another agency. The Department would fully review, including whether they have sufficient staff to fulfill their obligations.

The financial and administrative capability of the new agency is required as part of its determination of recognition; therefore, the new agency would be expected to be independently recognized as an accrediting agency, which is more important than relying upon the financial and administrative capability of the original agency. The only advantage being provided to affiliated agencies is the waiver of the requirement for two years of experience. All other standards for recognition must be met.

Changes: None.

Comments: One commenter disagreed with the proposal to eliminate the requirement that agencies seeking an expansion of scope provide documentation of their experience in accordance with § 602.12(b), noting that the Department's explanation that cross-referenced sections cover this is incorrect and not in compliance with the APA. Another commenter stated that the rule will impede transparency in the Department's recognition process. The commenter stated that if we only included documents viewed on-site in the record if there were issues of noncompliance, it would make it difficult for NACIQI to validate the Department's determinations and ensure that the Department is fulfilling its oversight responsibilities. This commenter also urged the Department to include an on-site visit in addition to the document production currently required and to make all document production, review, and feedback of each accrediting agency public including those held onsite.

Discussion: Section 602.32(j) requires agencies seeking an expansion of scope to provide documentation of their experience that satisfies the requirements of § 602.12(b). We, therefore, disagree with the commenter who opined that we eliminated these requirements and violated the APA. We also disagree with the commenter who concluded that excluding records that demonstrate compliance would make it difficult for NACIQI to validate the Department's determinations and ensure that the Department is fulfilling its oversight responsibilities. While the NACIQI relies, in part, on the Department staff's final analysis of the agency, it also considers other information provided under § 602.34(c). While under these regulations staff will not be required to upload every document they review, staff will be required to take notes regarding the review they conduct and provide a representative sample of evidence they identify to support their findings as part of their review. This evidence can be collected by making copies, saving images, or uploading a sample of documents reviewed.

Changes: None.

Comments: Several commenters opposed the proposed change to

§ 602.12(b)(2) that permits an agency that cannot demonstrate experience in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope to do so with limitations on the number of institutions or programs to which it may grant accreditation for a limited period of time. The commenters recognized that such agencies are also required under the proposed change to submit a monitoring report regarding accreditation decisions made under the expanded scope. One commenter requested that, if the Department proceeds with this change, that the regulation specify the agency ''will'' be subject to a limit of no more than five institutions or programs, within a specified volume of Federal financial dollars (*e.g.,* $10 million annually), until they have completed a full recognition cycle and demonstrated that they are effective assessors of quality. Another commenter suggested the regulations include a required evaluation of the outcomes and actions taken by the agency at other degree levels.

Discussion: We appreciate the commenters' input but believe that the regulations as written sufficiently ensure that an agency that demonstrates the capacity to administer an expanded scope, once authorized to make decisions under that expanded scope, is given time to also accumulate evidence of experience in doing so. The introduction of the monitoring report is an important element in support of this provision, as it provides the Department with an additional tool to detect and address any deficiencies that may arise as an agency begins to make decisions under the expanded scope. The regulation provides that the Department may limit the number of institutions or programs to which an accrediting agency may grant accreditation under the expanded scope for a designated period of time, and we believe it is appropriate to provide the Department with this discretion. The Department does not have the statutory authority to limit the amount of Federal financial aid dollars available to institutions or programs accredited by a specific agency if the students enrolled at an institution or in a program are qualified to receive Federal student aid.

We do not agree that it is necessary in this section of the regulation to add a specific requirement that the Department conduct an evaluation of the outcomes and actions taken by the agency at other degree levels since such a review will automatically be part of the Department's continuing oversight of the agency, including any subsequent review for renewal of recognition.

Changes: None.

Comments: Some commenters expressed concern that lowering the requirements for accrediting agencies to become recognized is likely to have the unintended consequence of some agencies lowering their standards in order to accredit more institutions and programs.

Discussion: We disagree that we have lowered the requirements for recognition of accrediting agencies. While changes have been made to allow for more competition and to address the need for innovation in higher education, these changes do not diminish the rigor with which the Department applies its standards during the recognition process, nor do they diminish the rigor agencies apply to their accreditation of institutions or programs. The Department does not anticipate recognized accrediting agencies will lower their standards in order to accredit more institutions and programs, as the reputation of an agency is critical to its members and their students. As noted earlier, it is still possible that an agency would lower standards to attract more institutions. The Department notes, however, that even under the current regulations an agency may lower its standards to attract or retain more members, so these new regulations do not create a new risk that does not already exist. Department staff and NACIQI monitor agencies to determine whether they maintain rigorous and appropriate standards that comply with the Department's regulations. The Department believes these regulations will give staff more capacity and means to do so. As many commenters have noted in response to our proposed regulations, accrediting agencies rely upon the trust and confidence of their peers and the community at large. The potential reputational damage that would result from lowered standards is an existential threat to an accrediting agency. In addition, if the standards no longer meet the Department's requirements, the accrediting agency will lose recognition by the Department.

Changes: None.

Comments: A couple of commenters objected to the Department's characterization of the growing practice of elevating the level of the credential required to satisfy occupational licensure requirements as credential inflation. They disagreed that professions that require graduate degrees may reduce opportunities for low-income students to pursue careers in those occupations.

Discussion: We appreciate the perspective of these commenters and acknowledge that, in many professions, the skills and knowledge required to be successful in an increasingly complex world necessitate graduate or professional education. However, we are also aware of situations where the elevation of degree requirements for licensure or employment is not predicated on a demonstrated inability for academic institutions to meet the education and training demands of employers at the current degree level, such as by modifying the curriculum, but on other unrelated and pecuniary factors. Finally, while Federal student aid fully supports graduate and professional education programs with student loans, the Department is keenly aware of the disparate debt burden some programs place on students whose personal circumstances require them to fully finance the cost of their graduate or professional education, without the assurance of commensurate wages to service that debt. Graduate students, who commonly obtain Graduate PLUS loans, are limited only to borrowing up to the cost of attendance less any other financial aid. Therefore, they can accumulate far more Federal student loan debt than undergraduate students. The Department is concerned that, when credential requirements for a specific occupation are elevated, employers will not necessarily increase wages to account for the added cost of pursuing a higher-level credential.

Changes: None.

Acceptance of the Agency by Others (§ 602.13)

Comments: Several commenters objected to the decision to remove and reserve this section, arguing that wide acceptance by one's peers is an important criterion to ensure adequate oversight of institutions of higher education. Commenters opined that this wide acceptance signals the new agency is trusted by peer organizations, practitioners, and other stakeholders.

Discussion: We appreciate the perspectives of these commenters; however, as noted in the NPRM, we believe that the current provisions of § 602.13 duplicate requirements in other sections of the regulations. Commenters should note that we incorporated elements of § 602.13 into the proposal for an initial application for recognition. Proposed § 602.32(b) requires an agency seeking initial recognition to submit letters of support from accredited institutions or programs, educators, or employers and practitioners, explaining the role for such an agency and the reasons why they believe the

Department should recognize the agency. The change effectively enhances the wide acceptance requirement under § 602.13 but applies it to only those accrediting agencies seeking initial recognition. In addition, under our current regulations, agencies are not required to provide letters from other accrediting agencies as evidence of wide acceptance. Some agencies have provided letters to demonstrate that programmatic accrediting agencies accept institutional accreditation by the agency as evidence of wide acceptance, but this is not required under our current regulations.

Changes: None.

Comments: One commenter expressed concern that the regulations in this section did not provide sufficient requirements for accrediting agencies that serve as financial stewards for Federal student aid. The commenter suggests that the Department impose, at a minimum, clear numerical caps on the number of institutions and programs that the agency may grant accreditation or preaccreditation for purposes of title IV.

Discussion: Under current and proposed § 602.36, the senior Department official (SDO) has the authority to limit, suspend, or terminate recognition of an agency if the NACIQI or Department staff demonstrate that deficiencies exist with the agency's compliance in meeting standards. For this reason, we do not believe it is necessary to impose a clear numerical cap on the number of institutions or programs that an agency may grant accreditation or preaccreditation for purposes of title IV aid. The senior Department official will determine if a limit is required and what that limit should be in the event that such a restriction is warranted by the recommendations of staff or NACIQI.

Changes: None.

Purpose and Organization (§ 602.14)

Comments: Two commenters expressed appreciation for the Department's recognition that the joint use of personnel, services, equipment, or facilities does not violate the ''separate and independent'' requirement.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: One commenter expressed support for the Department's interest in ensuring compliance with the long-established statutory requirement that accrediting agencies be ''separate and independent'' from any other institution, organization, or association. The commenter noted that they have witnessed the influence of professional associations on the standards established by accrediting agencies and the impact of this influence on the creation of requirements established by State licensure boards that quash innovation and new professional entrants.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter recommended the Department revise this section to better address conflicts of interest and strengthen the role of public members. The commenter specifically suggested that we revise the definition to prevent newly retired administrators or professors from holding public commissioner positions; require all public commissioners to have a 10-year ''cooling off'' period from when they last worked primarily in higher education or owned equity in an institution of higher education; prohibit individuals who previously represented institutions on commissions from serving as public commissioners; and expand the ban on what constitutes employment connected to an institution in order to include individuals with any association to higher education institutions or organizations, not just individuals affiliated with the accrediting agency.

Discussion: We appreciate the commenter's concern that public members of accrediting agency decision-making bodies may have conflicts of interest that impede their ability to fully represent their constituency. However, our experience with the recognized accrediting agencies does not support the assertion that members of a decision-making body are unable to fulfill their duties because of prior employment or affiliation with a postsecondary institution. Indeed, the opportunity to meaningfully contribute while serving as a member of a decision-making body is enhanced with the specialized knowledge an individual may have acquired while working in postsecondary education, and each agency must establish and implement guidelines to avoid conflicts of interest.

Changes: None.

Administrative and Fiscal Responsibilities (§ 602.15)

Comments: Two commenters objected to the proposed changes in this section, suggesting that the changes to the required maintenance of records will impede transparency and accountability. These commenters argued that the absence of a record of the elements that informed the agency's final decision will hamper the Department in fulfilling its oversight responsibilities.

Discussion: We disagree that the absence of a record of the elements that informed the agency's final decision will hamper the Department in fulfilling its oversight responsibilities. The Department is satisfied that the final decision documentation will provide sufficient detail to assess the agency's actions.

Changes: None.

Comments: One commenter recommended revising § 602.15(a)(4) to provide for single-purpose institutions that prepare students for a wide variety of career and professions, to read, ''Educators, practitioners, and/or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students *primarily* for a specific profession.''

Discussion: We do not believe the suggested change substantively improves the regulatory language. Graduates of single-purpose institutions may pursue a variety of careers and professions.

We also recognize that, while some programmatic accrediting agencies may accredit programs that prepare individuals for particular jobs, others might accredit programs that focus on unique curricular requirements or pedagogical practices, or that are based upon a shared set of underlying philosophical or religious beliefs. Such an agency might also accredit programs based on a shared set of scientific principles or educational standards. As such, an employer or a practitioner may not be able to provide feedback based on the way the program prepares individuals to perform a specific job function, but instead on the way that the program impacts other aspects of the person's contributions to the workplace more generally, including how graduates approach their work and solve problems.

Changes: None.

Comments: Two commenters requested that we clarify that the inclusion of students on decision-making bodies and employers on evaluation, policy, and decision-making bodies is optional.

Discussion: Section 602.15(a)(4) provides that the agency will include ''Educators, practitioners, and/or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession.'' The agency may have one or more of these roles represented, but they are not required to have all of these roles represented on its evaluation, policy, and decision-making bodies.

Section 602.16(a)(5) provides that the agency will include ''Representatives of the public, which may include students, on all decision-making bodies.'' The agency may include a student or students as public representatives as members of their decision-making bodies, but we do not require them to do so.

Changes: None.

Comments: One commenter recommended that we delete the phrase ''which may include students'' from the provision of § 602.15(a)(5) that includes members of the public on decision-making bodies. The commenter recommended that we explicitly note the possible inclusion of students in these roles in the accompanying handbook or guidelines. The commenter noted that, if subsequent experience shows that problems have materialized as a result of the presence of students, we can more easily modify the handbook or guidelines.

Discussion: We appreciate the commenter's concern that students may not be well-suited to the work of an accrediting agency's decision-making body, but the regulation does not require an agency to include a student as a member of the public. The intention of this regulatory provision is to recognize that, as entities that serve the interests of students by assuring the quality of postsecondary institutions, student perspectives should be represented. However, we also recognize that many, if not all, members of accrediting agency decision-making bodies consistently consider the needs of students. We note that agencies are free to include (or not include) students both before and after the effectiveness of this regulation. Students, like all members of agency decision-making bodies, must avoid conflicts of interest and adhere to other Department and agency requirements.

Changes: None.

Comments: Two commenters requested that we modify § 602.15(b)(2) that requires the agency to maintain complete and accurate records of ''all decision letters issued by the agency regarding the accreditation and preaccreditation of any institution or program and any substantive changes.'' The commenters suggested that we add a sentence to provide that this requirement would not apply to decision letters sent to institutions that are no longer in existence or accredited by the agency.

Discussion: We appreciate the commenters' request, but note that, while it would likely be uncommon, a situation could arise that would necessitate the review of decision letters sent to institutions or programs that are no longer in existence or accredited by the agency.

Changes: None.

Accreditation and Preaccreditation Standards (§ 602.16)

Comments: One commenter stated that it would not be possible for an agency to effectively address the quality of an institution or program, as required by proposed § 602.16(a), if the agency were prohibited from considering the impact of religious-based policies. The commenter suggested that such a provision gives too much deference to institutions; a religious institution can violate almost any accreditation standard so long as it justifies it with its religious mission. The commenter noted that the HEA, 20 U.S.C. 1099b(a)(4)(A), requires respect of all missions throughout the accreditation process and opines that the regulation appears to single out institutions with religious missions for special treatment. Additionally, the commenter suggested that the proposed regulatory language ''does not treat as a negative factor'' appears to go further than the term ''respect'' used in the statute.

Discussion: We appreciate the comment. In light of the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order 13798, the Department believes that it must provide more robust protection for faith-based institutions in situations in which their ability to participate in Federal student aid programs may be curtailed due to their religious mission. Allowing accrediting agencies to make negative decisions because of the exercise of religion could easily violate the Free Exercise Clause of the United States Constitution. While the HEA requires accrediting agencies to respect the missions of all institutions, the HEA singled out the need for accrediting agencies to respect religious missions, thereby emphasizing the need for particular attention to be paid to the rights of faith-based institutions. In addition to the HEA, the Constitution protects religious missions in ways that other institutional missions are not protected. Simply requiring accrediting agencies to respect religious mission does not go far enough to ensure that faith-based institutions' Constitutional rights are protected. In addition, the Department feels the need to clarify that respecting a religious mission includes not considering an institution's policies or practices related to the tenets of its faith—which could include curricular requirements, hiring practices, conduct codes, and other aspects of student life and learning—as a negative factor in making an accreditation decision. In order to avoid Constitutional concerns or violations, the Department believes it is advisable to protect institutions' religious missions in the accreditation process, and that doing so includes not treating a policy or practice based on the religious mission as a negative factor, even if that policy or practice differs from particular points of view or priorities. The need to provide this protection has become apparent in several instances, including when the accreditation of faith-based universities has been publicly questioned by accrediting agencies due to their long-held institutional stances with a religious basis that have lost favor in academia and potentially the public at large.[11]

In addition, under RFRA the government may only substantially burden a person's exercise of religion if the application of that burden to the person is the least restrictive means of furthering a compelling governmental interest.

Where an accreditation decision does not respect the religious mission of an institution or uses as a negative factor an institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii), the religious institution's exercise of religion could be substantially burdened. Furthermore, removing Federal aid would not be the least restrictive means of furthering a compelling governmental interest, as long as the agency can require that the institution's or program's curricula include all core components required by the agency.

Thus, agencies must ensure that they do not use exercise of religion as a negative factor in their decision making.

Changes: None.

Comments: One commenter expressed concern that the inclusion of the phrase, ''consideration of State licensing examinations, course completion, and job placement rates'' in § 602.16(a)(1)(i) imposes a vocational or occupational goal on postsecondary education. The commenter noted that, without in any way minimizing the importance of postsecondary education which does

[11] *www.christianpost.com/news/christian-college-says-accrediting-agencys-proposed-guideline-change-may-harm-religious-schools.html; https://www.empirestatetribune.com/est/campus/celina-durgin/03/03/2015/gordon-college-faces-potential-loss-of-accreditation-due-to-homosexuality-policy.*

focus on vocational and occupational outcomes, it is important to preserve that aspect of higher education that is centered on the transformation of the individual, on scholarship, and the development of the mind. The commenter requested that we include an explicit statement in the regulations to the effect that accrediting agencies may use indicators and expectations that are appropriate to the field of study, and that need not be quantitative in nature.

Discussion: The language referenced by the commenter is part of the current regulations and makes clear that the use of these quantitative indicators is at the discretion of the agency, to be used only as appropriate. We did not propose changes to this language in the NPRM and are not making changes in these final regulations. We do not agree that we need an explicit statement in the regulations to the effect that accrediting agencies may use indicators and expectations that are appropriate to the field of study, as this is already permitted under the regulations. In addition, the regulations already permit an agency to rely upon qualitative indicators, or a mixture of qualitative and quantitative indicators, to evaluate an institution or program relative to its mission.

Changes: None.

Comments: Several commenters objected to this section of the regulations. One opined that only a well-rounded education, replete with the sciences, social sciences, humanities, and arts, can ensure that students are prepared not just to become members of the workforce, but also active and critical citizens of our Nation. Another offered that academic institutions need to have one set of consistent accreditation standards across all academic programs offered by the institution—arts, sciences, and humanities, as well as career-technical education. The commenter stated that individual employer training programs are outside the scope of an academic institution's core programs, and should be funded by employers, not title IV funds, adding that career and technical education is broader than an individual employer's training program and qualifies students for gainful employment with a variety of employers.

Discussion: We appreciate the commenters ideas on a well-rounded education; however, we do note that occupational programs are at the core of many traditional institutions. Occupational majors such as teacher education, nursing, and engineering continue to dominate student enrollments at many institutions. We disagree that our regulations imply that preparing for a specific occupation is the only goal of postsecondary education. Nonetheless, the Department of Education Organization Act of 1979 (Pub. L. 96–88 [12]) prohibits the Department from exercising any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of an educational institution, accrediting agency, or association.

Changes: None.

Comments: Several commenters requested that the Department provide clarifying examples of ''clear expectations'' as referenced in § 602.16(a)(1). One commenter opined that ''clear expectations'' is not equivalent to the concept of effective application of standards and, as such, is inconsistent with the requirement in HEA section 496, 20 U.S.C. 1099b, that the Secretary is responsible for determining that an accrediting agency or association has failed to apply effectively the criteria. Another commenter noted that, as written, the regulations could cause undue burden to the agency if it is interpreted to require the establishment of quantitative standards for faculty and fiscal capacity, among other elements, that would take away flexibility of the program and institution, depending on their mission and goals.

Discussion: ''Clear expectations'' means that an agency must be direct and precise in communicating what requirements an institution or program must meet in order for the agency to make the determination that the institution or program is of sufficient quality to become accredited or maintain its accredited status. This does not mean that an accrediting agency must establish bright-line standards or require all institutions or programs to achieve the same quantitative results. It also does not preclude the use of qualitative standards for evaluating quality. Instead, it means that an accrediting agency must explain the criteria upon which it will make a determination that an institution is or is not providing instruction of sufficient quality. We do not believe that the use of ''clear expectations'' is inconsistent with the HEA; rather, we think it is far more consistent with the requirement that agencies assess institutional quality by reviewing a number of specific factors related to program design, instructional resources, and educational facilities. We believe that the prior regulations were insufficient because it was not clear what it meant to ''address'' quality.

The Department does not agree that this provision increases burden on accrediting agencies, as the new regulations do not require the establishment of quantitative standards for faculty and fiscal capacity, nor do they disallow the use of qualitative measures to make a quality determination. While it is possible that an agency may wish to revise its policies and standards as a result of these regulatory changes and clarifications, which could impose a level of burden, it is not required. In some cases, accrediting agencies may wish to revise their standards to make them clearer, which may cause a short-term burden, but doing so may alleviate confusion that would, over the long run, be even more burdensome.

Changes: None.

Comments: One commenter expressed support for the proposed changes to § 602.16(a)(2), as they provide alternative pathways for institutional Federal financial aid eligibility. Another commenter expressed support for the provisions in § 602.16(a)(2)(ii) that make clear that, after the five-year limit on preaccreditation has expired, an agency must make a final accreditation action and must not place an institution or program on another type of temporary status. Two commenters expressed support for the regulations proposed at § 602.16(d)(1). One commenter noted that they provide alternative pathways for institutional Federal financial aid eligibility. One commenter appreciated that the regulations require accrediting agencies to clearly define ''direct assessment'' and be ready to evaluate it before they can accredit such programs.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: Two commenters objected to proposed § 602.16(d)(1). One commenter objected to the fact that the agency conducts an evaluation of the quality of institutions or programs. The commenter asserted that it is the faculty who have the expertise to make a judgment on the curriculum—and that expertise comes not only from within the discipline seeking to institute a new course, but inclusively from across the institution so that a wide perspective is provided for the quality and viability of the course or courses in question. The other commenter opined that the addition of direct assessment will increase credential inflation.

Discussion: We appreciate the first commenter's point of view; however,

[12] *https://legcounsel.house.gov/Comps/Department%20Of%20Education%20Organization%20Act.pdf.*

accrediting agencies are responsible for evaluating the academic quality of the programs or institutions they accredit. A key purpose of accreditation is to provide third-party verification of institutional or programmatic quality so, while the faculty may establish the curriculum, it is up to the accrediting agency to verify that it meets the standards put forth by the agency. In this section of the regulations, we are only amending the language to include a reference to direct assessment education, in addition to distance education and correspondence courses. We disagree with the commenter who opined that direct assessment programs would lead to credential inflation. Direct assessment programs directly measure student knowledge and learning, and have no direct bearing on the level of the credential a student earns. The credential associated with the program that considers direct assessment of student learning is determined by other factors.

Changes: None.

Comments: One commenter supported the provisions in § 602.16(f) that would permit accrediting agencies to establish alternative standards for approval of curriculum. The commenter noted that this change would enable institutions to better address the needs of employers and help students to meet the educational requirements of professional credentialing or licensing boards of their chosen profession.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: Two commenters objected to the provisions in § 602.16(f) that would permit accrediting agencies to establish alternative standards for approval of curriculum. One commenter argued that this would undermine faculty governance and is an unlawful incursion by the Department into matters of academic responsibility. Another commenter expressed concern about these provisions and requested clarification, noting it appeared that agencies would now be required to establish a standard to allow for institutions to have a separate curriculum approval process to support external entities (*e.g.,* industry advisory boards, credentialing/licensing boards, employers) making decisions in this process and provide documentation to meet this criterion. The commenter observed that we do not restrict agencies from allowing institutions to have a separate curriculum approval process but said that it was unclear if separate approvals for external entities (*e.g.,* employers) would now be required with this proposed provision. The commenter asked, if this was the case, what the expectations are for documenting the standards established for those external entities. The second commenter opined that the regulation would result in the emergence of low-level industry-based accrediting standards.

Discussion: The commenters correctly noted that § 602.16(f) would permit accrediting agencies to establish alternative standards for approval of curriculum. We would not require accrediting agencies to establish a standard to allow for institutions to have a separate curriculum approval process for a program that typically leads to a specific occupation; rather, these regulations allow for the development of such standards. The Department declines to establish new requirements for documenting alternative standards, because we believe that accrediting agencies are already required to document their standards and to retain documents supporting all final decisions.

We do not expect these regulations will result in the emergence of low-level, industry-based accrediting standards, as we have not diminished the rigor with which the Department applies its standards during the recognition process, nor have we diminished the rigor agencies must apply to their accreditation of institutions or programs. To the contrary, we believe that the involvement of employers could have the opposite impact of strengthening the curriculum and increasing program rigor. As many commenters noted in response to our proposed regulations, accrediting agencies rely upon the trust and confidence of their peers and the community at large. The potential reputational damage that would result from lowered standards is an existential threat to an accrediting agency.

Changes: None.

Comments: Several commenters objected to the provisions in § 602.16(f)(4) that would permit accrediting agencies to maintain separate faculty standards for dual enrollment programs. The commenters noted that parity between dual enrollment programs and college courses is very important in order to avoid the perception that dual enrollment programs are ''lesser versions'' of college courses and to facilitate the transfer of credit. One group of commenters representing a rural institution noted that they have always firmly used the same credentialing and qualification standards for faculty teaching ''regular'' courses and those teaching ''dual enrollment'' courses, as they believe that is important for maintaining quality and rigor.

Discussion: We appreciate the commenters' concerns; however, as noted in the NPRM, the Department does not believe an agency should have to choose between setting rigorous standards for faculty that may be appropriate, for example, at comprehensive or research institutions, and providing students with the best opportunities possible, including in rural locations where faculty with specific kinds of degrees are not plentiful.

In addition, the Department recognizes that, in many instances, high schools provide dual enrollment programs at their location due to unreasonable travel distances to a local college. In those instances, the high school teacher may have a different kind of academic credential but may have years of experience teaching college-level courses that are relevant to the dual enrollment opportunity. Also, the credential of choice may be very different for career and technical education instructors, where workforce experience may be far more important than the academic credential an instructor holds.

Changes: The amendatory language in the NPRM added a new paragraph (b), and we should have redesignated all of the paragraphs that followed. Current paragraphs (d), (e), and (f) should have been redesignated as paragraphs (e), (f), and (g). We have revised the amendatory language to contain the correct numbering. We also include in the amendatory language § 602.16(g)(4) that was inadvertently omitted from the NPRM. This paragraph provides that agencies are not prohibited from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses, as long as the instructors, in the agency's judgment, are qualified by education or work experience for that role.

Application of Standards in Reaching an Accrediting Decision (§ 602.17)

Comments: One commenter opposed the changes to § 602.17, arguing that the Department has made the requirements an agency must meet when applying its standards to accreditation decisions less rigorous. The commenter argued that the Department has failed to provide adequate justification for the proposed changes.

Discussion: These regulations remain largely unchanged with respect to the requirements an agency must meet when applying its standards to accreditation decisions. We are revising the requirements of § 602.17(a)(3) to provide for the consideration of academic standards that are equivalent to those that are commonly accepted to facilitate the implementation and evaluation of pilot programs. The negotiators recognized that flexibility was required to allow agencies to consider their standards through a lens that fosters innovation, and we reiterate that this alternative approach is not a less rigorous approach.

Changes: None.

Comments: Two commenters expressed support for changes in § 602.17(a)(2) that require accrediting agencies to evaluate institutions at the institutional-level and at the individual program level. One of these commenters requested additional guidance concerning the Department's expectations for institutional accrediting agencies conducting evaluations at the program level. The commenter expressed concern that conflicts could arise due to competing interests if both an institutional accrediting agency and a programmatic or specialized accrediting agency review programs.

Several commenters objected to the proposed changes in § 602.17(a)(2), arguing that the individual review of programs is not within the purview of institutional accrediting agencies. One commenter noted that institutional accrediting agencies look at each institution as a whole on an array of measures, such as financial stability, planning, and academic and related programs, including program review policies and implementation. The commenter stated that these agencies generally do not review individual programs unless something is called to their attention that affects existing standards. Two commenters wrote that this requirement would duplicate and confuse the institutional accrediting agencies' work with that of programmatic and specialized accrediting agencies, increasing the regulatory burden on accrediting agencies and institutions. One commenter requested clarification of the requirements and expectations for each type of agency, especially when a program holds an accreditation status with a programmatic accrediting agency.

Discussion: We expect institutional accrediting agencies to demonstrate that they have established and use procedures for evaluating the quality of academic programs at an institution in accordance with these regulatory provisions. This is not a new requirement, as institutional accrediting agencies have always been responsible for evaluating the quality of the programs offered by the institutions it accredits. However, this does not mean that the agency must perform an in-depth review of every program offered by the institution. In general, an institutional accrediting agency should be aware of the programs offered by the institution and should make sure the institution has policies and practices in place to ensure that, in general, the academic programs offered meet the agency's quality standards. It is hard to imagine, in fact, how an accrediting agency could fulfill its obligation to ensure instructional or academic quality without engaging in a more detailed review of one or more of the institution's programs. Institutions are composed of academic programs and only through a review of those programs will an accrediting agency be able to determine whether an institution's policies regarding academic quality are effective in ensuring academic quality and rigor.

An accrediting agency may use sampling or other methods in the evaluation to comply with these requirements. An agency may also use the accreditation by a recognized programmatic accrediting agency to demonstrate the evaluation of the educational quality of such programs.

If conflicts arise between an institutional accrediting agency and a programmatic accrediting agency for a particular program, we would expect the institutional accrediting agency to consider the determination of quality made by the programmatic accrediting agency, as it possesses subject matter expertise. This reliance on programmatic accrediting agency's expertise mitigates duplication of effort, while providing an opportunity for collaboration and cohesion in an agency's independent assessment of program quality.

Changes: None.

Comments: One commenter suggested there is inconsistency between the requirements in § 602.17(a)(2) and (b). Section 602.17(a)(2) requires accrediting agencies to evaluate student achievement and program outcomes at the institutional and programmatic level, while § 602.17(b) permits accrediting agencies to use an institution's and program's self-study process to assess the institution's or program's education quality and success in meeting its mission and objectives, highlight opportunities for improvement, and include a plan for making those improvements. The commenter argued that there is significant research[13] that one can objectively measure student achievement and outcomes, and that metrics and rubrics can validate that an institution and its academic programs are high quality and that institutions are properly measuring student achievement.

Discussion: The Department disagrees that the requirements in § 602.17(a)(2) and (b) are inconsistent. The requirements are complementary, as they require an agency to evaluate whether an institution or, in the case of a programmatic accrediting agency, a program is achieving its stated objectives, *and* require the institution or program to conduct a self-study to assess its educational quality and success in meeting its mission and objectives, highlight its opportunities for improvement, and develop a plan for making those improvements. Nothing in the regulations precludes an agency, institution, or program from using objective measures.

Changes: None.

Comments: One commenter supported the changes in § 602.17(a)(3) that allow institutions to maintain requirements that ''at least conform to commonly accepted academic standards, or the equivalent, including pilot programs.'' The commenter noted that this provides institutions with the flexibility to pilot innovative, experimental programs while at the same time protecting consumers and maintaining educational quality.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter opposed the changes to § 602.17(a)(3) that would allow accreditation agencies to maintain degree and certificate requirements that at least conform to commonly accepted academic standards ''or the equivalent, including pilot programs in § 602.18(b).'' The commenter stated that the Department has not provided examples or data to support the claim that currently institutions are resisting meaningful innovations that could benefit students and their fields, or an analysis of what the actual barriers are to enacting innovations when they are supported by faculty who teach in those fields. Another commenter suggested the Department create a probationary process for those institutions that propose an innovation to produce

[13] Palomba, C., and Banta, T., ''The Essentials of Successful Assessment'' in Assessment Essentials: Planning, Implementing, and Improving Assessment in Higher Education, Jossey-Bass, 1999; Suskie, L., ''Assessing Student Learning: A Common Sense Guide,'' Anker Publishing, 2004; and *learningoutcomesassessment.org.*

outcomes more effectively or efficiently, during which they make a case for those innovations, try them out, and implement what works.

Discussion: The Department has received input from several institutions that support the claim that commonly accepted academic standards can be an impediment to innovation. For example, an institution interested in moving to three-year baccalaureate degree programs is concerned that, although the same learning objectives may be met as in a four-year degree program, the three-year degree is not a commonly accepted academic standard. As the commenter above stated, the changes to this section of the regulations provide institutions with the flexibility to pilot innovative, experimental programs while at the same time protecting consumers and maintaining educational quality.

The creation of a probationary process for institutions that propose an innovation to produce outcomes more effectively or efficiently, during which they make a case for those innovations, try them out, and implement what works falls within the purview of the accreditation agencies, and not the Department.

Changes: None.

Comments: One commenter objected to the phrase in § 602.17(b) that reads, ''highlights opportunities for improvement, and includes a plan for making these improvements.'' The commenter suggested that this proposal is highly unworkable, because improvement in teaching and learning at the postsecondary level is rare, and that we should remove this language from the regulation.

Discussion: We disagree with the commenter's assertion that improvement in teaching and learning at the postsecondary level is rare. The Academy of Arts & Sciences' report on *Policies and Practices to Support Undergraduate Teaching Improvement* [14] notes that ''advances in the learning sciences are providing new insights into how students learn, and the ways in which teaching can support that learning. The main challenges are putting that knowledge in the hands of the faculty who teach undergraduates and providing them with the incentives and necessary support to use it.'' We agree that improvements in teaching and learning are challenging but also note that colleges and universities across the Nation expend significant efforts in this area.[15] [16] [17] [18] These regulations seek to encourage continued progress.

Changes: None.

Comments: One commenter requested changes to § 602.17(e) to better emphasize congressional intent that third-party comments play an important role in the accreditation process, not just ''information substantiated'' by the accrediting associations. The commenter expressed concern that associations of colleges and universities are inclined to protect their members, and the interests of their members, rather than act on the interests of students, taxpayers, and the Federal government.

Discussion: We appreciate the commenter's request but note that we have revised § 602.17(e) only to ensure that the data the accrediting agency considers are valid. We made no changes to the third-party comment requirements in § 602.23(b). Third-party comments, along with any other information from other sources, will be used to determine whether the institution or program complies with the agency's standards. At the same time, we must ensure that institutions maintain their due process rights and that allegations of misconduct or illegal activity are not confused with proof of misconduct or illegal actions through a final judgment by the courts.

Changes: None.

Comments: Several commenters wrote in support of the changes to § 602.17(g) that require an accrediting agency to demonstrate that it requires institutions that offer distance education or correspondence education to have processes in place to establish that a student who registers for a distance education or correspondence education course or program is the same student who participates and completes the course or program and receives academic credit. The commenters noted that removing the list of options for confirming student identity provides institutions flexibility to find solutions that fit the modality and content of the course and avoids obsolescence due to outdated technology and processes. One commenter also supported the requirement for notification of students of any additional charges (fees, software, hardware) associated with identity verification at the time of registration or enrollment.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: Some commenters expressed concern that the requirements of § 602.17(g) may incentivize profit-seeking entities to say that they can accomplish verifying student identity for a fee. According to the commenters, some of these entities have already asserted that test proctoring as a means of verifying student identity would no longer be acceptable because we did not include it in the proposed regulatory language. The commenters noted that, while the proposed language is clear, an additional sentence would assist institutional personnel in understanding our intent: ''By removing the list of verification methods, the Department does not imply that those techniques are invalid or would not be acceptable in fulfilling the requirements of this section.''

Discussion: We are revising § 602.17, in part, to provide greater flexibility to agencies in establishing requirements for verifying student identity. We neither require nor encourage the use of profit-seeking entities to comply with this provision. Additionally, the regulations stand alone and do not require a comparison of previously included text.

We believe the regulations, as some commenters noted, clearly state the requirement and do not believe there is a need to state that the removal of the list of verification methods means that institutions could not continue to use such techniques. For example, while not included on our list of potential verification methods, test proctoring as a means of verifying student identity continues to be an acceptable method. While we agree with the commenters that removing the list of verification methods does not preclude an institution from continuing to use those methods, we do not typically include information in our regulations regarding what we are not regulating.

Changes: None.

Comments: One commenter requested that the Department revise § 602.17(g) to require accrediting agencies to prove they have robust systems to prevent what the commenter alleges to be widespread cheating in hybrid and online courses. Another commenter asserted that the proposed regulations are not sufficient to prevent student cheating, which they assert is very easy to do, especially online. The commenter stated that we should strengthen this

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[14] *amacad.org/publication/policies-and-practices-support-undergraduate-teaching-improvement.*

[15] *acue.org/wp-content/uploads/2018/07/ACUE-White-Paper1.pdf.*

[16] Blackburn, R.T., Bober, A., O'Donnell, C., & Pellino, G. (1980). Project for faculty development program education: Final report. Ann Arbor, MI: University of Michigan, Center for the Study of Higher Education.

[17] *academicaffairs.arizona.edu/uali-effective-strategies.*

[18] *insidehighered.com/blogs/higher-ed-gamma/strategies-improving-student-success.*

section to better control credential inflation associated with online cheating.

Discussion: While we understand that many people assume that online and hybrid courses are more susceptible to student cheating than brick-and-mortar courses, a recent study [19] found that, ''contrary to the traditional views and the research literature, the surveyed students tend to engage less in AD [academic dishonesty] in online courses than in face-to-face courses.'' We do not believe there is a correlation between online cheating and credential inflation and the commenter provided no such evidence.

Changes: None.

Ensuring Consistency in Decision-Making (§ 602.18)

Comments: Two commenters supported the proposed changes in § 602.18, writing that they provide flexibility for agencies in their application and enforcement of accreditation standards, and strong support for innovation in curriculum and instructional methods at institutions that serve non-traditional students through online instructional modalities.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: One commenter asserted that the changes proposed in § 602.18 would weaken the expectation that accrediting agencies ensure quality, create loopholes in enforcement of standards, and diminish the Department's ability to take action against an agency that fails to act when necessary.

Discussion: We disagree that the changes proposed in § 602.18 would weaken the expectation that accrediting agencies ensure quality, create loopholes in enforcement of standards, and diminish the Department's ability to act against an agency that fails to provide oversight when necessary. Indeed, the requirements in the section explicitly state that agencies must consistently apply and enforce standards. Moreover, while this section of the regulation applies specifically to the actions of the agency, subparts C and D detail, respectively, the requirements of the application and review process for agency recognition by Department staff and Department responsibilities, which continue to be rigorous and evidence based.

[19] *researchgate.net/publication/325249542_Predictors_of_Academic_Dishonesty_among_undergraduate_students_in_online_and_face-to-face_courses.*

Changes: None.

Comments: One commenter requested that we revise § 602.18(a) to make explicit that ''consistent'' does not mean ''identical.''

Discussion: ''Consistent'' means free from variation or contradiction, accordant, coherent, compatible, concordant, conformable to, congruent, congruous, consonant, correspondent with or to, harmonious, or nonconflicting,[20] whereas ''identical'' means ''being the same.'' [21] We do not view these terms as interchangeable.

Changes: None.

Comments: Two commenters supported the proposed changes to § 602.18(c) that would allow for agencies to work with institutions and programs to determine alternative means of satisfying standards and procedures due to special circumstances or hardships. One commenter appreciated the flexibility to find creative ways to report and comply with expectations when under hardship. Another commenter appreciated the Department's acknowledgement of the flexibility required to address student hardships and support innovation without jeopardizing recognition from the Department. The commenter is concerned, however, that allowing a program to remain out of compliance for three years, without any threat to its accreditation status, may allow for substandard education and the potential for unfair treatment of students to continue for an unreasonably long time. The commenter noted that, given the wide range of examples of circumstances that are beyond the control of an institution, from natural disasters to faculty recruitment issues, the Department should ensure that this provision continues to protect the interests of students, one of the primary purposes of accreditation.

Discussion: We appreciate the commenters' support. We do not agree that the provisions of this part will lead to substandard education and the potential for unfair treatment of students to continue for an unreasonably long time. When curricular changes are needed for an institution to come into compliance with an agency's standards, it could take years for those changes to be developed, approved, and implemented, and for the positive effects of the new curriculum to be observed in the outcomes of program graduates. Nothing requires an accrediting agency to provide the full amount of time for an institution to come into compliance, and the Department expects that agencies would establish milestones that an institution must meet during the improvement period, as required in § 602.19(b). Under current regulations, agencies can provide more than 12 months for an institution to come into compliance by granting ''good cause'' extensions. The Department believes that accrediting agencies have the experience and expertise to determine a reasonable time for an institution to come into compliance based on the steps necessary to come into compliance and the risk to students who continue to enroll during the improvement period. The requirements in § 602.18(b) are precisely the guardrails necessary to protect students, even under unforeseen circumstances. The goals and metrics required by this provision under alternative standards must be equivalently rigorous to standards applied under normal circumstances.

[20] *merriam-webster.com/dictionary/consistent.*

[21] *merriam-webster.com/dictionary/identical.*

Changes: None.

Comments: One commenter contended that the changes proposed in § 602.18(b) would encourage credential inflation and education expansion.

Discussion: We do not agree that the changes proposed in § 602.18(b) would encourage credential inflation and education expansion. The commenter attributed this potential risk to innovation; while we hope that innovation increases access to education for students seeking alternative postsecondary pathways, we do not associate that increase with credential inflation.

Changes: None.

Comments: Several commenters objected to § 602.18(b)(3), which states that accrediting agencies may not use an institution's religious mission-based policies, decisions, and practices in certain areas—curricula; faculty; facilities, equipment, and supplies; student support services; and recruiting and admissions practices—as a ''negative factor'' in assessing the institution. The commenters asserted that this change elevates religious mission above other types of institutional mission, which the HEA similarly protects (20 U.S.C. 1099b(a)(4)(A)). Commenters also contended that the Department has not adequately justified these proposed changes. They noted that we reported that we have not received any formal complaints about an institution's negative treatment during the accreditation process because of its adherence to a religious mission, nor have we provided any data on the number of institutions and students these changes would impact. Several commenters opined that the regulation protects religious institutions that engage in discriminatory behavior.

Discussion: Section 602.18 currently requires that accrediting agencies consistently apply and enforce standards that respect the stated mission of the institution, including religious mission. In light of the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order 13798, the Department believes that it must provide more robust protection for faith-based institutions in situations in which their ability to participate in Federal student aid programs may be curtailed due to accrediting agency decisions related to an agency's disagreement with tenets of the institution's faith-based mission, rather than actual insufficiencies in the institution's quality or administrative capability. Allowing accrediting agencies to make negative decisions because of the exercise of religion could easily violate the Free Exercise Clause of the United States Constitution. While the HEA requires accrediting agencies to respect the missions of all institutions, the HEA particularly singled out religious missions as something that agencies must respect, which suggests that Congress had concerns that faith-based institutions would be particularly vulnerable to negative accrediting agency decisions based on philosophical differences rather than insufficiencies of institutional quality or administrative capability. In addition to the HEA, the Constitution protects religious missions in ways that it does not protect other institutional missions. In order to avoid Constitutional concerns or violations, the Department believes this level of protection is appropriate regardless of whether there is a history of formal, documented complaints. When institutions believe that they have been treated unfairly based on their religious mission, they may fear retribution for issuing a formal complaint to the agency or the Department. However, in meetings with institutional leaders and organizations that represent faith-based institutions, and in the case of a recent proposed change in one agency's standards, it is clear to us that there is a real threat of negative accrediting agency action based on a philosophical disagreement In addition, under RFRA the government may only substantially burden a person's exercise of religion if the application of that burden to the person is the least restrictive means of furthering a compelling governmental interest. Where an accreditation decision uses as a negative factor an institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii), the religious institution's exercise of religion could be substantially burdened. Furthermore, removing Federal aid would not be the least restrictive means of furthering a compelling governmental interest, as long as the agency can require that the institution's or program's curricula include all core components required by the agency. Thus, although the Department does not have data on the number of institutions that we would consider to have a religious mission under these regulations or know the number of students those institutions serve, National Center for Educational Statistics, Fall Enrollment and Number of Degree-Granting Postsecondary Institutions, by Control and Religious Affiliation of Institution: Selected Years, 1980 Through 2016 (Aug. 2018) indicates that there were 881 faith-based institutions in the fall of 2016 as reported by the institutions. Institutions will continue to be subject to laws prohibiting discrimination, unless they are otherwise exempt.

During rulemaking, one negotiator described the challenges that medical schools have faced when students, the institutions that provide medical education, or hospitals that provide medical residencies are unwilling to engage in practices that run counter to their religious beliefs or missions. Although agencies and institutions found a way to ensure that students could complete their medical training without violating their conscience or principles of their faith, there is no assurance that other agencies will come to a similar compromise or that other areas of conflict will be similarly resolved. These regulations ensure that popular opinion does not prevail when in opposition to tenets of faith at a faith-based institution, which is protected under the Constitution from being penalized for its religious mission.

Changes: None.

Comments: One commenter encouraged the Department to make more explicit that, when accrediting a program at a religiously affiliated institution, the agency ensures that the program's curricula include all core components required by the agency.

Discussion: We are confident that the regulations are sufficient to make clear that a programmatic accrediting agency would ensure the program's curricula includes all of the core components required by the agency and, as appropriate, the licensing body for the profession for which the program prepares graduates. However, in some instances a program might partner with another institution that provides instruction in areas that run counter to the principles of faith at a faith-based institution. In other instances, a program might instruct students about practices or beliefs without requiring that students adopt those practices or beliefs.

Changes: None.

Comments: One commenter expressed concern that the Department will be investigating accreditation practices as they relate to an institution's mission, including religious mission. The commenter wondered if, for example, this regulatory change is meant to ensure that the Department will enforce the right of an Islamic institution to seek accreditation from a Christian-based accrediting agency.

Discussion: The Secretary recognizes accrediting agencies to accredit institutions within an agency's individual approved scope of recognition. We do not require an accrediting agency to recognize an institution outside its approved scope, and the statute prohibits us from doing so for purposes of determining eligibility for Federal programs. If a Christian-based accrediting agency limits its scope to Christian institutions, we would not require it to accredit non-Christian institutions; thus, we do not anticipate investigating actions that are contrary to the defined scope of an agency.

Changes: None.

Comments: One commenter requested that we frame the change in § 602.18(b)(6) in a way so that the public can have confidence that an institution or program has met accreditation standards throughout the full period that it claims accredited status. The commenter is concerned that retroactive accreditation, as framed in the proposed regulations, appears to enable an institution or program to claim it was accredited at the beginning of candidacy or preaccreditation status, even if it has not received a final affirmative accreditation decision.

Discussion: We appreciate the commenter's concern and would not want the regulations to be interpreted to mean that an institution could claim retroactive accreditation effective at the point at which an institution submits an application for accreditation or preaccreditation status. It is our intention that the retroactivity would be limited to the point in the actual preaccreditation or accreditation process that resulted in an affirmative decision that the institution or program is likely to succeed in its pursuit of accreditation, which is what preaccreditation or candidacy is intended to indicate. Thus, § 602.18(b)(6)(ii) provides that retroactive accreditation may not predate the agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

We refer to the July 25, 2018 Memorandum [22] that provides guidance regarding retroactive establishment of the date of accreditation. In accordance with a recommendation from the NACIQI, the Department agreed to permit the retroactive application of a date of accreditation, following an affirmative accreditation decision. Thus, we are codifying the current practices of many agencies, which the Department permitted prior to 2017 and once again permits.

We adopted this policy recognizing that some programmatic accrediting agencies establish student enrollment or graduation requirements that a program must achieve prior to rendering a final accreditation decision for that program. This action is necessary to ensure that students who enrolled during the accreditation review period would be eligible for certain credentialing opportunities or jobs upon completion of the program that was awarded accreditation based on the quality of the program and the accreditation review that took place during the time these students were enrolled. Without this policy, no institution would want to put students in the position of completing a program that will never enable those students to apply for licensure or work in the field.

Changes: None.

Comments: Two commenters supported the changes in § 602.18(c) that establish several conditions for alternative standards or extensions of time, including accrediting agency adoption, equivalent goals and metrics, a demonstrated need for the alternative, and assurance that it meets the intent of the original standard and does not harm students. One commenter noted that the proposed language includes enough guardrails and limitations to protect students, but also notes the importance for the Department to be rigorous in the oversight of any implementation of these provisions. One commenter suggested that the regulation would be more consistent with statute if we required agencies to report to the Department any actions involving alternative standards or extensions of time. The commenter noted that this could occur either at the time of recognition or annually, and in a format that would make clear to the public all such instances.

Discussion: We appreciate the commenters' support. The Department assures the commenters that it will be rigorous in the oversight of any implementation of these provisions, including through the initial and renewal of recognition review processes. As required by § 602.31, the Department will ensure that the agency complies with the criteria for recognition listed in subpart B of this part by, among other things, reviewing a copy of the agency's policies and procedures manual and its accreditation standards, including any alternative standards it has established. The agency will, in effect, provide the Department with information about its alternative standards or extensions of time through the documents it submits or that staff elect to review during the recognition process. The Department does not currently track the number of times agencies have provided good cause extensions under the current regulations and does not plan to add a separate reporting requirement as a result of these regulations. However, accrediting agency policies and standards, as well as an agency's final accreditation decisions and sanctions, are made available to the public, including on the accrediting agency's website.

Changes: None.

Comments: Several commenters expressed concern that the changes proposed in § 602.18(c) that allow accrediting agencies to establish ''alternative'' standards for programs identified as ''innovative'' have the potential to create a two-tiered system that likely would result in lower standards in certain programs. The commenters acknowledged that the Department's regulations must support learning innovations like competency-based education (CBE). One commenter noted that CBE enables their students to complete their credentials and degrees more quickly, affordably, and with greater relevancy to their career goals, inasmuch as they have a clearer identification of the knowledge and skills sought by employers. However, the commenter was concerned that, as written, the regulations would create conditions in which an accrediting agency's seal of approval would not be considered ''reliable'' or ''consistent'' as required by law, and students in some programs would be subjected to lower-quality curricula than students in other programs. The commenter opined that truly innovative programs do not need to be propped up by different agency standards in order to thrive; rather, this change could encourage accrediting agencies to lower their standards and allow programs out of compliance with the normal standards to still operate.

A group of commenters expressed concern that the changes to § 602.18(c) would reduce institutional accountability, exposing students and taxpayers to significant risk. The commenters recommended that the Department specify the circumstances under which the alternative standards may apply and create a process to verify that the alternative is equivalent to the original standard.

Another commenter suggested that the term ''monitoring'' is too vague to be meaningful.

Discussion: We do not believe that the ability to establish alternate standards, or to establish alternate criteria for meeting a standard or alternate metrics for evaluating compliance with a single standard, will incentivize accrediting agencies to create a two-tiered system that likely would result in lower standards in certain programs. In some instances, the agency may elect to maintain a single standard, but allow alternative ways for a particular institution or program to meet that standard. Not only does the law require accrediting agencies to be reliable and consistent, but as we stated previously, accrediting agencies rely upon the trust and confidence of their peers and the community at large. The potential reputational damage that would result from lowered standards is an existential threat to an accrediting agency. Moreover, the regulation requires the agency to apply equivalent standards, policies, and procedures; a two-tiered system would not fulfill this requirement.

The regulations include examples of the kinds of circumstances that could warrant the establishment of alternative standards. We do not believe it is reasonable for the Department to further specify the circumstances under which the alternative standards may apply, as the assumption is that some of these circumstances will be unanticipated and unprecedented. We also do not believe it is necessary to create a new process to verify that the alternative is equivalent to the original standard. When the Department conducts a review of an agency's standards, it will include any alternative standards that had been established and will ensure those standards are sufficient to ensure the quality of the institution.

[22] *www2.ed.gov/admins/finaid/accred/retroactiveestablishmentofthedateofaccreditation72518.pdf.*

We also disagree that the term ''monitoring'' is too vague to be meaningful. To ''monitor'' means to observe, record, or detect.[23] This is wholly consistent with the intention of the monitoring report.

Changes: None.

Comments: One commenter asserted that the proposed changes in § 602.18(c) violate the HEA and the APA. The commenter opined that the use of the word ''consistently'' in the HEA means that the accrediting agency must constantly adhere to the same standards and principles to ensure that courses or programs offered are of enough quality to achieve their stated objectives.

The commenter asserted that, because the regulations do not delineate what would constitute ''special circumstances,'' accrediting agencies are permitted to avoid statutory compliance. Similarly, the commenter stated that, because the regulations do not specify what ''innovative program delivery approaches'' or ''undue hardship on students'' mean, accrediting agencies would be able to avoid the statutorily required ''consistency.''

The commenter objected to the provision that the agency's process for establishing and applying the alternative standards, policies, and procedures be set forth in its published accreditation manuals rather than requiring the agency to publish its ''alternative'' standards or make them available to the Department, State authorizers, or students. The commenter concluded that these proposed changes are arbitrary and capricious, not in accordance with law, and in excess of the Department's statutory jurisdiction under section 706 of the APA.

Discussion: We agree with the commenter that the use of the word ''consistently'' in the HEA means that the accrediting agency must constantly adhere to the same standards and principles to ensure that courses or programs offered are of sufficient quality to achieve their stated objectives. However, we do not agree that the establishment of alternative standards, criteria, or metrics is inconsistent with the intent of the statute. Rather, the regulations provide that an accrediting agency can establish a second set of standards that it consistently applies under the circumstances identified that necessitated the creation of alternative standards. The agency would be expected to apply the alternate standards fully and consistently in each instance in which the alternate standard (or criterion or metric) is indicated.

We do not agree that because the regulations do not exhaustively enumerate what constitutes a ''special circumstance,'' ''innovative program delivery approaches,'' or ''undue hardship on students,'' accrediting agencies can avoid statutory compliance. Nothing in these regulations absolves an accrediting agency from its obligation to be a reliable authority as to the quality of education or training offered by the institutions it accredits.

We believe it is appropriate and adequate for the accrediting agency to document its process for establishing and applying the alternative standards, metrics, policies, and procedures in its published accreditation manuals. These agencies make these manuals available and they would, therefore, be available to the Department, State authorizing agencies, or students.

As we have stated previously, we do not agree that the changes in this part violate the HEA and the APA.

Changes: None.

Comments: One commenter requested that, in § 602.18(c)(2), we replace the word ''metrics'' with ''expectations.'' The commenter was concerned that ''metrics'' implies a quantitative measure.

Discussion: We do not believe that ''expectations'' captures the intention of word ''metrics'' in § 602.18(c)(2). ''Metrics'' is commonly understood to mean a standard for measuring or evaluating something,[24] while ''expectations'' generally refers to the act or state of looking forward or anticipating or the degree of probability that something will occur.[25] Indeed, because this section of the regulations refers to ''metrics'' in combination with ''goals,'' we feel comfortable that an accrediting agency could set and apply qualitative, quantitative, or a combination of qualitative and quantitative measures.

Changes: None.

Comments: One commenter requested that we clarify what ''undue hardship on students'' under § 602.18(d)(1)(v) means so that is it not a blanket exception. The commenter asserted that the ''normal application'' of an agency's standards should always be made in students' interests, and that current and prospective students deserve to know about any problems related to a provider's accreditation and should not be used as an excuse for noncompliance.

Discussion: We have intentionally not enumerated what might constitute ''undue hardship on students'' under § 602.18(d)(1)(v) in order to provide accrediting agencies latitude to apply their judgment in the event of unforeseen circumstances. Moreover, we strongly agree that an agency's standards should always be made in students' interests. It is in keeping with this principle that we determined students would be best served if accrediting agencies could be responsive to institutional circumstances that necessitate the application of alternative standards or metrics recognizing that these standards or metrics would not and could not release the agency from its duty to be a reliable authority as to the quality of education or training offered by the institutions it accredits.

Changes: None.

Comments: One commenter requested that we revise § 602.18(c)(4) to require institutions to ask students to provide written informed consent when they are participating in an innovative or alternative approach to their education.

Discussion: We appreciate the commenter's request but believe that it would be too burdensome to require institutions to ask students to provide written informed consent when they are participating in an innovative or alternative approach to their education. Moreover, § 602.18(c)(4) applies to actions the accrediting agency will take to ensure the institutions or programs seeking the application of alternative standards have ensured students will receive equivalent benefit and not be harmed through such application, so it is left to the agency's discretion to require the institutions they accredit to obtain consent from students to participate in an innovative or alternative approach.

Changes: None.

Comments: Two commenters supported § 602.18(d), noting that the regulation provides accrediting agencies additional flexibility in determining the length of time an institution or program may remain out of compliance in cases where circumstances are beyond the institution's or program's control. The commenters asserted that is a common-sense change and can help protect the interests of students, provided it is clear that these decisions are up to each accrediting agency and will not leave agencies vulnerable to legal action if they determine an extension is not appropriate. The commenters emphasized that it is up to the Department to ensure agencies use this

[23] *dictionary.com/browse/monitored.*

[24] *https://www.merriam-webster.com/dictionary/metrics?src=search-dict-box.*

[25] *https://www.merriam-webster.com/dictionary/expectations.*

flexibility judiciously and do not allow unwarranted extensions of accreditation without compelling reason.

Discussion: We appreciate the commenters' support and reassert our commitment to ensure agencies use this flexibility judiciously and do not allow unwarranted extensions of accreditation without compelling reason.

Changes: None.

Comments: Several commenters suggested that the changes proposed to § 602.18(d) will make it easier for failing institutions to remain out of compliance with accrediting agency standards for a much longer time without serious accountability, subjecting multiple cohorts of students to subpar education. One commenter argued that we did not provide clear evidence that necessitated the increase in the additional time and number of years colleges can be out of compliance with accrediting agency standards, and opined that this change would likely exacerbate many of the issues facing students at the institution before action is taken by the agency. The commenter suggests that, if the Department were to extend this time frame, there should be stringent consequences that would discourage an institution from continuing out of compliance.

Discussion: We disagree that the changes to § 602.18(d) will make it easier for failing institutions to remain out of compliance with accrediting agency standards for a much longer time without serious accountability. The extension of time continues to be based upon an accrediting agency's determination of good cause and requires exceptional circumstances beyond the institution's control be present that impede the institution's ability to come into compliance more expeditiously. Moreover, the extension of time requires approval from the agency's decision-making body, confidence on the part of the agency that the institution will successfully come into compliance within the defined time period, and, most importantly, that the decision will not negatively impact students. We are confident that these provisions appropriately balance the need for flexibility during unusual circumstances and accountability to students who rely upon the accrediting agencies' determination of educational quality. The Department has seen multiple examples in which agencies have provided extended time beyond 12 months for an institution or program to come into compliance, especially during the recent recession when college enrollments surged, and employment outcomes deteriorated. In some instances, more time was required to improve educational outcomes, either because new job opportunities had to open up, or the institution had to substantially reduce enrollments in subsequent classes to adjust to the reality that high unemployment rates reduced opportunities for new college graduates, regardless of which institution they attended. In other instances, colleges or universities facing economic hardships have been given more than 12 months to execute planned giving campaigns or to take other measures to control spending and balance their budget. Still other institutions have been provided good cause extensions beyond 12 months when significant issues of noncompliance or management capacity are identified, since repairing facilities and replacing management teams can require longer than 12 months to complete. In recognition of circumstances such as these, the Department provides additional regulatory flexibility, but expects agencies to use this flexibility within defined parameters to ensure institutions or programs come into compliance.

Changes: None.

Comments: Two commenters requested that we revise § 602.18(d) to address the expectations for how agencies must address noncompliance with standards, including timelines, in only one criterion to avoid confusion and conflicting terms. The commenters are seeking consistency with § 602.20(a)(2).

Discussion: We disagree that we should require consistency between the timelines in §§ 602.18(d) and 602.20(a)(2). The regulations intentionally provide latitude to the accrediting agencies to establish timelines that are reasonable and appropriate to their process and procedures. Accrediting agencies may, and we expect most will, align their timelines for addressing noncompliance with their standards, but it is at their discretion to do so. Moreover, § 602.18(d) contains optional timelines for implementation, whereas § 602.20(a)(2) contains required implementation timelines. We note that the timeline of three years used in § 602.18(d) can be used congruently with the enforcement timelines used in § 602.20, which must not exceed the lesser of four years or 150 percent of the length of the program (for a programmatic agency) or the length of the longest program (for an institutional agency). The timelines in § 602.20 are used when an agency finds an institution or program out of compliance with a standard; whereas the timelines in § 602.18 are used when an institution or program works with an agency to address a circumstance that precludes compliance with a specific standard.

Changes: None.

Comments: One commenter requested that we amend § 602.18(d)(1)(i) to list the death of an institutional leader as an example of a circumstance that would serve as a basis for a good cause extension.

Discussion: We disagree that the death of an institutional leader serves as an example of a circumstance that would serve as a basis for a good cause extension since institutional governance procedures require that an independent board of trustees make critical decisions regarding the institution. As a result, the death of an institution's leader should not result in an institution's inability to meet the requirements of its accrediting agencies. In fact, it would be inappropriate for an agency to opine on the appointment of senior leaders by an institution as long as the institution followed its policies and procedures for selecting a new leader, which could include the appointment of that leader by a State or other governmental entity, or potentially even the appointment of an institution's leader by election. The Department notes that there are no specific requirements in statute or regulations related to institutional governance. No particular model of governance, such as shared governance or faculty governance, is required. This is one model for administering an institution, but not the only acceptable model.

In the case of private institutions, the governing board of the institution is best able to make decisions about the appointment of senior leaders. At public institutions, elected or appointed State leaders often provide input into these decisions.

Changes: None.

Monitoring and Reevaluation of Accredited Institutions and Programs (§ 602.19)

Comments: One commenter agreed with the provision in § 602.19(e) that NACIQI should review an institution when that institution's enrollment increases by 50 percent through distance education or correspondence courses in one year. The commenter noted that any enrollment change of this magnitude can place a significant strain on an institution's administrative capability and ability to maintain academic quality and rigor. Another commenter suggested that the word ''effectively'' in § 602.19(b) is undefined and could result in the misapplication of this regulation. Another commenter opined that § 602.19(b) does not adequately address the problem of monitoring, asserting that the membership associations have consistently resisted taking full responsibility for monitoring and oversight.

Discussion: While we appreciate the commenters' input regarding these provisions, we note that the only changes made to the regulations in this section were to update cross-references in § 602.19(b) from § 602.16(f) to 602.16(g), and in § 602.19(e) from § 602.27(a)(5) to § 602.27(a). There were no changes made to this section regarding the review of institutions based on changes in enrollments.

Changes: None.

Enforcement of Standards (§ 602.20)

Comments: One commenter supported the changes proposed in this section, noting that, currently, § 602.20 sets forth a virtually inflexible process for agencies to address an institution or program that is not in compliance with a standard. The commenter observed that an agency must either immediately initiate adverse action or require the institution or program to bring itself into compliance in accordance with rigid deadlines. With the proposed changes, the commenter noted that agencies would be required to provide an out-of-compliance institution or program with a reasonable timeline to come into compliance, and the timeline for compliance would consider the institution's mission, the nature of the finding, and the educational objectives of the institution or program. Another commenter who supported these changes expressed appreciation for the added flexibility for accrediting agencies in setting the length of time institutions or programs must come into compliance if found to be in noncompliance. This commenter noted that the change reflects the reality that, in some circumstances, institutions are unable to come into compliance under the current ''two-year'' rule.

Discussion: We thank the commenters for their support and agree that in some instances, such as when an institution must undertake significant curriculum reform to improve student outcomes, it could take more than a year to implement the change. In particular, it can take significant time to obtain approval of the new curriculum through the faculty governance process. Once approved, the institution may need to enroll and graduate new cohorts of students under that new curriculum in order for the institution to fully demonstrate compliance.

Changes: None.

Comments: Several commenters objected to the changes proposed in this section, asserting that these changes would make it exceedingly difficult for the Department to ever hold an accrediting agency accountable. The commenters noted that current regulations already allow failing institutions to continue to operate out of compliance long past the current two-year deadline and few, if any, lose their accreditation. These commenters are concerned that the proposed flexibility to issue sanctions will make it almost impossible for accrediting agencies to hold an institution accountable in a timely manner. One commenter added that, when an institution is in the process of fixing deficiencies, we should prohibit access to any Federal financial aid programs until they are back in compliance. Another commenter asserted that the proposed regulation provides for an exceptionally long period of time to subject current and prospective students to uncertainty about the ultimate quality and value of that institution's credential. A group of commenters argued that the Department's reasoning ignores the reality that accrediting agencies often act far too slowly to protect students from predatory institutions and that students suffer when institutions continue to access title IV funds instead of closing. The commenters referenced recent high-profile closures of institutions that underscore the need for swifter action by accrediting agencies and the Department. The commenters asserted that expediency on the part of accrediting agencies could have protected tens of thousands of students from going further into debt by unknowingly continuing to attend failing institutions, and would have given those students an opportunity to transfer to higher-performing institutions or to have their Federal student loans discharged.

Discussion: Section 602.20 will not make it difficult for the Department to hold accrediting agencies accountable. The regulatory requirements for the enforcement of standards are extensive and include multiple elements that will inform the Department's oversight of the agencies' performance.

We also do not agree that the flexibility to issue sanctions will make it almost impossible for accrediting agencies to hold an institution accountable in a timely manner. In fact, the accrediting agency's decision-making body continues to have the authority to determine how long a program or institution has to come into full compliance, and it retains the right to establish milestones that an institution must meet in order to maintain its accreditation. Agencies will continue to be held accountable for enforcing their standards and ensuring that institutions and programs are operating in compliance with them.

It would be inappropriate to withhold title IV funds from an institution that is making timely and effective progress toward resolving a finding of noncompliance. Some findings of noncompliance are not directly related to educational quality or the student experience and may have no impact on the quality of education delivered. The intention is to provide programs and institutions with enough time and opportunity to comply with the accrediting agency's standards and minimize disruption to enrolled students' pursuit of their educational goals. Withdrawing title IV eligibility may have a devastating impact on students and may jeopardize an institution's financial viability over findings of noncompliance that do not indicate that a program or institution is failing. The Department does not believe that providing more time for institutions to come into compliance will support predatory practices, as the Department expects that an agency would take immediate action or require the institution to cease those practices immediately. For example, misleading advertisements should not be allowed to continue once discovered and errors in information on an institution's website would similarly need to be corrected immediately. The extended timeframe establishes a maximum period of time but does not assume that agencies will always provide the maximum time available for an institution to come into compliance.

We do not agree that the provisions in this part provide an exceptionally long period of time for the institution or program to come into compliance. As other commenters have reported, certain metrics will not show improvement in the short term and require multiple cohorts of students to benefit from the changes the institution or program has put in place before the outcome measures reflect those enhancements.

Finally, we do not agree that these regulations will cause accrediting agencies to act slowly or that students are better served by closing, rather than improving, an institution or program. Students are best served by an effective institution that affords the student the opportunity to achieve their educational goals in a program or at an institution that has been granted accreditation from a recognized accrediting agency. This regulation supports an accrediting agency to work closely with the institutions or programs it accredits to ensure compliance with the agency's standards and educational quality.

Changes: None.

Comments: One commenter expressed concern that providing an institution or academic program with a ''reasonable'' written timeline for coming into compliance based on the nature of the finding, the stated mission, and educational objectives will result in litigation on what is a ''reasonable'' timeline for establishing compliance. The commenter remarked that institutions will seek the longest time possible to become compliant, harming students in subpar programs, while the accrediting agency will not have clear guidelines to force improvement by a set time prior to taking adverse action. Another commenter stated that the Department did not provide evidence that the current timeline is too aggressive or overly prescriptive, and that extending the time for an institution to come into compliance will result in inadequate protections for students.

Discussion: We do not agree that the use of the term ''reasonable'' will result in litigation on what is a ''reasonable'' timeline for establishing compliance. While institutions or programs may seek to negotiate an extended period of time in which to come into compliance with the agency's standards, the accrediting agency's decision-making body will have made its determination of reasonableness based on the nature of the finding, the stated mission, and educational objectives of the institution or program. That determination will dictate the timeline to return to compliance, which can be less than, but must not exceed, the lesser of four years or 150 percent of the length of the program in the case of a programmatic accrediting agency, or 150 percent of the length of the longest program at the institution in the case of an institutional accrediting agency. Any extension of the timeline beyond that prescribed timeframe must be made for good cause and in accordance with the agency's written policies and procedures for granting a good cause extension. The assurance of educational quality and the protection of students is a primary factor in the accrediting agency's determination of a reasonable timeline for institutional improvement. Moreover, nothing in this regulation precludes the use of mandatory arbitration agreements by agencies to reduce the risk of frivolous litigation by institutions regarding the time limits imposed by the agency.

Changes: None.

Comments: One commenter supported the proposed changes to § 602.20(a)(2) that allow additional time to document compliance, noting that, for some issues, such as program completion, it can take more than two years to show the effects of changes.

Discussion: We thank the commenter for their support and agree that it can take more than two years to implement program improvements and see their impact on future graduating cohorts.

Changes: None.

Comments: One commenter objected to the provisions of § 602.20(a) that provide intermediate compliance checkpoints. The commenter asserted that these elements are confusing, and that each accrediting agency will handle this differently.

Discussion: We do not agree that the opportunity for an accrediting agency to include intermediate checkpoints during the timeframe when a program or institution is working to come into full compliance with the agency's standards is confusing. The Department already requires each agency to apply monitoring and evaluation approaches in § 602.19(b). In § 602.20, we do not prescribe how an agency will enforce its standards but require the agency to follow its Department-approved written policies and provide the institution with a reasonable timeline for coming into compliance.

We expect that accrediting agencies may utilize this provision differently, as they are not required to include intermediate checkpoints, and we anticipate they will do so in situations where it is important to gauge the progress toward compliance an institution or program is making. Intermediate checkpoints may be particularly useful to accrediting agencies when they have determined the timeframe for improvement is approaching or at the standard timeframe limit.

Changes: None.

Comments: One commenter expressed concern that we had removed a requirement from § 602.20(a)(1) that an agency immediately initiate adverse action.

Discussion: We continue to require accrediting agencies to initiate immediate adverse action when they have determined such action is warranted. We did not remove the requirement but relocated it to § 602.20(b).

Changes: None.

Comments: One commenter requested that we establish specific intervals for reviewing monitoring reports in § 602.20(a)(2). The commenter opined that, as written, it is not clear if the monitoring period is inclusive of, or in addition to, any good cause extension. Another commenter suggested that we clarify that changes that can be made expeditiously must be implemented more quickly. The commenter recommended that accrediting organizations develop explicit timeframes for these changes, noting that students are not protected when an institution or program is out of compliance for four years. Another commenter recommended that we require an institution to make direct disclosures of actions or sanctions to prospective and enrolled students at the start of the timeframe specified in the monitoring report.

Discussion: The changes to this section are designed to provide accrediting agencies with the flexibility to use monitoring reports and reasonable timelines for coming into compliance that are appropriate to the standard, the nature of the finding, the stated mission, and the educational objectives of the institution or program. It would not be effective to establish specific intervals for reviewing monitoring reports, as those intervals will and should vary based on the factors listed above. The Department intends the monitoring report process would be separate from the compliance report process that includes extensions for ''good cause.''

We do not agree that it is necessary to explicitly require that changes that can be made expeditiously must be implemented more quickly. Implementation requirements based solely on timeliness would undermine the ability of an institution to prioritize changes that may be less timely but have greater benefits to students. We are confident that the decision-making bodies of recognized accrediting agencies will ensure that the timelines they establish for coming into compliance will be reasonable and consider the speed with which a remedy could be implemented.

Finally, we do not agree that prospective and enrolled students would benefit from direct disclosures of monitoring activities. As we have stated in the NPRM and this preamble, we expect to use the monitoring report to address minor deviations from agency standards; alerting students each time a monitoring report is issued may undermine the effectiveness of student notifications for more serious findings of noncompliance subject to mandatory notification requirements.

Changes: None.

Comments: One commenter requested that we clarify in § 602.20(a)(4) what action would occur in response to a monitoring report. The commenter asserted that it is difficult to understand what it means to approve or disapprove a report.

Discussion: Accrediting agencies will develop a written policy that describes how they will evaluate monitoring and compliance reports. The Department requires the use of monitoring and evaluation approaches in § 602.19(b), which could include compliance or monitoring reports. We require agencies to describe the policies and procedures relating to such approaches currently, and that requirement would not change with the implementation of the new regulations.

Changes: None.

Comments: One commenter objected to the inclusion of ''immediate adverse action'' in § 602.20(b). The commenter argued that, while accrediting agency staff can take immediate action, the decision-making body may not meet for several months. The commenter suggested we modify the language to empower senior staff, in consultation with the Chair of the decision-making body (or similar), to take immediate adverse action.

Discussion: The requirement in § 602.20(b) for an agency to immediately initiate adverse action when an institution or program does not bring itself into compliance within the specified period is not new. The Department maintains that this is a reasonable and appropriate expectation for accrediting agencies to ensure compliance with its standards.

The decision-making body generates all accreditation decisions, except for the allowances in § 602.22 for the review and approval or denial of specific substantive changes. The current use of ''immediate adverse action'' in this section has been interpreted to mean as soon as the decision-making body first reviews and determines noncompliance. Nonetheless, many accrediting agencies have procedures in place for making accreditation decisions in between regularly scheduled meetings of the decision-making body.

Changes: None.

Comments: One commenter supported the provision in § 602.20(c) that allows an accrediting agency that takes adverse action against the institution or program to maintain the accreditation or preaccreditation of the program or institution until the institution or program has had time to complete the teach-out process. However, the commenter was concerned that a temporary hold on accreditation action could be problematic for students seeking a closed school loan discharge and that there will be programs and institutions that retain their accreditation, but the programs will not meet licensing requirements with licensing boards due to the original deficiencies that led the institution or program to enter into a teach-out.

Discussion: We appreciate the commenter's support. The regulation provides accrediting agencies with the latitude to maintain the institution's or program's accreditation or preaccreditation until the institution or program has had reasonable time to complete the activities in its teach-out plan, which could include assisting students in transferring or completing their programs, but it does not require them to do so. The intention of this provision is to ensure that students may successfully achieve their educational objectives. If the accrediting agency's finding would result in graduates of the program not meeting licensing requirements, we would expect the agency to take immediate adverse action. Many agencies already have similar policies or practices in place.

We understand that an extension of accreditation through the teach-out process would delay the availability of a closed school loan discharge for students who choose to interrupt, rather than complete, their academic program. However, a closed school loan discharge is available to students who leave a school up to 180 days prior to its closing, which should be ample time for the school to complete its teach-out. The Department has also clarified in its recently published Institutional Accountability regulations (84 FR 49788) that, in the event that a teach-out plan extends beyond 180 days, a student who elects at the time the teach-out is announced to pursue a closed-school loan discharge rather than participate in the teach-out will retain the right to receive a closed-school loan discharge. This is the case even if, under the terms and conditions of the teach-out plan, the institution does not close until more than 180 days after the announcement of the teach-out.

Changes: None.

Comments: Two commenters objected to the provision in § 602.20(d) that allows an agency that accredits institutions to limit the adverse or other action to specific programs at the institution or to specific additional locations of an institution, without taking action against the entire institution and all programs, provided the noncompliance was limited to a specific program or location. The commenters opined institutional accrediting agencies rarely evaluate individual programs, and that to do so may be prohibitively expensive and burdensome. The commenters further asked if the proposed changes could mean that an accrediting agency could sanction or withdraw accreditation from an institution based on a negative evaluation of a single program.

Another commenter expressed concern that these provisions could harm students who leave their program due to adverse action on their program when the rest of the institution remains open. Those students would be ineligible for a closed school discharge. The commenter suggested that an institution should be financially responsible to make these students whole and refund all tuition charges for that program when a program closes and not the institution.

Discussion: Under both the current regulations and these final regulations, an accrediting agency may sanction or withdraw accreditation from an institution based on the noncompliance with accrediting standards of a single program. However, the negotiating committee concurred that this could be an extreme reaction that could potentially harm many more students than are impacted by the deficiencies of a single program, and, accordingly, agreed to provide accrediting agencies with the ability to target their actions to noncompliant programs when an institution is otherwise compliant and serving its students.

We do not agree that institutional accrediting agencies rarely evaluate individual programs. We recognize that an institutional accrediting agency may use sampling or other methods in the evaluation to conduct their review, and that an agency may rely upon the accreditation by a recognized programmatic accrediting agency to demonstrate the evaluation of the educational quality of such programs. This does not mean that an institutional accrediting agency must separately review every academic program offered by an institution. However, if an institutional accrediting agency determines that a single program is not compliant with the agency's standards, the agency could determine that its accreditation does not extend to that program.

We acknowledge that the HEA does not provide a remedy for students who leave their program due to an adverse action by an accrediting agency against their program when the rest of the institution remains open. As a result, the Department does not have the legal authority to require institutions to refund tuition and fees to students whose programs the accrediting agency found to be out of compliance with its standards.

Changes: None.

Review of Standards (§ 602.21)

Comments: One commenter contended that § 602.21(a) imposes an undue burden on accrediting agencies and called for a review of standards only as circumstances dictate, noting the infrequency of changes in institutional and accreditation policies. The commenter further asserted the involvement of all relevant constituencies is an unrealistic requirement and suggested instead that we require accrediting agencies to invite participation from all relevant constituencies. They also requested that we define, or remove, the term ''systematic.''

One commenter supported the proposed changes to § 602.21(d)(3) requiring agencies to respond to comments by constituencies during the review of standards. This commenter noted the process would be consistent with the comment process at other Federal agencies.

A group of commenters noted concern that the regulations would allow institutions to establish alternate standards, making it more difficult for the Department to monitor accrediting agency performance. They noted risk of dilution of standards used to evaluate institutions, as well as concern that the Department would cease to require one set of evaluation standards. They further expressed concern that the regulations do not require transparency with respect to agencies' alternate standards, when or how the agencies may use alternate standards, or how the Department would assess compliance with agencies' alternate standards.

Discussion: The Department considered the above comments thoroughly and notes that the Federal and non-Federal negotiators discussed many of the above stakeholders' views and concerns during the negotiated rulemaking process for § 602.21. The Department believes that the proposed changes are consistent with HEA section 496(a)(4)(A), which requires that an agency's standards ensure that the institution's courses or programs are of sufficient quality to meet the stated objectives for which they are offered for the entire accreditation period.

The revisions to § 602.21 clarify that, when reviewing standards, agencies must maintain a comprehensive systematic program that involves all relevant constituencies and is responsive to comments received. Current regulations require an institution to complete the review of all of their standards at the same time. The Department believes it is reasonable for the agency to review different standards at different time intervals since doing so may be a more efficient way of completing the review and may allow the agency to be more responsive to the most important changes needed. Moreover, when the Department conducts a review of an agency's standards, it will include any alternative standards that an agency established and will ensure those standards sufficiently ensure the quality of the institution.

The Department believes the proposed language will continue to allow the Department to monitor accrediting agency performance and ensure an agency's system of review is comprehensive and responsive to all constituencies while allowing for more innovation in program delivery and flexibility in response to demonstrated need, without imposing an undue burden on any party. As is currently the case, an agency would not be found to be out of compliance with the Department's regulations if one or more relevant constituencies fails to offer comments once made aware through a public comment period that the agency is reviewing or modifying its standards.

Changes: None.

Substantive Change (§ 602.22)

Comments: Several commenters supported the proposed changes to § 602.22. One commenter specifically expressed support for the change that would allow an accrediting agency's senior staff to approve specific, substantive changes for institutions that are in good standing, without requiring the agency's decision-making body to approve these types of changes. Other commenters specifically supported the changes in § 602.22 that clarify the process accrediting agencies must use when reviewing substantive changes and provide agencies with more flexibility to focus on changes that are high impact and high risk. The commenters opined that the proposed language will also give agencies more flexibility to approve less risky changes by granting an agency's decision-making body the authority to designate senior agency staff to approve or disapprove the substantive change request in a timely, fair, and equitable manner. Another commenter noted that this change will allow institutions to open satellite or branch campuses that would be accredited after opening. The commenter suggested that this relatively minor regulatory change opens the door for greater access to higher education for underserved communities who may be limited to choosing an institution that enables them to stay close to home. The commenter noted that these changes will facilitate growth in the market for higher education, encourage competition, and ensure fewer students turn down a quality education because of location. Another commenter expressed appreciation for the provisions that require accrediting agencies to monitor rapid growth in enrollment. The commenter asserted that quick, unprecedented growth opens the door to predatory practices, and does not provide typical safeguards for quality assurance.

One commenter who opposed this change believed that it would allow political appointees to overturn long-standing Department policies. This commenter also expressed concern over potentially predatory practices and lower accrediting standards.

Discussion: We thank the commenters who supported the changes in this section. We believe these changes allow for greater flexibility for institutions to innovate and respond to the needs of students and employers, while maintaining strict agency oversight in more targeted areas, such as those associated with higher risk to students or the institution's financial stability, such as changes in institutional mission, types of program offered, or level of credential offered.

We disagree that the regulations will not provide safeguards for quality assurance. Accrediting agencies will continue to review substantive changes for quality assurance. Providing flexibility to accrediting agencies to allow senior staff to review and approve less risky changes enables accrediting agencies to focus their resources on issues that provide the highest level of risk to students and taxpayers. We disagree with the commenter who believed that this change invites predatory practices and lower standards. While it is possible that long-time policies could change, we believe that streamlining this process will not lead to a reduction in its rigor. Accrediting agencies do not employ political appointees; the commenter may be misunderstanding the fact that agencies, not the Department, are responsible for approving substantive change requests.

Changes: We have made a technical correction to § 602.22(a)(1) to make clear that the substantive changes subject to this regulation are not limited to changes to an institution's or program's mission, but rather, include all substantive changes addressed in § 602.22.

Comments: Several commenters objected to the provisions in this section, asserting that they would create a rushed review process for program outsourcing requests with less stringent standards and less accountability; increase the risk that low-quality schools will be approved to receive Federal student aid to administer poor academic programs, which will waste students' time and educational benefits in addition to taxpayer dollars; let colleges close campuses and move online with inadequate review of substantive changes; allow an existing agency to expand its scope into areas where it lacks experience; and reduce accountability among agency commissioners, shifting responsibility and potential consequences of poor decision-making onto staff.

Discussion: The changes in this section will provide flexibility to accrediting agencies while maintaining proper agency oversight of high-risk changes. While we designed these regulatory changes to reduce the cost and time required for institutions to obtain approval from their accrediting agencies, agencies will still be held accountable for making well-reasoned decisions. These changes will also allow accrediting agencies to focus their limited resources on the types of changes that pose the greatest risk to students and taxpayers. The changes will also enable the decision-making bodies at accrediting agencies to focus on the most significant and potentially risky changes. The Department believes that appropriate and adequate review processes will remain in place and that allowing agencies to focus on changes with the most associated risk will improve oversight of institutions and protection of student and taxpayer interests.

We do not agree that improved efficiency results in lax oversight. The foundation of this section of the regulations requires every agency to document adequate substantive change policies that ensure that any substantive change made after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards.

Changes: None.

Comments: One commenter asked that we clarify whether § 602.22(a) pertains only to substantive changes in an institution's mission. The commenter suggested that the provisions in this section apply more broadly and that we remove the phrase ''change to the institution's or program's mission.''

Discussion: Section 602.22(a) is intended to pertain to all of the substantive changes as described in § 602.22(a)(1)(ii), and not just changes to an institution's or a program's mission. We agree with the commenter that the phrase ''change to the institution's or program's mission'' does not convey our intent to include all substantive changes as delineated in § 602.22(a)(1)(ii).

Changes: We are revising § 602.22(a) by removing the words ''to the institution's or program's mission'' to clarify that § 602.22 applies to all substantive changes as specified in § 602.22(a)(1)(ii), and not just substantive changes to an institution's or program's mission.

Comments: One commenter suggested that the regulations should allow accrediting agencies to designate future unknown innovations or changes as substantive, if those changes or innovations present a unique risk to students and taxpayers. Another commenter asked whether institutions must complete a substantive change application each time they would like to offer a program at the master's or doctoral level when the institution already offers the same area of study at the undergraduate or master's level.

Discussion: In response to the commenter who suggested that we add a provision allowing agencies to designate future unknown innovations or changes as substantive, if the innovations or changes present a unique risk to students and taxpayer, the regulations provide that agencies must require an institution to obtain the agency's approval of a substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution. This provision enables an institution and agency to consider applications for substantive change based on a proposed change or innovation.

We further clarify that an institution must submit a substantive change application whenever it seeks to increase its level of offering, including moving from the bachelor's level to a master's level and from a master's level to a doctoral level. An institution is not required to submit a substantive change application for each subsequent program at the same educational level.

Changes: None.

Comments: One commenter asked if we intend for § 602.22(a)(2)(ii) to provide that staff will decide the outcome, since there are accrediting agencies which do not meet every 90 days.

Discussion: Under § 602.22(a)(2)(ii), the Department intends to allow senior staff at accrediting agencies to make decisions regarding requests for approval of written arrangements, unless the agency or its senior staff determines significant related circumstances require a review of the request by the agency's decision-making body.

Changes: None.

Comments: One commenter asserted that the Department had interpreted in an overly broad way the statutory requirement in HEA section 496(c)(4) and (5) that accrediting agencies require that institutions establish a business plan prior to opening a branch campus, and that the agency will conduct an on-site visit of that branch campus within six months of its establishment. The commenter recommended that the regulations require approvals of all locations and site visits to all approved locations within six months of opening.

Discussion: The Department disagrees that we have interpreted the statutory requirement too broadly. As the commenter notes, the HEA requires that any institution of higher education subject to its jurisdiction which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening the branch campus, and that the institution's accrediting agency agrees to conduct, as soon as practicable, but within a period of not more than six months of the establishment of a new branch campus or a change of ownership of an institution of higher education, an on-site visit of that branch campus or of the institution after a change of ownership. The regulations in § 602.22 continue to require an accrediting agency to have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations. We do not believe it is necessary or practical to require an accrediting agency to require the approval of all locations or to visit all approved locations within six months of opening. While an accrediting agency may choose to require such approvals or site visits, we believe that the agency should have the flexibility to determine this rather than for us to regulate those actions.

Changes: None.

Comments: One commenter requested that the Department reconsider the provision in § 602.22(b) that creates new circumstances under which certain activities by provisionally certified institutions will require substantive change approval by their institutional accrediting agency. The commenter urged the Department to consider limiting this new burden of review to institutions that are on Heightened Cash Monitoring 2 (HCM2) or demonstrate some other more specific risk to students and title IV than just that the institutions are provisionally certified.

Discussion: We proposed only two additional substantive changes for which an institution placed on probation or equivalent status must receive prior approval and for which other institutions must provide notice to the accrediting agency in § 602.22(b). These include when the agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution, and when the agency's definition of substantive change covers high-impact, high-risk changes.

We do not believe it would be helpful to limit this change to those institution who are on HCM2 or who demonstrate specific risks. We believe this provision offers an important review that would only rarely occur if we limited the use to those circumstances suggested by the commenter.

Changes: None.

Comments: Three commenters opposed the revisions to the substantive change regulations, arguing the Department failed to provide enough evidence to justify the changes and to specify how we would assess whether a change is ''high-impact and high risk.'' The commenters opined that the changes are incongruent with statutory requirements pertaining to the approval of branch campuses and direct assessment programs.

Discussion: The revisions to the substantive change regulations are designed to provide accrediting agencies more flexibility to focus on the most important changes. We believe that this targeted, risk-based approach focuses the agency's decision-making body's efforts on more relevant or risky issues in a changing educational landscape, while allowing an agency to delegate lower-risk decisions to staff. The Department considers a high-impact, high-risk change to include those changes provided as examples in the regulations (§ 602.22(a)(ii)(A)–(J)), such as substantial changes in the mission or objectives of the institution or program; a change in legal status or ownership; changes to program offerings or delivery methods that are substantively different from current status; a change to student progress measures; a substantial increase in completion requirements; the acquisition of another institution or program; the addition of a permanent site to conduct a teach-out for another institution; and the addition of a new location or branch campus.

We do not believe that the changes contradict the statutory requirements for the approval of branch campuses and direct assessment programs. HEA section 498 (20 U.S.C. 1099c(j)) provides the Secretary with the latitude to establish regulations that govern the certification of a branch of an eligible institution.

Changes: None.

Comments: One commenter asked that we clarify § 602.22(b)(2), which refers to ''A change of 25 percent or more of a program since the agency's most recent accreditation review.'' The commenter asked if this is in reference to a change in the number of credit hours associated with the program and, if so, whether we would consider all courses, only courses within the discipline, or only general education courses.

Discussion: When we referred to ''A change of 25 percent or more of a program since the agency's most recent accreditation review'' in § 602.22(b)(2), we meant a single change, or the sum total of the aggregate changes, to a program's curriculum, learning objectives, competencies, number of credits required, or required clinical experiences. This would include changes in the general education courses required for program completion and not merely the courses within the discipline, program, or major.

Changes: We have revised § 602.22(b)(2) to clarify that we would consider an aggregate change of 25 percent or more of the clock hours or credit hours or program content of a program since the agency's most recent accreditation review to be a substantive change requiring prior approval under § 602.22(b)).

Comments: One commenter requested that we add the acquisition of any other institution, program, or location to the required representative sample of site visits to additional locations in § 602.22(d).

Discussion: As stated earlier, the Department proposes revisions to the substantive change regulations to provide accrediting agencies more flexibility to focus on the most important changes. While an accrediting agency may choose to implement a policy such as what the commenter suggested, we do not believe it is appropriate to broadly regulate such activity.

Changes: None.

Comments: One commenter requested clarification as to when an institution must seek approval of a new location instead of reporting the change under § 602.22(a)(1)(ii)(J) and § 602.22(c).

Discussion: As stated in § 602.22(c), once an institution receives accrediting agency approval for two additional locations, it may report subsequent locations, rather than seeking additional approval, if it meets the conditions in § 602.22(c).

Changes: We have made a technical correction in § 602.22(c) to clarify that institutions that have successfully completed at least one cycle of accreditation and have received agency approval for the addition of at least two additional locations *must* report these changes to the accrediting agency within 30 days, if the institution has met criteria included in this section of the regulations.

Operating Procedures All Accrediting Agencies Must Have (§ 602.23)

Comments: Two commenters wrote in support of the requirements in § 602.23(a)(2) that an accrediting agency make written materials available describing the procedures that institutions or programs must follow regarding the approval of substantive changes.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: One commenter endorsed the change in § 602.23(a)(5) that requires the mandatory disclosure of names, academic and professional qualifications, and relevant employment and organizational affiliations of members of the agency's decision-making bodies and principal administrative staff.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter supported the change to § 602.23(d) that permits publishing address and telephone information as an alternate form of agency contact information.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: Two commenters agreed with the change to § 602.23(f) that reserves preaccreditation status for institutions and programs that are likely to succeed in obtaining accreditation. The commenters noted that this is an important requirement, as institutions may be in preaccreditation status for five years and then may not succeed in getting accreditation. Students may suffer if their school does not achieve accreditation, and, if the school closes, taxpayers will be responsible for closed school loan discharges. One of the commenters also supported requiring accrediting agencies to obtain a teach-out plan from all preaccredited institutions and recommended that they update the teach-out plans every six months if they include partner institutions, as those agreements and the regional education landscape change frequently.

Discussion: We appreciate the commenters' support. We do not believe it is practical or necessary to require accrediting agencies to obtain updated teach-out plans from pre-accredited institutions every six months, nor would it be reasonable to expect an institution to seek contractual teach-out agreements with other institutions simply because the institution or program is in a preaccredited status. If an accrediting agency determines that it is necessary for an institution to implement its teach-out plan, the agency can request that the institution seek or enter into one or more contractual teach-out agreements with partner institutions that offer the courses or programs needed by the closing institution's students.

Changes: None.

Comments: A group of commenters objected to § 602.23(f), asserting that it is unclear from the Department's reasoning exactly what risks, if any, the proposal to maintain preaccreditation status will mitigate. The commenters argued that the proposal increases risk by not removing title IV eligibility from a school that has demonstrated its inability to provide a quality education and allowing students to continue to attend that school for up to four months or longer. The commenters asserted that, if the Department agrees to then recognize those students' work as ''accredited,'' the students will still have to market themselves to other institutions and employers and will be ill equipped to effectively do so, having received such a poor education.

Discussion: We intend for this provision to ensure that students can successfully achieve their educational objectives at the institution where they chose to enroll. We do not agree with the commenters' assertion that the student will have received a poor education, as there are many factors, apart from the quality of the education provided, that can result in an institution not receiving accreditation after a period of preaccreditation. An accrediting agency, in awarding preaccreditation, must believe that the program or institution is likely to obtain accreditation, meaning that the educational quality must meet the agency's requirements. Students may use title IV funds to enroll in a preaccredited program. Therefore, the accrediting agency must believe that it is of appropriate quality to likely become accredited. It would be detrimental to students to allow them to enroll in a preaccredited program and subsequently determine that the credits they earned during that enrollment would likely not transfer to another institution if the program is not fully accredited. Without such a provision, an institution could not recruit students to a preaccredited program, and the Department could not allow those students to obtain title IV funds. This would reduce the likelihood of institutions starting new programs in areas where there may be significant workforce demand.

Changes: None.

Comments: One commenter supported the proposal in § 602.23(f)(ii) to require accrediting agencies to insist on a teach-out plan from preaccredited institutions. However, the commenter suggested this provision does not ensure adequate protection. The commenter recommended that the Department require a teach-out agreement and that adequate funds are set aside to implement the agreement if the school does not receive accreditation.

Discussion: We appreciate the commenter's support and suggestion. However, we believe it would be impractical to require preaccredited institutions to establish teach-out agreements, as these are contractual arrangements that are based on the number of students enrolled in a program (among other factors) and institutions would need to update them each term in order to accurately reflect the current status of the program. Also, an institution cannot force another institution to enter into a contractual agreement, especially since a teach-out agreement often includes financial arrangements between the two institutions. The Department cannot require any institution to enter into a contractual agreement with another institution and it would be difficult to know in advance what financial arrangements would be required by the receiving institution in the event of a teach-out, since this could change based on the number of students to be served at the time of the teach-out and other factors. The Department also lacks the authority to require institutions to post a letter of credit simply because they are in a preaccredited status.

Changes: None.

Comments: One commenter supported the proposed language in § 602.23(f)(2) that allows the Secretary to consider all credits and degrees earned and issued by an institution or program holding preaccreditation from a nationally recognized agency to be from an accredited institution or program. The commenter observed that this may help clarify what preaccreditation status means, prevent harm to students who attend preaccredited institutions or programs, and recognize that graduates of preaccredited programs are workforce-ready and, therefore, should be eligible for State or national credentials.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter objected to the provisions of § 602.23(f)(iv), stating that instead of adding protections for students in the event the institution does not obtain accreditation, the Department proposes to allow an institution to maintain its preaccredited status, continue serving students, and collect student and taxpayer money even when it is now guaranteed the institution or program will not gain accreditation. The commenter asserted that preaccreditation status and accredited status are fundamentally not the same and that we should not consider them to be equal.

Discussion: The Department has not proposed that a preaccredited program or institution continue to be able to operate in the rare instance that an agency makes a final decision not to award full accreditation. Instead, the Department seeks to protect students enrolled in preaccredited programs or institutions so that, in the event the program or institution does not receive full accreditation, the students are able to transfer credits and complete their program at another institution. The Department considers both preaccreditation and accreditation to be an accredited status. Since both accreditation and preaccreditation may allow a student to access title IV funds, the Department is committed to providing protections to students to ensure that the credits they earned using title IV funds can be transferred to other institutions. Several accrediting agencies require institutions or programs to graduate a cohort of students before they will grant full accreditation. However, the students who complete the program during a period of preaccreditation may not be eligible to sit for the licensure exam if the requirement to do so necessitates that they have graduated from an accredited program. Thus, it is important that these students be afforded the opportunity to fulfill their educational objective to be licensed in the profession for which they were prepared if the program or institution became accredited based on the agency's review of the institution or program that took place during the time in which the student was enrolled. Accrediting agencies have reported to us that preaccredited programs and institutions typically proceed to fully accredited status. The agencies noted that they grant preaccreditation status when the agency has confidence that the institution or program will ultimately become accredited, but some agencies will not award full accreditation until they review licensure exam pass rates or other employment outcomes dependent upon a student having attended an accredited institution.

Changes: None.

Additional Procedures Certain Institutional Accreditors Must Have (§ 602.24)

Comments: Several commenters supported the Department's proposed changes to § 602.24. Collectively, the commenters expressed appreciation for the flexibility afforded to institutions and accrediting agencies by the proposed rules, allowing them to focus more on innovating and providing students with a quality education.

Discussion: We appreciate the commenters' support for these proposed changes and the Department's efforts to facilitate innovation and reduce regulatory burden.

Changes: None.

Comments: One commenter objected to the elimination of the requirement in § 602.24(a) for an institution to include in its branch campus business plan submitted to the accrediting agency a description of the operation, management, and physical resources of the branch campus. The commenter asserted that the proposed changes fall short of what is required by statute—namely that "any institution of higher education subject to [an accreditor's jurisdiction] which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening a branch campus." The commenter further asserted that the proposed revisions fail to establish what is a reasonable period needed to judge the appropriateness of opening a branch campus, and that the Department failed to conduct any cost-benefit analysis or adequately justify the change.

Discussion: We disagree with the commenter that the changes to § 602.24(a) fail to meet the statutory requirements. We proposed amendments to this provision specifically to remove requirements that we believe go beyond the statutory requirements. Additionally, we believe the requirements in § 602.24(a) were either unnecessarily prescriptive or duplicated requirements in the revised § 602.22. Regarding what we consider a reasonable time period for an agency to judge the appropriateness of opening a branch campus, we do not believe a compelling reason exists for the Department to impose strict calendar timeframes around such determinations. The amendatory text requires, with respect to branch campuses, an agency to demonstrate that it has established and uses all of the procedures prescribed in § 602.24(a). We expect an agency's protocols to facilitate this being accomplished in a timely manner. The reasons for the proposed changes to § 602.24(a), removing the requirements for an institution to include in its branch campus business plan a description of the operation, management, and physical resources of the branch campus, and for an agency to extend accreditation to a branch campus only after the agency evaluates the business plan, are explained in the July 12, 2019 NPRM and reiterated above. We do not believe it is further necessary to conduct a cost-benefit analysis to support these changes or that such an analysis is germane to the discussion of whether they are needed.

As the Department noted during negotiated rulemaking, there are no data upon which to base the establishment of a reasonable period to judge the appropriateness of a branch campus. However, we believe the time required to obtain approval was, in many cases, so significant that it impeded institutional growth and student access. We hope with these changes that more closely align with the statute, we will enable institutions and accrediting agencies to be nimbler and more responsive to student demand. The regulations maintain important oversight protections by requiring the institution to submit a business plan and the accrediting agency to conduct a site visit within six months.

Changes: None.

Comments: Two commenters requested that the Department delete the reference in § 602.24(c)(2)(i) to institutions merely placed on the reimbursement payment method described in § 668.162(c)—commonly known as HCM. One of those commenters stressed that while we typically place institutions with composite scores of less than 1.5 on HCM1, this does not mean such institutions are in danger of closing. The commenter further noted that if no changes are made to the calculation of the composite score to reflect the recent change by the Financial Accounting Standards Board regarding leases, institutions will fail financial responsibility and be put on HCM1 when, economically, nothing has changed, and that institutions can be placed on HCM1 for various other reasons, including noncompliance with Clery Act standards or other regulatory matters. The commenter concluded the Department should revise § 602.24(c)(2)(i) to pertain only to instances where an institution has been placed on the reimbursement payment method under § 668.162(c) or the HCM payment method requiring the Secretary's review of the institution's supporting documentation under § 668.162(d)(2).

Discussion: We believe the commenters may have misinterpreted proposed § 602.24(c)(2)(i), which requires submission of a teach-out plan if the Secretary notifies the agency that it has placed the institution on the reimbursement payment method under § 668.162(c) or the HCM payment method requiring the Secretary's review of the institution's supporting documentation under § 668.162(d)(2). Under the reimbursement payment method, an institution must, in addition to identifying the students or parents for whom reimbursement is sought, credit a student's or parent's ledger account for the amount of title IV, HEA funds he or she is eligible to receive, submit documentation showing that each student or parent included in the request was eligible to receive the title IV, HEA program funds requested, and show that any title IV credit balances have been paid. HCM2, described in § 668.162(d)(2), mirrors the reimbursement payment method except that the Secretary may modify the documentation requirements and procedures used to approve the reimbursement request. HCM1, found in § 668.162(d)(1) and identified by the commenter as the cash monitoring payment method on which the Department commonly places institutions with low composite scores, does not require the submission of documentation establishing the eligibility of a student. Institutions on HCM1 are not subject to the provisions of proposed § 602.24(c)(2)(i).

Changes: None.

Comments: One commenter asked the Department to clarify the teach-out requirements in § 602.24(c) related to travel. The commenter questioned the standard that the teach-out arrangement should not require travel of substantial distances or durations, on the basis that it is vague and does not address situations where geographically convenient options for on-the-ground programs are limited due to being at capacity enrollment or capped enrollment. The commenter concluded that it is insufficient merely to name local institutions with similar programs, as those programs are frequently unable to assist with a teach-out.

The same commenter agreed with the Department that a teach-out by an alternative delivery modality is insufficient unless an option for a teach-out via the same delivery modality as the original educational program is also available. However, the commenter contended that the institution should also ensure there is a geographic limitation on this requirement, that is, an institution should not be permitted to have its own distance education program be offered as a teach-out when the on-ground offering is 200 miles away from the original on-ground location and there are significant transportation barriers.

Finally, the commenter agreed with the Department that an accrediting agency should be permitted to waive the requirements related to the percentage of credits that must be earned at the institution awarding the educational credential for students completing their program under a written teach-out agreement, but recommended that the waiver also apply to institutions allowing students to transfer to the institution in lieu of a written teach-out agreement.

Discussion: We agree that merely naming local institutions with similar programs does not constitute a teach-out agreement, yet we note that it may be appropriate in a teach-out plan.

We appreciate the commenter's support regarding the insufficiency of alternative delivery modes for a teach-out and agree that it may be an option available, but it cannot be the only option provided to students. We further agree that the teach-out needs to provide the same method of delivery as the original education program.

We do not, however, agree that we should prescribe a specific geographic limitation. The regulations require that the teach-out agreement provide students access to the program and services without requiring them to move or travel for substantial distances or durations. We believe that the accrediting agencies (and the States) should determine what is a reasonable distance or travel duration based on the circumstances of each location. For example, in some parts of the country, a 10-mile distance is the equivalent of more than an hour of driving time. In other parts of the country, it is unlikely that another institution would be available within a 10-mile radius and so it might be reasonable to expect students to travel farther to complete their program. The distance noted by the commenter would not be a reasonable distance. While we would support allowing the institution to offer its own distance education program as an option to its students, we would not allow that offering to supplant the requirement to provide a reasonable ''brick-and-mortar'' option to the students if the original education program was offered as an on-ground program.

We thank the commenter who supported the Department's waiver of requirements related to the percentage of credits earned at the institution for students completing their program under a written teach-out agreement. We also agree that the same waiver should be available to students who transfer credits following a school closure, even if that transfer is not part of a formal teach-out agreement. However, we do not agree that this requires a change to the regulatory language in this section, as it is within the accrediting agency's authority to grant this waiver when it is appropriate to do so.

Changes: None.

Comments: One commenter asserted that the Department should require any institution that closes, as a condition of closing, provide current transcripts to every student, past and present, as well as refund to students all amounts paid retroactive to the beginning of the current semester. The commenter stated that this would hold for-profit institutions to the same standard as State-funded institutions.

Discussion: We appreciate the commenter's concern for preservation of students' academic records and agree that closing institutions have an obligation to preserve those records and transfer them to the appropriate entity, as described in their teach-out plan. Teach-out plans must include arrangements for maintenance of records as well as instructions to students for how they can obtain those records. However, we do not have the authority to require a closing school to distribute transcripts to students. Additionally, most institutions require the submission of an official transcript directly from an institution for admission consideration. An institution might not consider a transcript submitted from an applicant to be an official transcript.

The Department does not have the authority to require institutions to refund students for non-title IV tuition payments made. We agree that closing schools should reimburse students if tuition was paid for classes that will no longer be offered, but we do not have the authority to require that of institutions. We applaud States that require a closing or closed public institution to refund students' tuition and fees for the final term. However, we are aware that some States operate tuition recovery funds to enable students to receive financial reimbursement for some or all of the non-title IV tuition payments made in the event that an institution closes.

Changes: None.

Comments: One commenter, while generally supportive of the proposed changes to § 602.24, suggested we prohibit closure of an institution based solely upon loss of accreditation. The commenter believed institutions should remain open for a period of one year or more after removal of accreditation to allow for students to determine whether they wish to complete their educational program at that institution. The commenter concluded that we should not allow the institution to solely determine the fate of students' academic careers.

Discussion: The Department appreciates the commenter's support on these changes. We note, however, that we cannot prevent an institution from closing when it loses accreditation since many students could not continue their enrollment without access to title IV funds. Also, loss of accreditation is a circumstance that enables students to seek and receive a closed school loan discharge. The Department does not determine whether an institution is open or closed. The Department determines an institution's eligibility to participate in the title IV programs and recognizes that, in many instances, the loss of title IV eligibility makes it impossible for an institution to continue educating students.

Changes: None.

Comments: One commenter noted with regard to the proposed revisions to § 602.24(c)(2)(iii) that a school that is on the verge of losing its recognition or intends to cease operations may not fully cooperate in carrying out teach-out mandates, assurances to students may not be implemented, and that expecting an orderly transition is not always realistic. The commenter believed the Department should conduct a careful review of previous terminations and closures to see if there are lessons to learn and apply.

Discussion: The Department agrees with the commenter that an orderly transition does not occur in all cases, yet we strive for a transition that is as smooth as possible. The Department has examined, and will continue to examine, school closures so that we and other triad partners can collectively assist students impacted by closures. Our experience suggests that students are best served when they have options to complete their program, including through an approved teach-out plan or teach-out agreement.

Changes: None.

Comments: One commenter recommended that the Department revisit proposed § 602.24(c), outlining the circumstances under which an accrediting agency must require an institution to submit a teach-out plan. The commenter urged the Department to not rely on provisional certification as an indicator of trouble—since that is not always the case—and instead consider identifying problem institutions as those the Department has placed on HCM2 or has taken action against under subpart G of the General Provisions.

Discussion: We agree with the commenter's position that provisional certification does not always indicate trouble. However, we believe that provisional certification imposes a higher level of risk to students and taxpayers and increases the likelihood that a school closure might ensue. Some accrediting agencies require all institutions to keep teach-out plans on file at all times. Teach-out plans do not require an institution to take any action, but instead to describe what the institution would do, and potential programs or institutions that could accept students, if the institution closes. Teach-out plans provide important information to the Department and States in the event of a school closure; thus, it protects students and taxpayers for institutions to have these plans on file when the institution is provisionally certified. The number of institutions on HCM2 or subject to an action under subpart G of the General Provisions consistently remains small compared with the number of provisionally certified institutions. Keeping in mind a teach-out plan acts as a preventive measure, we do not agree with the commenter that limiting the requirement to such a small number of institutions would help us achieve the desired outcome. We seek, instead, to identify institutions at risk for closure and ensure that a plan is in place so that the Department and States can assist students in transitioning to new programs and accessing their academic records if their institution closes.

Changes: None.

Comments: One commenter commended the Department for considering and including parts of a proposal submitted by negotiators strengthening teach-out requirements, securing teach-out agreements, and putting protections in place for students enrolled in schools at risk of closure, but stated the proposal in the consensus language does not go far enough in guaranteeing students will have high-quality teach-out options in the event their school closes. The commenter offered that the Department should require teach-out agreements, not make them optional, and we should clearly distinguish when an institution needs an agreement instead of just a plan. The commenter further asserted that the Department should require accrediting agencies to secure teach-out agreements when schools exhibit particular risk factors. The commenter suggested that, in the event of precipitous closure, accrediting agencies have routinely requested nothing more than teach-out plans when an institution exhibits warning signs, because under current regulations, securing a teach-out agreement is at the discretion of the agency and almost never results in the agency requesting a teach-out agreement.

Discussion: We appreciate the strong support from this commenter and the non-Federal negotiators who worked with us to create a more robust framework to protect students. While we seek to provide protections for students affected by a school closure and strive to assist with the transition to high-quality academic programs, we cannot guarantee students will have high-quality teach-out options in the event their school closes. However, teach-out plans can be helpful to students, States, and the Department when a school closes and we are trying to help students identify another institution where they can complete their program and obtain the records they need to document their attendance or prior degree completion at the closed school.

We do not believe it is possible for either the Department or the accrediting agencies to force an institution to engage in a teach-out agreement because such an agreement requires a contractual agreement between the closing school and a continuing school. Neither the Department nor an accrediting agency can require a continuing institution to enter into a teach-out agreement with a closing institution, and in some instances, the receiving institution in a teach-out agreement will accept students into some programs but cannot accommodate students in all programs or can accept some but not all students into a particular program. Teach-out agreements identify which students a continuing school will receive, how many credits it will receive in transfer, and any financial arrangements required to support the agreement. Neither the Department nor an accrediting agency can require an institution to accept students or credits from another institution. Moreover, the statute only requires that institutions have teach-out plans in place. We recently learned that some accrediting agencies will not review a teach-out agreement until the closing school has closed—at which point it may be too late to help students complete their program. We clarify in this regulation that agencies can and should request that an institution pursue teach-out agreements and review teach-out agreements prior to a school's closure. However, we cannot force an institution to enter into a contract with another institution, or to accept students into a program for which the receiving institution believes the transferring students are underprepared.

Changes: None.

Comments: One commenter expressed concern about the Department's proposal to remove the required agency review of institutional credit hour policies as well as the specifics of how an agency meets the requirements for such review in § 602.24(f).

Discussion: We continue to believe the agency review requirements are unnecessarily prescriptive and administratively burdensome without significantly improving accountability or protection for students or taxpayers. However, we note that the definition of ''credit hour'' in § 600.2 requires that the amount of student work determined by an institution to comprise a credit hour be approved by the institution's accrediting agency or State approval agency. Moreover, nothing precludes an accrediting agency or State approval agency from examining or questioning an institution's credit hour policies either as part of a routine evaluation of that institution's academic programs or as the result of specific concerns brought to the attention of the accrediting agency.

Changes: None.

Due Process (§ 602.25)

Comments: Several commenters questioned the reasoning behind the proposed change to due process, stating that the Department did not explain how the change helps institutions understand accreditation status decisions. Further, the commenters believed the proposed changes would not clarify decisions issued by the agency's decision-making body for institutions or programs. The commenters contended that the Department should not permit an agency to re-evaluate its original decision if an appeals panel reverses it but does not specifically remand the decision. In such a case, these commenters asserted, no further agency action should be allowed.

Discussion: We considered views on § 602.25 similar to the commenters during negotiated rulemaking. The Department believes that the changes sufficiently satisfy the intent of HEA section 496(a)(6), which provides that an agency must establish and apply review procedures throughout the accrediting process that comply with due process. The Department permits agencies to remand appeals panels' decisions to the original decision-making body for a final review. In the event that an agency does remand the decision to the original decision-making body, the Department believes it is important to require that the final decision issued by that body be consistent with the recommendations of the appeals panel.

However, an appeals panel maintains the option to amend an adverse action, which could involve reaching a different conclusion.

When the agency's appeals panel decides to remand the adverse action to the original decision-making body, the appeals panel must provide the institution or program with an explanation for any determination that differs from that of the original decision-making body. In the event that the decision is remanded, any decision issued by the original decision-making body must act in a manner consistent with the appeals panel's decisions or instructions.

These changes will ensure that institutions or programs receive full information regarding the decisions pertaining to their accreditation status, and that decisions remanded back to the original decision-making body reflect the appeals panel's decision or recommendation. Additionally, the changes will provide that the original decision-making body speaks for the agency in addressing concerns raised in a remand.

Changes: None.

Notification of Accrediting Decisions (§ 602.26)

Comments: Several commenters agreed with the proposal in § 602.26(b) to reduce the amount of time within which an accrediting agency must notify State agencies and the Department regarding any adverse action taken against an institution so that these entities are notified at the same time as the institution. One commenter asked for clarification of the ''same time'' language to ensure that accrediting agencies adhere to the spirit and intent of the provision.

Discussion: We appreciate the commenters' support of the reduced time to notify State agencies and the Department and note that the term ''at the same time'' would generally mean within one business day and is consistent with current regulations.

Changes: None.

Comments: Several commenters agreed with requiring an institution to disclose adverse actions to current and prospective students within seven days. However, one commenter noted that disclosures that are hidden, inaccurate, confusing, or misleading fail to provide students with the information they need to make informed decisions. The commenter urged the Department to take steps to ensure that disclosures required under these regulations provide actual, effective notice and information that is accurate, meaningful, and actionable to students who may be unfamiliar with the accreditation system and the meaning of accreditation decisions and terminology. The commenter also urged the Department to ensure that the disclosures continue for the duration of the suspension or other adverse action so that the disclosures are more likely to reach all relevant students and prospective students.

Discussion: We appreciate the support and suggestions of the commenters. We believe that providing initial notification within seven days provides transparency and protection to current and prospective students. Institutions are expected to maintain that disclosure until the suspension or adverse action is resolved. Beyond the Department's regulations, individual agencies often set additional requirements for how and where this information must be disclosed.

The Department's regulations refer to the requirement that the agency must disclose the action taken in a manner that is clear, factual, and timely.

Changes: None.

Comments: One commenter disagreed with the proposed requirement to reduce the amount of time an accrediting agency has available to inform State agencies and the Department when an institution voluntarily withdraws from accreditation or preaccreditation or allows either to lapse from 30 to 10 days. The commenter stated that 10 days is unreasonable and places an unnecessary burden on agencies.

Discussion: We appreciate the commenter's concerns; however, we believe that decreasing the notification timeframe to 10 days provides needed protections to students and taxpayers. The prompt notification of these changes is of critical importance to entities responsible for ensuring an institution's authority to operate or, in the case of the Department, to ensure that the institution continues to be able to participate in title IV programs.

Changes: None.

Other Information an Agency Must Provide the Department (§ 602.27)

Comments: One commenter disagreed with the proposed elimination of the requirement that an accrediting agency provide to the Department any annual report that it produces as well as the change to require an accrediting agency to consider any contact with the Department as confidential only where the Department determines a compelling need for confidentiality. The commenter stated that these changes lack a reasoned basis. Another commenter agreed with the Department making the determination regarding confidentiality as it would allow the Department to determine the appropriate classification under Federal law.

Discussion: The Department has created monitoring tools that provide it with more real-time data and information to evaluate an agency. By the time an agency publishes an annual report, the data is often stale and unhelpful to the Department. We believe that eliminating the requirement to provide an annual report does not affect the Department's ability to monitor agencies and will increase efficiency and reduce administrative burden.

Changes: None.

Severability (§ 602.29)

Comments: None.

Discussion: We have added § 602.29 to clarify that if a court holds any part of the regulations for part 602, subpart B invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 602.29 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Activities Covered by Recognition Procedures (§ 602.30)

Comments: One commenter objected to the Department's proposal to eliminate this provision. The commenter argued that, although the Department stated that the provisions in the current regulations in this section duplicate other regulatory provisions, we have failed to identify which sections in part 602 cover these activities. The commenter asserted that this is because these sections do not exist.

Discussion: The recognition activities procedures that we removed in § 602.30 duplicate provisions in §§ 602.31(a), 602.31(b), 602.31(c), 602.19(e), and 602.33. The sections are referenced within § 602.30 in the current regulations and are contained within these regulations at the same cited locations.

Changes: None.

Agency Submissions to the Department (§ 602.31)

Comments: Several commenters disagreed with proposed changes to § 602.31(a)(2). One commenter stated that the Department's proposal to eliminate a requirement that accrediting agencies submit not only documentation of compliance with the recognition criteria, but also evidence that the agency ''effectively applies those criteria'' conflicts with the statute as it requires that the Secretary limit, suspend, terminate, or require an agency to come into compliance if she determines that an accrediting agency or association has failed to effectively apply the criteria. Another commenter noted that this is a fundamental part of the application process.

Discussion: The changes to § 602.31(a)(2) continue to require the agency to provide documentation as evidence that the agency complies with the criteria for recognition listed in subpart B of this part, including a copy of its policies and procedures manual and its accreditation standards. The Department staff will analyze the information submitted, in accordance with the procedures described in § 602.32, which include the current requirement to assess observations from site visits to gauge the efficacy of the agency's application of the criteria, rather than a simple attestation of that fact in the documentation submitted by the agency. In keeping with the statutory requirement, if the Secretary determines that an accrediting agency or association has failed to effectively apply the criteria in this section, or is otherwise not in compliance with the requirements of this section, the Secretary will limit, suspend, or terminate the Department's recognition, or require an agency to come into compliance.

The regulations also recognize that, in some instances, an agency may not have the need to apply a particular policy, standard, or procedure during its recognition review period. In such instances, the agency should not be found to be noncompliant if it has the appropriate policy in place but has not yet had the need to implement it. For example, if no institution during the five-year review period has appealed a negative decision, the agency cannot prove that it follows its appeal procedures, but this does not indicate that the agency is noncompliant. However, if the agency has had occasion to implement a given policy, it must do so effectively.

Changes: None.

Comments: Commenters agreed that accrediting agencies should redact submissions of personally identifiable information (PII) and other sensitive information to prevent public disclosure of PII while facilitating access to documentation. One commenter stated that the Department should better identify what it means by PII before it requires agencies to perform the redaction.

Discussion: We thank the commenters for their support on this proposed change. We believe that those who work with ''personally identifiable information'' generally understand what it includes, which is any data that could potentially identify a specific individual.

PII is defined in 2 CFR 200.79 as information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual. We do not believe that we need to further define PII.

Changes: None.

Comments: Another commenter stated that changing the timeframe to reapply for recognition to 24 months prior to the date on which the current recognition expires is unreasonable noting that in 24 months the information provided may be out of date. The commenter contended that the reason for the change likely has to do with understaffing at the Department.

Discussion: The Department disagrees with the commenter. To the contrary, the 24-month timeframe provides ample opportunity for an agency, if found deficient in its policies and procedures, to update them as necessary to meet the Department's requirements. It also affords Department staff the opportunity to follow an individual accreditation decision from beginning to end, meaning that staff can observe both the site visit and the final agency decision for a single institution.

The current timeframe makes it impossible for staff to observe the decision-making body considering the same institution for which the staff observed a site visit. Agencies will be able to provide the Department with information if updates occur during the 24-month period. Presently, there is no stated timeframe in the regulations, and providing 24 months allows the Department to perform a more thorough review of the agency and its activities. It also provides the agency sufficient time to make corrections to policies and procedures in order to come into compliance.

Changes: None.

Comments: One commenter noted that the Department proposes moving aspects of the recognition process to an on-site review, but it provides no explanation of how it will ensure adequate maintenance of records. The commenter asserted that this lack of records, which will impede NACIQI in its ability to review the record for its decision and shield the Department from accountability, violates the law.

Discussion: We appreciate the commenter's concerns. Department staff will document the on-site review, including a description of documents reviewed, an explanation of how those documents support the staff finding, and in the event of a negative finding, will require staff to make copies or upload a sample of documents that provide evidence to support a staff finding or recommendation. This will be included in the agency review and will be provided to NACIQI for their review of the agency.

The Department proposed this change in methodology in response to recommendations made by the Office of the Inspector General (OIG or IG) in its June 27, 2018 report, *U.S. Department of Education's Recognition and Oversight of Accrediting Agencies*.[26] The OIG report expressed concern that agencies are able to provide examples of their best work in deciding on their own which documents to include as evidence in their petition for recognition or renewal of recognition. Instead, OIG recommended a representative sample of documents that accurately reflect a complete picture of the agency's work. Moreover, the IG expressed concern that staff do not review an appropriate number of institutional or programmatic decisions relative to the number of institutions or programs the agency accredits.

The IG recommended that the accreditation group use risk-based procedures and readily available information to identify the specific institutions and an appropriate number of institutions that each agency must use as evidence to demonstrate that it had effective mechanisms for evaluating an institution's compliance with accreditation standards before reaching an accreditation decision.

The IG further recommended that the OPE accreditation group adopt written policies and procedures for evaluating agency recognition petitions that incorporate the elements of the recommendation described above and address specific documentation requirements to include each selected school's complete self-study report and the agency's site visit report and decision letter; and adopt a risk-based methodology, using readily available information, to identify high-risk agencies and prioritize its oversight of those agencies during the recognition period. These regulations and the June 2019 update to the Accreditation Handbook achieve these objectives.

The Department is concerned that already petitions include tens of thousands of pages and adding to the size of petitions creates a number of practical challenges including demands of agency and staff time. As a result, the Department has determined that by receiving lists of upcoming accreditation decisions 24 months in advance of the recognition decision, staff will have more opportunities to participate in site visits or observe agency decisions regarding institutions that have demonstrated risk characteristics. In addition, by performing an on-site review, staff can review sections or excerpts of more documents, meaning that their review will include consideration of a larger number of member institution or program files.

Changes: None.

Procedures for Department Review of Applications for Recognition or for Change of Scope, Compliance Reports, and Increases in Enrollment (§ 602.32)

Comments: Commenters stated that the Department should continue its practice of having career staff provide a draft report to agencies it reviews because the Department provides no reason to eliminate the practice.

Discussion: The regulations provide that, if an agency is required to be reviewed by the NACIQI under § 602.19(e), the Department will follow the process outlined in § 602.32(a) through (h) which includes a provision for a draft report to the agency. However, the regulations do not require staff to make a preliminary recommendation regarding an agency's recognition status at the time of issuing a draft report. Only after considering the agency's response to the draft staff report, including additional evidence provided by the agency, and performing its on-site review(s) should staff make a recommendation regarding an agency's recognition status.

Changes: None.

Comments: One commenter stated that under proposed § 602.32(b), the Department would only require that an accrediting agency provide letters from educators and institutions to show wide acceptance of the agency. However, the commenter suggested that both of those parties may have a conflict of interest in providing acceptance of the agency if they are an institution or work for an institution that is accredited by the agency. Further, the commenter stated that the requirement to show wide acceptance was not only applicable to initial approval, but also re-recognition. The commenter suggested that letters should not be used if all three come from the same institution and that the Department should justify why this provision should not apply to continued recognition.

Discussion: We appreciate the comments on this topic; however, once an agency has been recognized, the fact that it has member institutions serves as evidence that the agency is valued by institutions and educators. It is important to request support from educators and institutions during the review of an application for initial recognition since the Department needs to be sure that the agency is likely to maintain a healthy membership and is not being created for the purpose of accrediting a single institution. We believe the original widely accepted standard in § 602.13 was too subjective and was unclear about how many letters would be required to meet the standard. In some instances, agencies submitted multiple documents in support of their wide acceptance, yet staff found the agency to be out of compliance. In addition, this requirement could be used strategically by educators, licensing boards, and other agencies to block competition either among institutions or within the labor pool by narrowing available opportunities or the number of individuals who qualify for them. It is also possible that an agency that accredits a small number of programs or institutions could be a reliable authority on institutional quality, but because of the narrow scope of its work, lacks wide acceptance outside of the institutions for which it provides accreditation due to a lack of knowledge about the area by others, or due to philosophical differences in approach. The proposed change would streamline the current wide acceptance requirement while keeping guardrails for the initial recognition of an agency by ensuring they can demonstrate acceptance from the constituencies most relevant to them. The Department expects that letters of support reflect the wide variety of constituencies the agency serves but does not believe one-size-fits-all regulatory requirements align with statutory authority, nor would they improve accrediting agency quality. The Department believes this requirement is most appropriate during initial recognition because it helps validate that there is a need for a newly recognized agency.

Changes: None.

Comments: One commenter stated that the current § 602.32(d) specifies that final judgments on the merits by a court or administrative agency in complaints or legal actions against an accrediting agency are determinative of compliance. The commenter stated that the proposal to merely consider such final judgments is a significant change to the Department's procedures, and that the Department's explanation that the proposed change reflected the view of the Department and several committee members did not provide a justification that meets the burden of the APA.

Discussion: Current § 602.32(d) specifies that ''Department staff's evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the

[26] *www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09r0003.pdf.*

agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards.'' The proposed change in this section does not substantively change this requirement. Moreover, there is no mention of the results of a final judgment on the merits by a court or administrative agency anywhere in the current regulations in part 602. The language referenced in the new regulations at § 602.32(d)(2) states that complaints or legal actions against an accredited or preaccredited institution or programs accredited or preaccredited by the agency may be considered but are not necessarily determinative of compliance. This change was necessary to ensure that institutions and agencies have due process rights and benefit from the presumption of innocence such that allegations alone do not suffice as evidence of noncompliance.

Changes: None.

Comments: One commenter requested that the Department clarify what is meant, in § 602.32(e), by the statement: ''that the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession.'' Another stated that the Department provided no evidence that unnecessary qualifications are being imposed on students to sit for licensure or for certification and that the Department is trying to link the changes in § 602.32(e) and (k) in order to prevent accrediting agencies from working with licensing bodies and States to prohibit discrimination.

Discussion: The purpose of the change is to limit symbiotic relationships between accrediting agencies, institutions, and licensing boards, which together may limit access to professions by increasing education requirements without regard for consumer cost to the benefit of agencies, institutions, and licensing boards.

The Department views such behavior as anticompetitive and contrary to the spirit, if not letter, of the ''separate and independent'' provisions in HEA section 496 as well as to basic fairness and the goals of the HEA, namely, to expand opportunity to Americans.

In other instances, accrediting agencies may have formed such a close relationship with licensing boards that there is no opportunity for a new agency to form. Licensing boards may require individuals to have graduated from an institution approved by a specific accrediting agency to qualify for licensure. As a result, institutions—who want their graduates to obtain licensure—would not choose an agency who could not fulfill that licensure obligation. It may be difficult to sanction an agency that is the only agency providing the programmatic accreditation necessary for a graduate's entry into the workforce. Again, the Department places far greater importance on the acquisition of knowledge and skills than on how such knowledge and skills were acquired.

Changes: None.

Comments: One commenter stated that the Department failed to give an example, in connection with proposed § 602.32(e), of how an accrediting agency deprived a faith-based institution of accreditation because of its religious mission. The commenter stated that proposed § 602.32(e) would allow faith-based institutions to have their own accrediting agency, questioned what quality controls would exist for such an agency, and asserted that faith-based institutions should be required to adhere to the same academic standards as secular schools. Another commenter stated that the proposed regulations were not clear as to when an institution could make a complaint to the Department that its mission had been a negative factor in an accrediting agency's decision which could lead to confusion for accrediting agencies.

Discussion: We believe the commenters may have intended to refer to § 602.18(b)(3) rather than § 602.32(e). Although the Department does not have evidence that faith-based institutions have been deprived of accreditation because of their religious missions, we have seen instances in which agencies have proposed changes to their standards that would have prevented those institutions from following the tenets of their faith. Faith-based institutions were successful in blocking those changes, but if the accrediting agency had not been responsive to the requests of its faith-based members, the change could have interfered with the mission of a number of faith-based institutions.

The Free Exercise clause of the Constitution requires the Department to ensure that faith-based institutions are not deprived of access to Federal programs because of the exercise of their religious rights. A number of faith-based institutions have expressed concern to the Department that, while accreditation has ultimately been granted, some agencies have used accreditation to force institutions to implement policies and practices that may align with popular opinion, but may not be consistent with the tenets of their faith. Likewise, RFRA requires that the Federal government not substantially burden religious exercise unless it is the least restrictive means of furthering a compelling government interest. We are taking proactive steps to ensure that discrimination does not occur against faith-based institutions because of their religious exercise. Agencies that accredit faith-based institutions must meet the same standards to obtain recognition from the Secretary that are applicable to all accrediting agencies seeking the Secretary's recognition. All institutions have access to an existing complaint process that provides an opportunity for institutions to raise their concerns, including concerns about respect for their missions, to the Department. These regulations do not change the existing complaint process.

Change: None.

Comments: One commenter stated that, because the regulations do not specify how many or which criteria the accrediting agency must meet to be substantially compliant, the proposed regulations may allow an agency to be out of compliance with multiple criteria and still be a gatekeeper for Federal aid. Two commenters agreed with allowing an agency to continue to be recognized if it was in ''substantial compliance'' because it would allow an agency a four-year grace period to resolve any regulatory lapse, and, as one commenter noted, the language also ensures the unfettered ability of Department staff to re-escalate an issue, should it prove more serious than initially determined. The commenter also noted that the Department would only use the designation in cases where an agency achieved compliance in all but a technical sense.

Discussion: The Department disagrees with the commenter who stated that the ''substantial compliance'' standard would allow a noncompliant agency to continue to be recognized. An agency that is out of compliance would not be found to be substantially compliant. However, in some instances an agency may have been acting in accordance with the Department's requirements but may have a written policy that does not clearly articulate every aspect of the agency's policies or procedures. In other instances, the agency may have the correct policy in place and mostly acted in accordance with the policy but may be found to have a limited number of instances when special circumstances or employee error resulted in the agency deviating from its written policy. In other instances, a missing signature or the use of language that is not precisely the same as the language in the Department's regulations could result in a finding of noncompliance although the agency's actions meet the Department's requirements.

As one commenter noted, the proposed language regarding the use of monitoring reports for agencies that are substantially compliant relates to situations where there were technical compliance issues, but the agencies were meeting the spirit of the requirements. Section 602.3 makes clear that a monitoring report is required to be submitted by an agency to Department staff when the agency is found to be substantially compliant but needs to make a minor correction to its policies or practices. The report must contain documentation to demonstrate that the agency is implementing its current or corrected policies, or that the agency, which is compliant in practice, has updated its policies to align with those compliant practices.

Changes: We have made no changes as a result of this comment. However, we have modified § 602.32 by condensing paragraphs (j) through (m), removing redundant language, including removing proposed § 602.32(k), which was identical to proposed § 602.32(e), and clarifying the process Department staff follow in their review of applications for recognition or for change of scope, compliance reports, and increases in enrollment.

Procedures for Review of Agencies During the Period of Recognition (§ 602.33)

Comments: Several commentators stated that the proposed rules regarding the application process would make it more difficult for the Department to remove ineffective accrediting agencies that serve as gatekeepers for title IV aid. One commenter stated that the concept of a monitoring report for accrediting agencies that are ''substantially in compliance'' rather than fully meeting all requirements was a broad term that had no basis in statute. The commenter stated that the process would allow Department staff to make decisions without full transparency and public accountability versus a ''typical full agency review.''

Discussion: The Department's intention in introducing the monitoring report is to enable accrediting agencies to more effectively resolve instances of minor exceptions to full compliance. Furthermore, we believe that the use of monitoring reports will increase the likelihood of identifying and correcting minor problems before they become larger problems.

An accrediting agency that is failing to meet the Department's criteria for recognition remains subject to withdrawal of recognition. The Department has not yielded its authority or forfeited its responsibility for assuring that accrediting agencies are qualified gatekeepers of title IV aid. While the statute does not specify ''substantial compliance'' as a status for accrediting agency recognition, it does not preclude the Secretary from making this designation and for many years substantial compliance was the standard used by the Department during recognition reviews. The introduction of the monitoring report and designation of substantial compliance provides the Department with more efficient and effective tools and methods to address minor deviations in process or procedures to ensure full compliance. It is also important to note that the monitoring report increases the level of transparency for recognition or accreditation decisions as it provides evidence that any minor omissions or inconsistencies are resolved, and that policies and procedures are put in place to prevent future inconsistencies. The monitoring report will be employed in situations where the accrediting agency is substantially compliant and requires only minor actions or sufficient time to come into full compliance.

Changes: None.

Comments: Regarding proposed changes to § 602.33(c), one commenter stated that an on-site ''spot check'' of records during a visit may not be sufficient to understand an agency's full body of work during a review period. The commenter also noted that the Department must also have sufficient staff to handle the workload should these rule changes increase the number of agencies that need to be reviewed and monitored. The commenter supported the provisions that require the Department, for issues that cannot be resolved by Department staff, to seek public comment, make a recommendation to NACIQI, and, ultimately, refer the issue for Secretarial action; however, the commenter felt that the Department's decision to continue or not continue monitoring should also be public. One commenter stated that the Department should do more to monitor competition between accrediting agencies.

Discussion: We disagree that the provisions of § 602.33(c) constitute a ''spot check.'' The regulations will require the Department staff to conduct a thorough review and analysis of identified areas of concern or inconsistency. The on-site review is designed to increase the quality and scope of documents staff review, based on institutions or actions selected by staff, while reducing the burden of uploading thousands of pages of documents that may not be responsive to staff's specific concerns or questions. We appreciate the commenter's support for the provisions that require escalation of unresolved issues to NACIQI and believe that this process affords sufficient and appropriate transparency to the public. In response to the commenter who believed the Department should make its decision regarding the continuation of monitoring public, we reiterate that we will use the monitoring report for minor omissions or inconsistencies that we do not believe are cause for public concern.

The Department seeks to acknowledge and correct even small deviations from standard practice to ensure that they are resolved before becoming larger problems, while at the same time not creating unnecessary work for the agency or taking time from a NACIQI meeting that would be better spent focusing on agencies with more serious compliance concerns.

With regard to the commenter's concern that these regulations will reduce the stringency of the Department's oversight, we believe instead that these new regulations provide greater opportunities for the Department to take necessary action against an accrediting agency. For example, when institutions were limited to selecting an agency based on their location, and entire regions of the country were accredited by a single accrediting agency, the Department would have been reluctant to withdraw recognition from a regional accrediting agency, leaving an entire region of the country without a comprehensive institutional accrediting agency. The Department believes there is always a small risk that some agencies may feel pressured to lower standards in order to attract more member institutions. However, the Department does not believe this risk will grow as a result of these regulations and, as always, will be vigilant in monitoring agencies that insufficiently monitor the quality of the institutions and programs they oversee. The Department believes that by reducing unnecessary administrative burden from the recognition process, accrediting agencies can devote more time and resources to their primary responsibility of overseeing institutional quality and the student experience.

The Department will perform risk-based analysis and review of agencies, including between official renewal of recognition activities, when we detect signs of risk through our various monitoring and program review activities. Through these revised processes, the Department believes it will be able to more effectively identify and act against agencies that may be at risk of reducing rigor and causing harm to students and taxpayers.

Changes: None.

Comments: One commenter stated that the Department proposes eliminating a requirement that it review an agency at any time at the request of the NACIQI and that it does not mention this change in the NPRM. The commenter stated that the Department provides no reasoning or justification and appears not to have discussed this change during the rulemaking. The commenter stated that it is particularly problematic given the proposal to conduct monitoring reports without input or review from NACIQI.

Discussion: The regulations do not eliminate an investigation at the request of NACIQI. This requirement is addressed in § 602.33(a)(2), which requires Department staff to act on information that appears credible and raises concerns relevant to the criteria for recognition. Thus, if NACIQI were to make a credible request, based on evidence of risk, the Department staff would act on this request and initiate a review or investigation.

Changes: None.

Senior Department Official's (SDO's) Decision (§ 602.36)

Comments: A few commenters opposed the additions to the types of decisions the SDO may make in § 602.36(e), such as approving agencies for recognition and approving recognition with a monitoring report. These commenters feared the change would impede the Department's ability to perform an appropriate oversight function over accrediting agencies. Additionally, these commenters believed this change would conceal important monitoring of agencies not only from NACIQI, but also from the public. These commenters requested that the Department abandon these changes and fully review and evaluate accrediting agency performance.

Discussion: The Department believes that creating required monitoring reports provides an additional tool to ensure accrediting agency compliance with recognition criteria. Under the current regulations, when the Department identifies minor omissions or inconsistencies in an agency's standards, policies, or procedures, the Department may not take action because the required action would be unjustifiably severe. On the other hand, the Department has sometimes determined a seasoned accrediting agency to be noncompliant because a single form was left unsigned or changes in board membership temporarily change the ratio of board participants. By adding the substantial compliance determination and a required monitoring report, the Department has the opportunity to award continuing recognition and continue to address minor irregularities or omissions. We will restrict the use of the monitoring report to instances when an agency has demonstrated substantial compliance and limit its use to low-risk situations. The monitoring report, for example, could include documentation to show that an agency has updated its written policies and procedures to align with its current practice, to ensure that controls have been put in place to make sure that all documents are properly signed, or to demonstrate that minor deviations that were made in order to accommodate students in unusual circumstances have not become standard practice.

The decisions of the SDO are predicated on demonstrated compliance or substantial compliance with the criteria for recognition listed in subpart B of this part. Those decisions do include a wide range of determinations including, but not limited to, approving for recognition; approving with a monitoring report; denying, limiting, suspending, or terminating recognition; granting or denying an application for an expansion of scope; revising or affirming the scope of the agency; or continuing recognition pending submission and review of a compliance report. These decisions are based on the SDO's assessment of the agency's petition for recognition, Accreditation Group staff analysis and agency response, and the NACIQI review.

Changes: None.

Comments: A few commenters also criticized the changes in § 602.36(e) and (f) that allow the SDO to determine that an agency is compliant or substantially compliant. These commenters expressed concern that a determination of substantial compliance represents a weakening of protections or the allowance of agency inaction.

A few commenters specifically disagreed with the change in § 602.36(e)(1)(i) allowing the SDO to determine that the agency has demonstrated compliance with a standard when an agency has required policies and procedures in place but has not had an opportunity to apply them. These commenters believed that this change violates the HEA, which they claimed requires the Department to act within 12 months or remove the agency's recognition if it does not comply or effectively apply required criteria. One commenter suggested that agencies could continually create new standards to avoid a Department finding for failure to follow their standards. Two commenters suggested that the Department withdraw this change.

Discussion: We disagree with the commenters who argued against allowing the SDO to determine an agency to be compliant or substantially compliant. The provision still requires that the SDO make a compliance determination. We do not believe that this weakens the standard. Instead, we believe it allows the SDO to raise concerns about even small irregularities or omissions, and require the agency to resolve them, while at the same time allowing NACIQI to focus their time on agencies with clear areas of noncompliance.

We also disagree with the commenters who opposed allowing the SDO to determine that an agency demonstrated compliance when the agency had the required policies and procedures in place but had not had the opportunity to apply them. We do not believe it is appropriate to penalize an accrediting agency that has the appropriate policies in place but has not had the need or opportunity to apply those policies during the review period. For example, a small accrediting agency may have policies in place to evaluate an expansion of scope at a member institution to include distance learning, but it may have no members that participate in distance learning or that add distance learning during the review period. Similarly, an agency may have a change-of-control policy in place, but it may not have had an institution that requested consideration of a change-of-control during the review period, and the agency would have had no need to implement the policy. Accrediting agencies with a small number of members may have few or even no institutions that go through an initial accreditation or renewal of accreditation review during the agency's five-year recognition review period since agencies typically accredit institutions every 10 years.

The Department believes that this is consistent with statute, which requires an agency to have accredited or preaccredited only one institution prior to being eligible for recognition. It is unlikely that an accrediting agency would be required to implement all of its policies in the course of accrediting or preaccrediting a single institution, which makes it clear that Congress did not expect that each agency would be required to implement every policy during each review cycle. This is not a change in policy because staff have considered these instances to meet the standard for compliance; however, the

Department seeks to codify this practice in these regulations.

To be clear, this policy does not ignore instances when an agency elected to ignore a problem and not implement its written policies, but instead takes into account that agencies may not need to exercise every one of its policies during a five-year review period, and that is not a violation of the requirements of the HEA. In such a case, the Department will review the policies and procedures in place to be sure they comply with the Department's requirements. In addition, as soon as the need to apply that policy arises, the agency will be required to notify the Department so that the Department has the opportunity to conduct an evaluation of the agency's application of the policy. The agency has not failed to comply if it has not had the need or opportunity to apply a particular policy, as long as it has a policy in place and implements it properly if and when the need arises.

Changes: None.

Severability (§ 602.39)

Comments: None.

Discussion: We have added § 602.39 to make clear that, if any part of the regulations for part 602, subpart C, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 602.39 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Secretary's Recognition Procedures for State Agencies

Criteria for State Agencies (§ 603.24)

Comments: One commenter supported the Department's removal of the requirement for State agencies that function as accrediting agencies to review and evaluate institutions' credit hour policies. This commenter agreed with the Department that the requirement adds burden without evidence of increased accountability, benefit to taxpayers, or assistance to students.

Discussion: We thank the commenter for the support of the removal of this provision. We believe that it is beneficial to reduce burden when it does not jeopardize accountability.

Changes: None.

Comments: One commenter challenged the Department's assertion that the requirements were ''overly prescriptive'' and did not agree that State agencies functioning as accrediting agencies needed fewer restrictions in this area.

Discussion: The Department maintains its position that the requirements in § 603.24(c) to review policies related to credit hours are overly prescriptive and that the State agency serving as an accrediting agency should have autonomy and flexibility to work with institutions in developing and applying credit-hour policies. This change does not, as some commenters suggested, remove all oversight of institutions in this area (see the discussion above related to § 602.24). Instead, it provides for more flexibility and treats State agencies that serve as accrediting agencies the same as other agencies.

Changes: None.

Severability (§ 603.25)

Comments: None.

Discussion: We have added § 603.25 to clarify that if a court holds any part of the regulations for part 603, subpart B, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 603.25 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Standards for Participation in the Title IV, HEA Programs

End of an Institution's Participation (§ 668.26)

Comments: Several commenters supported allowing institutions to award and disburse title IV aid for up to 120 days following the end an institution's eligibility. These commenters noted that this would allow more students to complete their academic programs at the institution they selected without the disruption involved in relocating to another institution. One commenter also expressed that this change benefits closing institutions by providing continuity and strong operations through a closure.

Discussion: We thank the commenters who supported the provision allowing a school to allow students an opportunity to complete their academic program at their chosen institution if they can do so within 120 days. This minimizes disruption and allows for greater flexibility for students and for institutions—especially those who planned an orderly closure.

The Department realized that, as written, § 668.26(e)(1) could be read by some to permit an institution that no longer participates in title IV programs to continue receiving title IV aid. Instead, the Department's intent was a desire to enable the Secretary to allow an institution to continue participating in title IV programs for up to 120 days after a State, an accrediting agency, or the Department has made the decision to remove State authorization, accreditation, or title IV participation, but defers the effective date of that decision.

Comments: One commenter generally supported this provision but also expressed concern that the Department would not allow for more than 120 days of funding following the decision to end an institution's participation. This commenter suggested alternative language that outlined parameters for which an institution would retain funding. These suggestions included disbursing only to students who were already enrolled when the institution announced its closure, disbursing only to students who had already completed at least 50 percent of the academic program, allowing disbursements only for institutions that were voluntarily withdrawing from participation in the title IV programs, and requiring the accrediting agency to approve the teach-out. These conditions, in the commenter's opinion, provided for what the commenter believed was the Department's intent—allowing for students to receive funding during an orderly closure of an institution.

Discussion: We appreciate the support from the commenter and note that we have revised § 668.26 to more clearly articulate the need for the State authorizing agency, accrediting agency, and Department to all agree that the institution has the capacity to conduct an orderly teach-out based on the teach-out plan provided by the institution. We note that we had addressed most of the concerns expressed in the NPRM; however, we agree that additional assurances by each member of the triad are needed to provide an appropriate teach-out opportunity to students. To reiterate, in our proposal, we imposed numerous requirements on institutions that wish to avail themselves of the flexibility afforded by this provision. Most importantly, the Secretary may permit the institution to continue to originate, award, or disburse title IV, HEA program funds following a State authorizing agency or accrediting agency's decision to withdraw, suspend, or terminate State authorization or accreditation in circumstances when such a decision has a deferred effective date, and only if the State authorizing agency and accrediting agency agree that the cause of the probation or termination decision would not prevent the institution from engaging in an orderly teach-out. Note, however, that this is permissible only in certain circumstances and only with agreement from an institution's State authorizing agency and accrediting agency. In addition, the permission to originate, award, or disburse funds may not extend beyond the delayed effective date of the withdrawal, suspension, or termination decision, or 120 days following that decision, whichever is earlier.

We require the institution to notify the Secretary of its plans to conduct an orderly closure and teach-out in accordance with accrediting agency requirements. Additionally, we compel the institution to continue to follow the terms and conditions of the program participation agreement.

Finally, we limited the disbursements to enrolled students who could complete the program within the 120 days following the date of a final, non-appealable decision by State authorizing agency to remove State authorization, an accrediting agency to withdraw, suspend, or terminate accreditation, or the Secretary to end the institution's participation in title IV, HEA programs. Students would also be able to transfer to a new institution. To further protect both students and taxpayers, the Secretary together with the institution's State authorizing agency and accrediting agency must determine that with continuing title IV resources the institution is able to carry out a teach-out, and that the cause for the withdrawal, termination, or suspension of State authorization or accreditation would not prevent the institution from conducting a high-quality teach-out. For example, an accrediting agency could make the decision to withdraw accreditation because an institution does not meet the agency's requirements for long-term financial viability; however, the institution may still have sufficient resources if title IV participation continues to provide a teach-out that meets the requirements of the approved teach-out plan.

We did not limit the provision to those who voluntarily withdrew from participation in the title IV programs. We believe that in those instances institutions are already permitted to continue to participate in title IV programs until the end of the approved teach-out plan or until such time that the institution is no longer providing a teach-out opportunity that meets the requirements of the teach-out plan.

We agree that it is important for the State authorizing agency and the accrediting agency, not the institution itself, to determine regulatory requirements. We believe this adds additional assurances that the commenter thought were important.

We do not agree with the commenter who believed that we need to provide for additional time beyond the 120 days after a decision to end participation in the title IV programs. We note that an institution executing an orderly closure has not ended its participation in the title IV programs by announcing a future closure. As an example, if an institution announces in July that it will operate for one more academic year and close at the end of its spring semester (which ends the following May), the institution continues to participate in the title IV programs and continues to receive title IV funds without the possible extension that may be available under this provision.

Changes: The Department has added language to clarify that, in the event that the State authorizing agency or accrediting agency has made the decision to withdraw, suspend, or terminate accreditation or authorization, the Secretary may consider granting the institution the 120-day teach-out opportunity only if the institution's State authorizing agency and accrediting agency agree that the cause for that negative action would not prevent the institution from conducting an orderly teach-out.

Comments: Several other commenters opposed the Department providing title IV funds to students to allow them to complete a teach out for up to 120 days after a decision to end an institution's title IV eligibility. These commenters expressed serious concern about loosening standards for schools, expecting taxpayers to spend additional money to fund them, and preventing students from obtaining closed school discharges.

Discussion: We disagree with the commenters who believe that the goal of this provision is to avoid closed school discharges. The Department reiterates that the Secretary may—but is not required to—allow the use of this option in the event that the State authorizing agency makes the decision to end authorization, or the accrediting agency makes the decision to terminate, suspend, or withdraw accreditation, or the Department makes the decision to end the institution's title IV participation, but only with the agreement of the State authorizing agency and the institution's accrediting agency. This maximum 120-day extension of participation would be provided only when the institution demonstrates the capacity to administer title IV funds appropriately and provide a high-quality teach-out experience. Additionally, students who meet the closed school discharge requirements, and who did not opt to participate in the teach-out, would still be eligible for a closed school loan discharge as would students who agreed to participate in the teach-out in instances in which the institution does not fulfill the requirements of the teach-out plan and meet the other requirements. A student who elects to participate in a teach-out, and then fails to complete the courses that were part of the student's teach-out agreement due to no fault of the institution, would not be eligible for a closed school loan discharge. The Department will not permit an institution to continue to participate in title IV after a decision has been made by the State authorizing agency, the accrediting agency, or the Department to remove authorization, accreditation, or to end title IV participation, without first confirming with the institution's accrediting agency and State authorizing agency that the institution has the capacity to conduct the 120-day teach-out, and that the reason for the withdrawal, termination, or suspension of State authorization or accreditation does not prevent the institution from completing an orderly teach-out.

Only those students who are enrolled will be able to participate in the teach-out either to complete their program or to transfer to a new institution. The institution would not be permitted to advertise or enroll new students during the 120-day period, in accordance with § 668.26(e)(1)(iii).

Changes: We have revised § 668.26(e)(1) to clarify that the provision for continued participation in title IV, HEA programs, for up to 120 days must precede the point at which the Secretary terminates the institution's program participation agreement; to clarify that a student may take credits for the purpose of transferring to another institution; and to provide other clarifying and conforming edits.

In addition, we have modified § 668.26(e)(2) to cross-reference the regulations that address misrepresentation to students by the institution regarding the teach-out plan or teach-out agreement.

Severability (§ 668.29)

Comments: None.

Discussion: We have added § 668.29 to clarify that if a court holds any part of the regulations for part 668, subpart B, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 668.29 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Reporting and Disclosure of Information (§ 668.41)

Comments: Multiple commenters opposed the proposed changes to the job placement rate disclosures. Many of those specifically opposed the change that would require an institution to disclose any placement rate it calculates. Those commenters also opposed the elimination of a requirement that institutions identify the source, timeframe, and methodology of the job placement rates they do disclose. One commenter suggested that by changing the requirements, an institution is likely to cherry pick the best calculations to disclose to students. Additionally, that commenter said that Federal funds should not support students in academic programs related to employment requiring licensure if the program does not meet the licensure requirements in a given State. Another commenter who opposed changes to the job placement disclosure requirements stated that placement rates are the most commonly inaccurate or misleading advertisements for academic programs. Another commenter stated that the Department did not justify why an institution is not required to disclose any job placement rate calculated at the behest of a State authorizer or accrediting agency.

Discussion: The Department does not believe that the changes to the job placement rate disclosures will weaken protections to students. The Department believes that, if an institution uses a job placement rate in its advertising for students, or if an institution's accrediting agency or State requires the calculation of a job placement rate, the institution should be required to disclose those rates publicly. However, the Department agrees with the commenter that job placement rates are subject to inaccuracies and inconsistencies due to the reliance on self-reported data and the myriad methods used to calculate these rates. The Department believes that requiring institutions to disclose any job placement rates they calculate may cause institutions to simply calculate such rates less often or publish rates based on flawed methodologies or surveys that have an insufficient survey response rate. Required disclosure of any calculated job placement rate may yield unintended consequences, including diminishing institutions' willingness to examine ways to improve their program's placement rates or requiring the disclosure of data to students and prospective students that could be incomplete, invalid, or unreliable. The Department believes institutions should have the right to utilize internal data to diagnose and address program weaknesses and that this flexibility will benefit students.

The Department disagrees with the commenter who claims institutions will disclose only positive calculations to students. The Department believes that institutions will work to improve their programs when job placement rates reflect poor results. Improving programs will help students, who will benefit from stronger programs and better job options after completion.

There are other regulations that prohibit misrepresentation in advertising, including any misrepresentation of job placement rates used by an institution in advertisements.

The Department believes that the regulations at § 668.41(d)(5)(ii) that require an institution to identify the source of the information provided in job placement rates is duplicative of the requirement in § 668.41(d)(5)(i) that informs institutions that they may provide this disclosure using the institution's placement rate for any program based on data from State data systems, alumni or student satisfaction surveys, or other relevant sources and, as a result, is unnecessary. The changes made to this regulation do not prohibit institutions from providing students the calculation method they used to determine their published job placement rates.

The Department also disagrees with the commenter who stated that programs that do not lead to licensure or certification should not be eligible to participate in the title IV programs. Students may wish to enroll in programs with no intention of attaining licensure or certification in that field and should retain the right to do so as long as they are aware of the limitations of the program. The Department also notes that, in § 668.43(a)(14), the regulations require the disclosure of any placement rates calculated and reported to the institution's accrediting agency or State, if the agency or the State requires them.

Changes: None.

Institutional Information (§ 668.43)

Comments: Many commenters encouraged the Department to maintain strong disclosure requirements for institutions to help level the information playing field between students and institutions.

One commenter recommended that the Department require institutions to share all disclosures through ''appropriate publications, mailings or electronic media,'' rather than having disclosures be ''readily available.'' That commenter continued by stating that the Department should develop requirements that preclude institutions from burying disclosures on a website with a lengthy list of other disclosures.

Discussion: The Department thanks those commenters that encouraged the Department to maintain strong disclosure requirements for institutions. The Department continues to believe that providing disclosures on all programs that lead to licensure or certification, regardless of instructional modality, is the best way to ensure that all students are aware of the program's ability to prepare the student to sit for licensure or certification exams or qualify for licensure or certification.

While the Department would applaud any institution that exceeds the requirement for making these required disclosures, the Department remains committed to requiring only that institutions have them ''readily available.'' This is consistent with the statutory requirements for information dissemination activities in HEA section 485(a)(1).

Changes: None.

Comments: Multiple commenters expressed support for a disclosure related to transfer credit policies, suggesting that this change may encourage institutions to discontinue the practice of awarding transfer credit solely on the source of accreditation or tax status of the sending program or institution. The commenters stated that having credit transfer policy disclosures will provide transparency for students and help to ensure that institutions do not deny students a fair and fulsome evaluation of their earned academic credits.

One commenter recommended that the Department also require this disclosure to be made to part-time students. Another commenter suggested that all accredited institutions' academic credits should be transferable because accredited institutions must meet established standards for course content, quality, and rigor.

Discussion: The Department thanks those commenters who supported the Department's inclusion of a transfer credit disclosure. The Department views this requirement as necessary to ensure transparency to institutional policies related to transfer credits. The Department agrees that part-time students should also receive this disclosure.

The Department does not have the authority to require institutions to accept academic credits earned at an accredited institution because the authority for that determination resides with the institution. The Department of Education Organization Act of 1979 (Pub. L. 96–88) prohibits the Department from dictating such matters.

Changes: None.

Comments: Multiple commenters opposed the inclusion of a transfer credit disclosure, including one commenter who stated that it would be duplicative and unnecessary for an institution to include in its transfer credit policy the disclosure of any types of institutions from which they will not accept credit. One commenter stated that this disclosure would interfere with academic review of credits by faculty members and would result in students receiving a poorer quality education from their programs. Another commenter stated that the disclosure would strip institutions of the autonomy to independently determine the transferability of credit and force institutions to accept credit from institutions that the accepting institution finds to be academically substandard.

Discussion: The Department does not believe it is duplicative to require institutions to list any types of institutions from which the institution will not accept credits when also providing a description of the transfer credit policies. It is in the best interest of students to receive information about whether their credits will or will not transfer prior to attempting to transfer. Providing transparency to students regarding an institution's transfer credit policies will improve their ability to make informed enrollment decisions. In some cases, these disclosures will reduce the instances of students having to retake coursework or take additional courses after transferring to an institution that will not accept their previously earned credits. This requirement will not interfere with the academic review of a student's transfer courses or result in students who are less prepared academically. The Department is not requiring institutions to adopt a particular policy but is requiring institutions to disclose their policies and practices; it is vitally important for students to know if an institution categorically rejects credits based on the accrediting agency or tax status of other institutions.

This disclosure has no impact on the academic review of credits by faculty members, or the autonomy to independently determine the transferability of credit. Moreover, it does not force institutions to accept credit from institutions that the accepting institution finds to be, as the commenter noted, academically "substandard." The disclosure simply requires institutions to inform prospective students of any institutions or types of institutions from which it will not consider the transferability of earned academic credits.

Comments: Multiple commenters expressed support for the inclusion of a requirement that institutions disclose to students whether their educational programs meet the requirements for licensure across States so that a student will know if their investment in an educational program will lead to the career the student intends to pursue. One commenter stated that this provision would encourage institutions to conduct research regarding whether their programs fulfill requirements for State licensure, and that it is vitally important for students to have as much information on State licensure as they can obtain. Another commenter called this a "common-sense requirement" that will help prospective students from wasting money on programs that will not lead to licensure.

Discussion: The Department thanks those commenters who expressed support for the inclusion of licensure and certification disclosures. The Department continues to encourage institutions to determine if their programs meet licensure requirements and hopes that these regulations will encourage institutions to conduct such research.

The Department acknowledges, however, that, in some instances, it can be difficult to ascertain the requirements for licensure or certification in certain States, and that States sometimes have conflicting requirements, which means that the institution may not be able to make the determination in every State or develop programs that meet the requirements of all States.

Changes: None.

Comments: Many commenters opposed the Department requiring institutions to disclose if a program meets a State's licensure or certification requirements. One commenter noted that students have as much access to State licensure requirements as institutions do. Another commenter opined that requiring institutions to assess whether a program meets the educational requirements for licensure or certification for employment in an occupation (§ 668.43(a)(5)(v)) should be removed because the disclosure is not required by the HEA and it places an undue burden on institutions.

One commenter who opposed the inclusion of licensure disclosures asserted that many students do not want licensure and to require an institution to disclose this information creates undue burden to them for a reason that is not always the case. The same commenter opined that to obtain information on licensure and certification is difficult because the appropriate agencies do not always respond timely to inquiries. This commenter expressed concern that this disclosure requirement may discourage institutions from offering programs that lead to a career that requires licensure or certification because of the extra work this disclosure requirement would cause.

Another commenter suggested that instead of requiring institutions to determine whether their program meets the requirements for State licensure or certification, the Department should require the States to make it easier to find and follow the State's licensure requirements.

One commenter noted that the Department should reconsider its use of the student's location in determining the correct location for a licensure disclosure because a student may not plan to obtain licensure in the same location that the student is taking their courses. Another commenter requested that the Department go beyond requiring disclosure of whether programs meet State licensure requirements and require that all programs meet State licensure requirements in all States where the institution offers the program.

One commenter asked whether the Department means to permit an institution to continue to advertise a program based on whether the program would fulfill educational requirements for licensure or certification, but allow the institution to only make a disclosure to students on whether the institution had not made such a determination. The commenter was concerned that this would allow an institution to advertise misleading or inaccurate information about whether a program meets licensure or certification requirements.

One commenter asked for advice on how to successfully comply with this requirement when many boards will not confirm whether the program meets licensure requirements until individuals apply for licensure or certification. Another commenter asked for clarification on what programs provide licensure or certification and would be bound by the licensure and certification disclosures. The commenter asked whether an accounting program that meets the requirements to sit for the Certified Public Accounting exam only in some States the program is offered in, but does not meet the qualifications to sit for that exam in other States, should be held to the licensure and certification disclosure.

Another commenter encouraged the Department to retain the requirement for an institution to provide direct disclosures, especially related to when a program does not meet the licensure and certification requirements for a State.

Discussion: The regulations do not require an institution to make an independent determination about whether the program it offers meets the licensure or certification requirements; the regulations provide that an institution may disclose that it has not made a determination as to whether a program's curriculum meets a State's educational requirements for licensure or certification. Including that option provides sufficient flexibility so that an institution need not incur any additional burden.

The Department agrees that students may have the same access to State licensure and certification requirements as an institution; however, students may not have access to the requisite information to determine whether the program meets those requirements without assistance from program experts at the institution.

The requirements in § 668.43(a)(2) are for all programs that lead to licensure or certification, or that should lead to licensure or certification, regardless of whether these programs are offered through distance learning, through correspondence courses, at brick-and-mortar institutions, or through another modality.

While the Department believes that students who enroll in programs that do not meet licensure and certification requirements for a State could still be title IV eligible, the Department also believes that an institution should disclose this information to all individuals who enroll in these programs so that they are making an informed enrollment choice. The Department does not believe that this disclosure will dissuade institutions from offering legitimate academic programs that may lead to State licensure or certification since, absent confirmation of the program's alignment with licensure requirements, the institution can simply notify a student that they have not determined whether its program meets those requirements. If an institution opts to not confirm whether a program meets the requirements for a State because it enrolls a small percentage of students in that State, the institution will remain compliant by disclosing that it has not made a determination.

The Department understands that students may not plan to obtain licensure where they have established their location of record with the institution. However, the institution has an obligation to make this disclosure to students based on the students' current location. Additionally, we believe the term ''located'' will minimize confusion related to State legal residence requirements and is the term most commonly used by States in policies related to distance education.

The Department requires institutions to only advertise true and factual statements about their programs. While the Department does not preclude an institution from advertising a program for which it has not made a determination regarding the program's alignment with State licensure or certification requirements, the Department expects that institutions will accurately and truthfully provide that information on the required disclosure.

Regarding the timing of these disclosures, the Department expects that the institution will provide this disclosure before a student signs an enrollment agreement or, in the event that an institution does not provide an enrollment agreement, before the student makes a financial commitment to the institution. The Department further expects that an institution will determine a student's ''location'' based on its published policies, and that the location may include the address provided by the student at the time of enrollment or at any point when the student notifies the institution in writing of a change in location to a new State.

The Department does not believe these regulations will limit the States in which an institution may recruit students since the institution can simply state that it has not determined whether the program meets State licensure or certification requirements in that State. However, the Department concedes that institutions that do make that determination may have a marketing advantage, since it might better inform student choice.

The Department notes that these regulations require direct disclosures to students regarding licensure and certification as described in § 668.43(c) and has not removed that requirement entirely; rather, the Department has clarified that this direct disclosure may be through email or other forms of electronic communication.

Changes: None.

Comments: Another commenter stated that they support this requirement but requested additional time for institutions to become compliant. Multiple commenters requested a delay of at least three years after the effective date of the regulations and contended that, since ''brick-and-mortar'' programs were not previously subject to this type of requirement, it would not be feasible to comply by July 1, 2020. Another commenter asked whether an institution must comply with both the current regulations, effective as of July 1, 2018, or the new regulations, which will become effective on July 1, 2020. The commenter argued that the creation of two different processes to comply with two separate regulations would be extremely burdensome to the institution.

Discussion: It is the Department's view that institutions do not require additional time to become compliant with the licensure or certification disclosure since an institution can comply with this disclosure requirement by informing students that it has not made a determination about whether its programs meet the licensure or certification requirements for a State. If the institution later makes a determination that its program does not meet a State's requirements for licensure or certification, it must disclose this fact. Therefore, the Department believes institutions can comply with this provision by July 1, 2020. Until July 1, 2020, an institution must comply with the disclosure requirements of the State

Authorization regulations published on December 19, 2016.

Changes: None.

Comments: Multiple commenters were supportive of the use of the term ''location'' when used for disclosures on licensure or certification, but asked for clarification on when, specifically, the Department considers an individual to be enrolled at the institution. One commenter also asked for clarification on what is meant by ''formal receipt of change of address by a student'' as it pertains to this disclosure. Another commenter stated that he supported the Department's willingness to allow institutions to use their own policies to determine a student's location.

Discussion: The institution determines the student's location at the time of initial enrollment based on the information provided by the student, and upon receipt of information from the student that their location has changed, in accordance with the institution's procedures. Institutions may, however, develop procedures for determining student location that are best suited to their organization and the student population they serve. For instance, institutions may make different determinations for different groups of students, such as undergraduate versus graduate students.

Changes: None.

Comments: One commenter strongly supported the Department's proposal to require an institution to disclose information about teach-out plans.

Discussion: The Department appreciates the support of the commenter and believes that requiring disclosures about an institution's teach-out plans and why an accrediting agency is requiring an institution to maintain one is an important disclosure for a student to receive.

Changes: None.

Comments: Multiple commenters raised concerns about the lack of specificity regarding what ''actions'' among the many actions that could be taken against an institution would require notification under the proposed rule, and what kind of ''notice'' would be sufficient to comply with this regulation.

In particular, one commenter stated that there are several types of notice, all of which might be legally sufficient depending on the circumstances, but nevertheless would reflect different approaches by institutions to meeting the standard.

Several other commenters, in addition to asking what constitutes sufficient notice, asked for greater clarity concerning which actions rise to the level of requiring notification. Another commenter pointed out that damage could be done to an institution as a result of a notification requirement, if the institution is required to supply notice of an investigation, action, or prosecution by a law enforcement agency before the investigation is complete and concerns are substantiated, and that such damage could be unjustified to the extent that the concerns are not ultimately substantiated. These commenters did not directly oppose the requirement that institutions disclose adverse actions against them, as proposed in § 668.43(a)(20), but instead sought clarification regarding which actions rise to the level that requires notice.

One commenter noted the general burden on institutions given the number of disclosures already required of institutions.

Other commenters supported the inclusion of disclosures related to investigations conducted by a law enforcement agency for issues related to academic quality, misrepresentation, or fraud. One commenter sought to ensure that the proposed rulemaking includes actions from law enforcement agencies, attorney general offices, or state authorization entities so that all investigations that could impact an institution's state authorization are included.

Discussion: As a matter of first principles, the Department believes a student is entitled to transparency and robust disclosure of pending legal actions by law enforcement agencies but realizes unwarranted allegations could impact the student's ability to complete their education or diminish the value of their education. The Department believes that legal actions that bear on an institution's accreditation, State authorization, or continuing participation under title IV are the types of legal actions that have the greatest potential to impact students. Therefore, by this rule, the Department seeks to ensure that these categories of legal actions are fully disclosed to students.

The Department recognizes, in light of comments that it received, that the disclosure language provided in this section of the NPRM lacks the necessary specificity to guide institutions as they grapple with the practical challenges of determining which actions should result in notification and how that disclosure should be made. The use of terms such as ''actions'' and ''other severe matter[s]'' would result in unnecessary and inappropriate ambiguity.

The Department agrees that it must more clearly define which categories of ''actions'' are subject to a notification requirement. The Department also agrees with commenters that notification requirements that sweep in unproven allegations could cause reputational and financial injury to an institution, prevent a current student from completing their education, deter new enrollments in or transfers to the institutions, or discourage students from enrolling in a program that could benefit them. Disclosure of a government investigation that might not even lead to allegations of misconduct against an institution could create significant negative consequences, including for students and alumni.

Therefore, we are revising the regulations to eliminate investigations from the notification requirement, and better define what types of legal actions do require disclosure. Our goal is to ensure that students have access to information about pending legal proceedings, including those resulting from allegations of fraud or misrepresentation. This information may have the greatest potential to impact a student's education—including on their ability to make an informed choice about which school to attend, to complete a degree or program at a school they have chosen, or to subsequently benefit from an earned credential, without its value being inappropriately undermined by as-yet-unproven allegations. To strike this balance, in the final rule we provide that institutions must disclose only pending enforcement actions or prosecutions by law enforcement agencies in which a final judgment against the institution, if rendered, would result in an adverse action by an accrediting agency, revocation of State authorization, or limitation, suspension, or termination of eligibility to participate in title IV.

Carving out the fact of investigations also protects students and graduates from having the value of their education or their chances of obtaining employment diminished merely because their educational institutions were subject to government investigations. While notification of pending enforcement actions or prosecution by a law enforcement agency could be useful to students to avoid enrolling at institutions that may be guilty of misrepresentation, the Department must balance this with damage that potential students could suffer if unfounded allegations against an institution deter students from enrolling in a program that would otherwise benefit them. In addition, the Department must balance the need to protect students against fraud and misrepresentation with the need to ensure that the value of a student's credential and their future employability are not unnecessarily diminished by false allegations against the institution.

This disclosure requirement, although it involves only disclosure to students and not reporting to the Secretary or a trigger for a letter of credit, mirrors the approach the Department took in its final 2019 Borrower Defense to Repayment (BD) rule. In the 2019 BD rule, in eliminating some mandatory triggers for letters of credit based on pending claims and non-final judgments, the Department recognized the inappropriateness of imposing sanctions upon an institution based on unproven allegations. The Department also learned, as a result of the 2016 BD rule, that requiring institutions to report to the Department all legal actions against them, without regard for materiality, created undue regulatory burden much larger than the level of burden estimated in the final 2016 BD rule. Relying on allegations or claims made against an institution to require an institution to provide a letter of credit also invites abuse and denies institutions due process by placing undue weight on unsubstantiated claims. Here, the Department is requiring institutions to focus on specific types of legal action—enforcement actions and prosecutions—by a specific set of governmental entities—law enforcement agencies—that could have the most significant negative impact on students, therefore enabling them to make informed enrollment decisions.

In this final regulation, disclosure is required only for enforcement actions and prosecutions, including those resulting from allegations of fraud or misrepresentation, where the institution can discern (based on the nature of the allegations and the progress of the case) that, if a final judgment is rendered against the institution, the institution's accreditor would take an adverse action against the institution, its State authorization would be revoked, or its title IV participation would be limited, suspended, or terminated. We have removed actions relating to ''academic quality'' from the list of actions requiring disclosure since accreditors and State authorizers are charged with making quality determinations, not State or Federal law enforcement agencies. Also, consistent with the 2019 BD rule, the Department is limiting the risks of abuse and denial of due process to institutions—by excluding the mere fact that an institution is under investigation from the disclosure requirement.

We appreciate those commenters who agreed with the Department's inclusion of a disclosure requirement but asked that we clarify what a legally sufficient disclosure would look like. The Department agrees that greater clarity is necessary; however, this provision is part of a long list of items that must be disclosed by the institution and made readily available to enrolled and prospective students. The Department provides no additional guidance regarding how it must make those disclosures. Many institutions meet these requirements by including these disclosures on their website or in their catalog.

Changes: In response to comments, we have revised § 668.43(a)(20) to provide that an institution must disclose enforcement actions or prosecutions by law enforcement agencies that, upon a final judgment, would result in an adverse action by an accrediting agency, revocation of State authorization, or suspension, limitation or termination of eligibility to participate in title IV. Investigations that have not progressed to pending enforcement actions or prosecutions need not be disclosed—regardless of their subject matter.

Comments: One commenter supported the Department's proposal to require institutions to disclose written arrangements in the program description in instances in which they are used to engage a non-accredited entity in providing portions of the program.

Two commenters supported the Department's proposal to disclose the criteria used by institutions when evaluating prior learning experience stating that it is important to ensure that credits awarded based on a prior learning assessment are based on academic quality, which benefits students and the public. Another commenter noted that this disclosure can help improve academic completion while reducing education costs.

Discussion: The Department thanks the commenter for their support for disclosing written arrangements included in a program's description, as proposed in § 668.43(a)(12). The Department continues to believe that standardizing the location of this disclosure will provide uniform information to all students and provide them with easily accessible and discernable information in which to make enrollment decisions.

The Department also thanks the commenters for their support for the requirement that institutions disclose their policies for evaluating and assigning credit based on a student's prior learning experience, as outlined in § 668.43(a)(11)(iii). The Department continues to believe that this information is important to inform student choice since students often learn only after enrolling at a new institution that credits they believed they would earn through prior learning assessment are no longer being considered or granted. In addition, institutions should publish their policies regarding the acceptance of credits in transfer that were awarded through prior learning assessment. The Department believes this will also encourage institutions to potentially save students and taxpayers time and money.

The Department disagrees with the characterization that it removed the requirements of disclosing a complaint process to students. To the contrary, the Department continues to require institutions to provide students with information about how to file a complaint against the institution with a relevant State agency. However, the regulations no longer require an institution to publish the complaint processes for both the State in which the student is located and the State in which the institution is located, as long as it discloses at least one point of contact for filing student complaints.

The Department's final regulations require institutions to provide students or prospective students with contact information for filing complaints with its accrediting agency and with at least one relevant State agency or official, either in the State in which the institution is located or in the State in which the student is located, or a third party identified by a State or a State reciprocity agreement, with whom the student can file a complaint.

Changes: None.

Institutional Disclosures for Distance or Correspondence Programs (§ 668.50)

Comments: Many commenters supported removing the requirements of § 668.50 and proposing similar requirements in § 668.43(b) because they supported providing disclosures to all students, regardless of the program's mode of delivery.

One commenter opposed removal of § 668.50 stating that the Department was deleting most of the disclosure requirements for distance education programs. They further claimed that we only moved two disclosure requirements to § 668.43.

One commenter disagreed with the explanation provided in the NPRM that the deletion of refund policies in § 668.50 eliminated a duplicative requirement already required under § 668.42(a)(2). The commenter stated that § 668.42(a)(2) does not require the disclosure of refund policies.

One commenter stated they disagreed with statements made regarding the requirements included in § 668.50. Specifically, they disagreed that the requirement to disclose adverse actions taken by a State or accrediting agency would be unnecessary. Instead, the commenter stated that these actions should be disclosed because those actions would generally lead to the program's ineligibility to participate in the title IV, HEA programs. The commenter stated that the definition of ''adverse actions'' differed depending on the accrediting agency and that some of those actions would be at the level of information gathering, or probation, which would not end in the loss of title IV eligibility. Another commenter provided similar thoughts by stating that an institution required to supply notice of an investigation, action, or prosecution may damage the institution if it must provide that notification prior to the completion of an investigation. However, another commenter recommended that the Department keep the required disclosure on adverse actions from accrediting agencies because they may directly affect a student's ability to obtain a professional license. One commenter opposed the removal of the requirement that an institution disclose adverse actions taken by an accrediting agency because there are often times when an accrediting agency takes an adverse action that stops short of stripping an institution of its title IV eligibility and that students deserve to know when an institution fails to meet the very standards that makes it eligible for title IV participation. That same commenter also requested that the Department define the term ''adverse action'' from a State rather than removing the requirement.

One commenter voiced support for a requirement to disclose adverse actions taken by a State or accrediting agency.

Discussion: The Department appreciates the support of those who supported removing § 668.50 and replacing those requirements with one that applies to all programs that lead to licensure or certification (or should lead to licensure or certification), regardless of the delivery modality of those programs. The Department believes this will provide all students with valuable information and necessary protections. However, the Department notes by moving disclosures from § 668.50, which only applied to distance education programs and correspondence courses, to § 668.43, which applies to all title IV eligible programs at institutions of higher education, the Department broadened the scope of these requirements so that more students can make informed enrollment decisions.

The Department agrees with and thanks the commenter that noted it made an incorrect reference to current regulations requiring an institution to disclose refund policies. The Department meant to cite § 668.43(a)(2) instead of § 668.42(a)(2) as the section which requires institutions to disclose their refund policies. Section 668.43(a)(2) requires that institutions make readily available to enrolled and prospective students any refund policy with which the institution must comply for the return of unearned tuition and fees, or other refundable portions of costs paid to the institution. This covers the requirements of § 668.50(b)(6), which required institutions to disclose refund policies for the return of unearned tuition and fees with which the institution must comply under the laws of any State in which enrolled students reside.

The Department also notes that disclosures related to adverse actions are now described at § 668.43(a)(20), which requires an institution that an institution must disclose enforcement actions or prosecutions by law enforcement agencies that, upon a final judgment, would result in an adverse action by an accrediting agency, revocation of State authorization, or suspension, limitation or termination of eligibility to participate in title IV. Investigations that have not progressed to pending enforcement actions or prosecutions need not be disclosed—regardless of their subject matter. We respond to further comments about adverse actions in that section.

The Department has retained the language in § 602.24(c)(8)(ii) that an agency must not permit an institution to serve as a teach-out institution, if it is under investigation relating to academic quality, misrepresentation, fraud, or other severe matters by a law enforcement agency. We would consider an allegation or finding of criminal conduct, for example, to constitute a severe matter. The Department retains this language because of the contractual relationship between the closing institution and the teach-out institution, as well as the fact that the teach-out agreement must be approved by the accrediting agency, all of which give the teach-out institution the appearance of a preferred and streamlined option for students, and the teach-out institution benefits from an influx of new students. The Department has determined that to enjoy that benefit, the teach-out institution must not be subject to any ongoing investigation, as described in § 602.24(c)(8)(ii). The Department believes that teach-out agreements constitute a unique and limited circumstance and, accordingly, has retained the consensus language excluding institutions that are subject to investigation as teach-out institutions.[27]

The Department stands by its assessment that disclosures of adverse actions taken by accrediting agencies often came too late to inform student enrollment decisions. As such, the final regulations at § 668.43(a)(19) require that if an accrediting agency requires an institution to maintain a teach-out plan, the institution must disclose the reason that the accrediting agency required such a plan. The Department believes this will assist students who are considering enrollment in programs where institutions may be in danger of closing or losing accreditation by informing them of this risk. On the other hand, some students may find teach-out plans to be reassuring on the basis that, should an institution close, there are options available to them to complete their programs.

The institution is not precluded, as is also the case in the 2016 State authorization regulations, from providing information to students about any investigation, action, or prosecution and any disagreement that the institution has with the validity of these allegations. While the Department understands that adverse actions from an accrediting agency may impact a student's ability to obtain professional licensure, the Department believes the proposed disclosure in § 668.43(a)(19) addresses this concern and broadens it to accommodate all programs, not just those offered through distance or correspondence education. The Department emphasizes that, similar to requiring a letter of credit, requiring a teach-out plan does not necessarily mean that an institution will close, lose its accreditation, or lose its title IV eligibility; however, the teach-out plan will provide additional protections to students and taxpayers in the event that the institution does lose accreditation, State authorization, or title IV eligibility. The Department believes that § 668.43(a)(20) provides appropriate protection to students when the institution's or program's accrediting agency takes negative action, and provides clarifying details about the kinds of adverse actions that must be disclosed. However, in moving the requirement to § 668.43, the Department requires institutions to provide the

[27] *Note:* Nothing in § 602.24(c)(8)(ii) or anything in this document burdens, limits, or impedes the Department's determinations in, or interpretations of, the Institutional Accountability regulations at 84 FR 49788.

disclosure to students enrolled in all programs, not just distance education or correspondence programs.

The Department thanks the commenter that supported the Department's changes to § 668.50.

Finally, we note that the amendatory instruction to remove § 668.50 was unintentionally omitted from the NPRM.

Changes:

Comments: None.

Discussion: As described above, we believe that the substance of current § 668.50 should be removed. In its place, we have added language to clarify that, if any part of the regulations for part 668, subpart D, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have revised § 668.50 to remove the current text and added, in its place, text that clarified that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Severability (§ 668.198)

Comments: None.

Discussion: We have added § 668.198 to clarify that if a court holds any part of the regulations for part 668, subpart M, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 668.198 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

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

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

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

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

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

This final rule is an economically significant action and will have an annual effect on the economy of more than $100 million because the proposed changes to the accreditation process could increase student access, improve student mobility, and allow for the establishment of more innovative programs, including direct assessment programs, that may attract new students. According to the Department's FY 2020 Budget Summary, Federal Direct Loans and Pell Grants accounted for almost $124 billion in new aid available in 2018. Given this scale of Federal student aid amounts disbursed yearly, even small percentage changes could produce transfers between the Federal government and students of more than $100 million on an annualized basis.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

This final rule is considered an E.O. 13771 deregulatory action. We estimate that this rule will generate approximately $16.0 million in annualized net PRA costs at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon. While there will be some PRA burden increase, we believe the greater effect of this regulation is to allow for additional entrants or enhanced competition in the postsecondary accreditation market and to promote innovation in higher education and it is deregulatory.

As required by Executive Order 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and we are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that the regulations are consistent with the principles in Executive Order 13563.

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

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Elsewhere in this section, under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Need for Regulatory Action

These final regulations address several topics, primarily related to accreditation and innovation. The Department issues these regulations primarily to update the Department's accreditation recognition process to reflect only those requirements that are critical to assessing the quality of an institution and its programs and to protect student and taxpayer investments in order to reduce unnecessary burden on institutions and accrediting agencies and allow for greater innovation and educational choice for students.

In addition, these final regulations are needed to strengthen the regulatory triad by more clearly defining the roles and responsibilities of accrediting agencies, States, and the Department in oversight of institutions participating in title IV, HEA programs. These final regulations revise the definition of ''State authorization reciprocity agreement'' to clarify that such agreements cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.

Another area addressed in these final regulations is the definition of ''religious mission'' as a published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings. These final regulations require accrediting agencies to consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and to not use not use as a negative factor the institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii).

Summary of Comments on the RIA

A number of commenters raised points about the analysis of these regulations in the NPRM. The Department summarizes and responds to comments related to the RIA here.

Comments: One commenter noted that the expense incurred by their accrediting agency to submit a recognition application was not unreasonable under the current regulations and while they agreed generally with the review process changes, they did not see the proposed changes as entirely justified.

Discussion: The Department thanks the commenter and welcomes the feedback. The Department believes the changes are justified for the numerous reasons outlined in the NPRM and elsewhere in this document. While the Department appreciates that some accrediting agencies can manage the existing burden, other agencies are struggling to do so or, at the very least, could redirect resources away from paperwork burden and towards direct work with the institutions or programs the agency oversees. The Department has received petitions for renewal of recognition that exceed 60,000 pages. Also, these new regulations provide staff the opportunity to randomly select files to review, and to perform oversight that includes a more representative sample and variety of documents—and not only those that an agency decides to submit.

The Department also, as stated elsewhere, believes that a number of the current regulations prevent competition, create unnecessarily high barriers to entry for new accrediting agency, and make it difficult for institutions to effect the radical changes necessary to reduce cost and improve outcomes through educational innovations. The current regulations similarly do not differentiate between high-risk activities that demand greater attention, and low-risk activities that do not justify distracting agency decision-making bodies from more critical concerns related to ensuring educational quality. In addition, these regulations seek to reduce unnecessary delays in developing and implementing curricular and other changes in order to meet employer needs. These regulations also encourage institutions to participate in orderly teach-outs, thus providing more students with the opportunity to complete their program or transition to a new institution should their current institution close. Finally, these regulations eliminate the distinction between students enrolled in distance learning programs that lead to licensure and ground-based programs focused on the same by ensuring that all students—regardless of instructional modality—understand whether the institution's programs will meet educational requirements for a graduate to become licensed and work in their field in a given State.

Changes: None.

Comments: One commenter stated that the Department failed to provide any legal, policy, factual, or cost-benefit analysis for the new definition of ''religious mission'' or the exemptions to accrediting agency standards. They point out that the definition is not mentioned in the RIA and no potential costs are cited if an institution claims exemption from any of a wide range of accreditation standards. Furthermore, there is no estimate of how many institutions may assert exemptions from accrediting standards based on the definition or from what types of standards they may assert exemptions.

Discussion: The Department appreciates the commenter pointing out the need for discussion of the definition of religious mission and the associated impacts.

Changes: We have added discussion of the definition of ''religious mission'' in the Costs, Benefits, and Transfers section.

Comments: One commenter contended that the Department did not present any evidence that the current regulations have created any substantive barriers to innovation and noted that, in fact, as an example, distance education enrollment has grown significantly over the past two decades under the oversight of accrediting agencies. The commenter also contended that it may be desirable to have certain barriers in place to promote quality and protect students.

The same commenter stated that the Department is greatly underestimating the cost of these final regulations, citing the $3.8 billion estimate, with the reported range of estimated Pell Grant increases from $3.1 billion to $4.5 billion as too low and the increase in loan volume and Pell Grant recipients of at most two percent by 2029 as also too low. The commenter alluded to historical evidence regarding the cost of innovation, citing the change from 1997 to 1998—prior to passage of a demonstration project that allowed institutions to move entirely online—to Fall 2017, after the law changed to permit online-only institutions. The commenter stated that according to NCES data, enrollment in distance education programs during this period increased tremendously, from 1.3 million to over 6.5 million students.

The commenter claimed that the estimated two percent increase reflected in the NPRM is likely a ''significant underestimate'' given the potential for new accrediting agencies, new providers, and new programs eligible for Federal funding. Also, according to the commenter, the Department failed to adequately consider costs associated with reduced oversight. The commenter stated that these final regulations are likely to greatly increase borrower defense claims that would arise from institutions operating without strong oversight from accrediting agencies and continuing to operate under new ownership after closure, and that, because the Department has not yet issued new final borrower defense regulations, it must estimate these costs based on the 2016 borrower defense regulations currently in effect. The commenter further noted that the added costs from borrower defense claims would be partially offset by fewer closed school discharges resulting from fewer institutions closing.

The commenter stated that under these final regulations the bar would be lower for entry to new accrediting bodies and therefore the Department should assume an increase in new accrediting agencies.

The commenter provided Department of Labor (DOL) data showing that DOL proposed to create ''standards recognition entities'' (SREs) that would act like accrediting agencies to approve apprenticeship programs. DOL estimates that it would receive 300 applications of which 100 would be totally new applicants without any experience in the area. The commenter believed the Department should assume a more significant increase in applicants for Department recognition than it does as well as institutions that would be seeking sources of funding such as Title IV.

The commenter stated that the Department's estimate of $3.8 billion for regulatory changes that affect the entire higher education landscape is less than the $6.2 billion it projects from rescinding gainful employment regulations that affect proprietary school programs and non-degree programs at public and nonprofit institutions that represent only a portion of the higher education landscape.

The commenter asserted that the Department should revise its estimates substantially upwards.

Discussion: The Department believes that the final regulations strike the right balance between the goals of encouraging innovation and ensuring accountability while providing sufficient oversight of accrediting agencies and institutions and protecting students, taxpayers, and the Federal government.

With respect to the increase in distance education dating back to 1997, the Department acknowledges that the impact of the expansion of distance education on total number of enrollments was significant as technological advances reduced barriers to entry for students who could not otherwise participate in opportunities offered by traditional ground campuses. The Great Recession further contributed to enrollment growth as high unemployment drove more individuals to participate in postsecondary education. In addition, regulatory changes that eliminated policies that once limited growth on line by the growth of programs on the ground also contributed to significant growth of enrollments in online education. While the proportion of enrolled students who take some or all classes online is increasing, the total number of students enrolled is shrinking. This suggests that how students receive education may continue to change, and this regulation could encourage even greater shifting of students to online modalities. Enrollments are shrinking at many institutions, including most online institutions.[28] [29] The Department also notes that the internet itself and the world wide web were only becoming popular in the mid-1990s and, according to many sources, including the National Science Foundation,[30] by 1995, the internet was fully commercialized in the United States when the National Science Foundation Network was decommissioned, removing the last restrictions on use of the internet to carry commercial traffic.

In fact, according to a research article published in the journal *Science,* ''The internet's takeover of the global communication landscape was almost instant in historical terms: It only communicated 1% of the information flowing through two-way telecommunications networks in the year 1993, already 51% by 2000, and more than 97% of the telecommunicated information by 2007.'' [31] So, a substantial amount of growth in all online activity in the 1990s is attributable to the new internet and world wide web activity taking place in the mid-1990s. Therefore, a comparison between the vast innovation taking place in the online technology arena over a 20-year period with any innovation evolving as a result of these regulations is not an ''apples-to-apples'' comparison.

The Department believes that its financial aid estimates related to these regulations are not ''greatly underestimated'' as the commenter asserts. In fact, the Department realizes that any cost estimates relating to regulations of this type carry a strong element of speculation since many other variables are at play over the budget window from 2020 to 2029. And the Department also was cognizant of the lower estimate made concerning the lifting of the 50 percent rule related to institutional online courses, which, among other issues, underestimated the number of adult learners who wanted to enroll in postsecondary education if they could do so without quitting their jobs or enrolling in campus-based programs.

Therefore, the Department provided three scenarios incorporating low, medium, and high assumptions consistent with regulatory guidelines. And, the Department does estimate that under the high scenario, additional higher educational costs of $4.5 billion are possible. While there is no definitive way to test these assumptions in the future, the Department does not accept the commenter's assertion that the Department is reducing accrediting agency oversight and weakening agency oversight of institutions which will result in significantly higher costs. The Department does not accept the premise that it is lowering the bar to accrediting oversight and reducing Federal responsibility. Given this different prediction about the outcome of these final regulations compared to the commenter, we do not anticipate a significant increase in borrower defense claims from these final regulations. The subsidy cost associated with the estimated increase in volume for these final regulations was based on the President's Budget FY 2020 baseline which included the implementation of the 2016 Borrower Defense rule and we do not believe these final regulations will necessarily lead to an increase in bad actors or conduct that would give rise to borrower defense claims under any version of that regulation. We also do not expect a substantial difference in the number of closed schools from these final regulations, so we do not estimate any savings from reduced closures tied to fewer accrediting agency actions at this time.

Rather, as discussed earlier in the preamble, the Department views these regulations as enabling accrediting agencies and institutions to be nimbler and more responsive to changing economic conditions and workforce demands. The Department believes that the regulations are in the best interests of both students and taxpayers and will enable institutions to improve the quality of education.

The Department appreciates the comments regarding DOL's recent NPRM to establish new Standards Recognition Agencies (SRAs). While there are similarities between SRAs and accrediting agencies, those similarities are limited to the need to evaluate quality based on a set of published standards or metrics. It is also important to note that SRAs are likely to include industry trade associations and other private-sector entities that may pay higher salaries or have higher costs of operating and decision-making based on the structure of these entities and salary trends in certain industries. DOL's cost estimates for establishing SRAs have no bearing on the Department's cost estimates related to reducing unnecessary regulatory burden, encouraging institutions to close in orderly fashions rather than precipitously, or allowing new agencies to enter a field that has a well-established history and a large number of existing participants. The Department believes it would be inappropriate to apply DOL's assumptions for the cost of creating a new quality assurance system to our regulations, which are designed

[30] *www.nsf.gov/news/special_reports/cyber/internet.jsp.*

[31] ''The World's Technological Capacity to Store, Communicate, and Compute Information,'' Martin Hilbert and Priscila López (2011), *Science,* 332(6025), pp. 60–65, available at: *martinhilbert.net/WorldInfoCapacity.html.*

to increase competition and refocus accrediting agency activities on educational quality and the student experience.

The estimates for these regulations do not assume loan performance will decline due to the rescission of the gainful employment rule. Although the gainful employment regulations primarily affect a limited number of institutions, their impact could have been significant, as they tied ineligibility to the debt-to-earnings metric. However, with only one year of GE data available, it is hard to speculate on the long-term impact of the GE regulations and whether program closures would have reduced the total number of students enrolled, or simply shifted where these students enrolled or which programs they pursued. On the other hand, although these regulations will affect all sectors, we believe their impact will be more limited.

Changes: None.

Costs, Benefits, and Transfers

As discussed in the NPRM, the Department is amending the regulations governing the recognition of accrediting agencies and institutional eligibility and certain student assistance general provisions, as well as making various technical corrections. A number of clarifying changes were made in these final regulations, including updates to the definitions of terms including State authorization reciprocity agreements, teach-out, and compliance report; noting that prior approval is required for an aggregate change of 25 percent or more of the clock hours, credit hours, or content of a program since the agency's most recent accreditation review; and requiring disclosure of negative actions taken by an accrediting agency, provided that an institution need not disclose allegations, lawsuits, or legal actions taken against it unless the institution has admitted guilt or there has been a final judgment on the merits. Additionally, we have made it clear that title IV participation may be extended for 120 days only after a decision to end participation has been made, but prior to the termination of accreditation, State authorization, or the program participation agreement. All of these changes are detailed in the Analysis of Comments and Changes section of this preamble and none are expected to significantly change the net budget impact or cost and benefits of the final regulations to students, institutions, or accrediting agencies.

These final regulations will affect students, institutions of higher education, accrediting agencies, and the Federal government. The Department expects students, institutions, accrediting agencies, and the Federal government will benefit as these final regulations will provide transparency and increased autonomy and independence of agencies and institutions. We also intend for these final regulations to increase student access to postsecondary education, improve teach-outs for students at closed or closing institutions, restore focus and clarity to the Department's agency recognition process, and integrate risk-based review into the accreditation recognition process.

The Department of Education Organization Act of 1979 (Pub. L. 96–88) prohibits the Department from intervening in institutional decisions regarding curriculum, faculty, administration, or academic programs of an institution of higher education. Instead, Congress assigned accrediting agencies the role of overseeing the quality of institutions and academic sufficiency of instructional programs. The Secretary recognized 53 accrediting agencies as of April 2019 as shown on the Department's financial aid accreditation websites.[32] In addition, there were four State approval agencies that are also identified as title IV gatekeepers for the approval of postsecondary vocational education and five State approval agencies for the approval of nurse education (for non-title IV, HEA purposes).

The 53 accrediting agencies are independent, membership-based organizations that oversee students' access to qualified faculty, appropriate curriculum, and other support services. Of the 53 accrediting agencies recognized by the Secretary, 36 accredit institutions for title IV, HEA purposes and 17 solely accredit programs. While postsecondary accreditation is voluntary, accreditation from either a nationally recognized accrediting agency or State approval agency is required for an institution to participate in the title IV, HEA programs. One goal of our negotiated rulemaking was to examine the Department's accreditation regulations and processes to determine which are critical to assessing the quality of an institution and its programs and to protecting student and taxpayer investments. In negotiating these regulations, negotiators reached consensus on the processes that accrediting agencies should follow and understood that certain tradeoffs would be inevitable. Providing greater flexibility in how agencies approach the accrediting process and promoting innovative practices while reducing administrative burden and streamlining operations are key objectives of these final regulations.

[32] *https://ope.ed.gov/dapip/#/home.*

The regulatory impact on the economy of these final regulations centers on the benefits of, and the tradeoffs associated with, (1) streamlining and improving the Department's process for recognition and review of accrediting agencies and (2) enabling accrediting agencies to exercise greater autonomy and flexibility in their oversight of member institutions and programs in order to facilitate agility and responsiveness and promote innovation. Although we estimate here the marketplace reaction by accrediting agencies, students, institutions, and governmental entities to such regulatory changes, generally, there is little critical data published on which to base estimates of how these final regulations, which primarily promote flexibility in accrediting processes, will impact various market segments.

Accrediting Agencies

These final regulations will allow accrediting agencies the opportunity to exercise a greater degree of choice in how they operate. One key change in these final regulations pertains to the concept of not limiting an agency's accrediting activities to a particular geographic region. These final regulations remove the "geographic area of accrediting activities" from the definition of "scope of recognition or scope." The current practice of recognizing geographic scope of an accrediting agency may discourage multiple agencies from also including the same State in their geographic scope. By removing this potential obstacle and acknowledging that many agencies already operate outside their recognized geographic scope, the Department seeks to provide increased transparency and introduce greater competition and innovation that could allow an institution or program to select an accrediting agency that best aligns with the institution's mission, program offerings, and student population.

Under these final regulations, we will no longer require accrediting agencies to apply to the Department to change the geographic region in which the agencies accredit institutions, which occurs about once a year. However, we will require accrediting agencies to include in public disclosures the States ("geographic area") in which they conduct their accrediting activities. This includes not only those States in which they accredit main campuses, but also the States in which the agencies accredit branch campuses or additional locations. This will promote greater transparency and clarity for students while eliminating burden on agencies and the Department of recognition proceedings focusing on geographic scope as well as the anticompetitive impact of the Department appearing to endorse allocation among individual agencies of discrete geographic regions.

In general, these final regulations will simplify the labeling of accrediting agencies to better reflect their focus. Therefore, the Department will no longer categorize agencies as regional or national; we will instead include them under a combined umbrella identified as ''institutional'' or ''nationally recognized.'' The terms ''regionally accredited'' and ''nationally accredited'' related to institutional accreditation will no longer be used or recognized the Department. We will, however, allow agencies to market themselves as they deem appropriate. Programmatic agencies that currently accredit particular programs will retain that distinction under these final regulations.

As a result of these changes, the Department expects that the landscape of institutional accrediting agencies may change over time from one where some agencies only accredit institutions headquartered in particular regions (as shown on the map in Chart 1) to one where institutional accrediting agencies accredit institutions throughout many areas of the United States based on factors such as institutional mission rather than geography. As indicated in Chart 2, provided by the Higher Learning Commission during the negotiated rulemaking sessions for this regulation, many of the institutions accredited by regional accrediting agencies engage in activities outside of their region so geographic distinctions in accreditation are less meaningful than they once might have been. As a result of these regulations, some accrediting agencies may capture a larger share of the market while agencies that specialize in niche areas may enjoy strong demand. However, we will not require any institution or program to change to a different accrediting agency as a result of these regulatory changes, nor will we require an agency to accept a new institution or program for which it did not have capacity or interest to accredit.

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Chart 1: Regional Accrediting Agency Coverage Map[33]

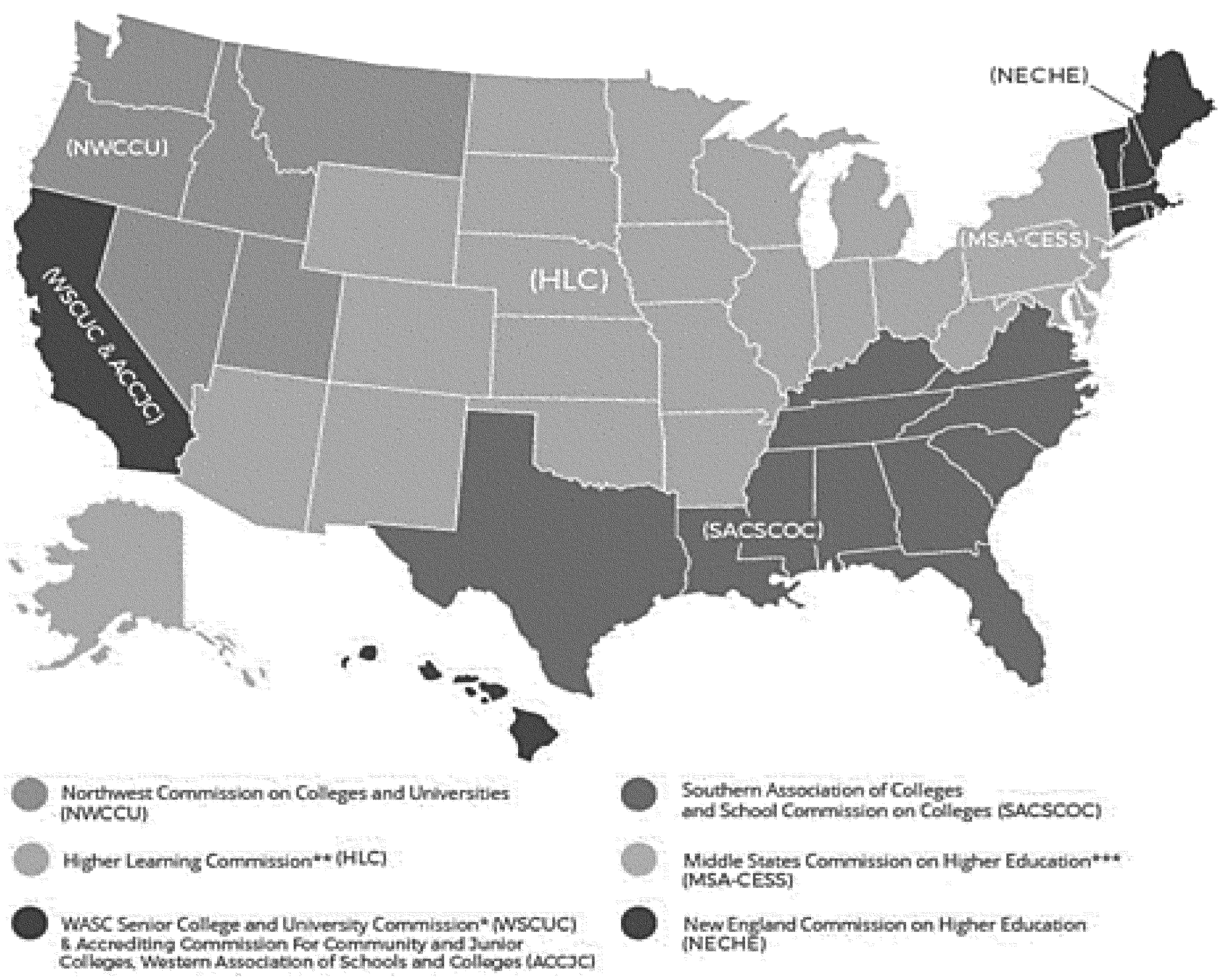
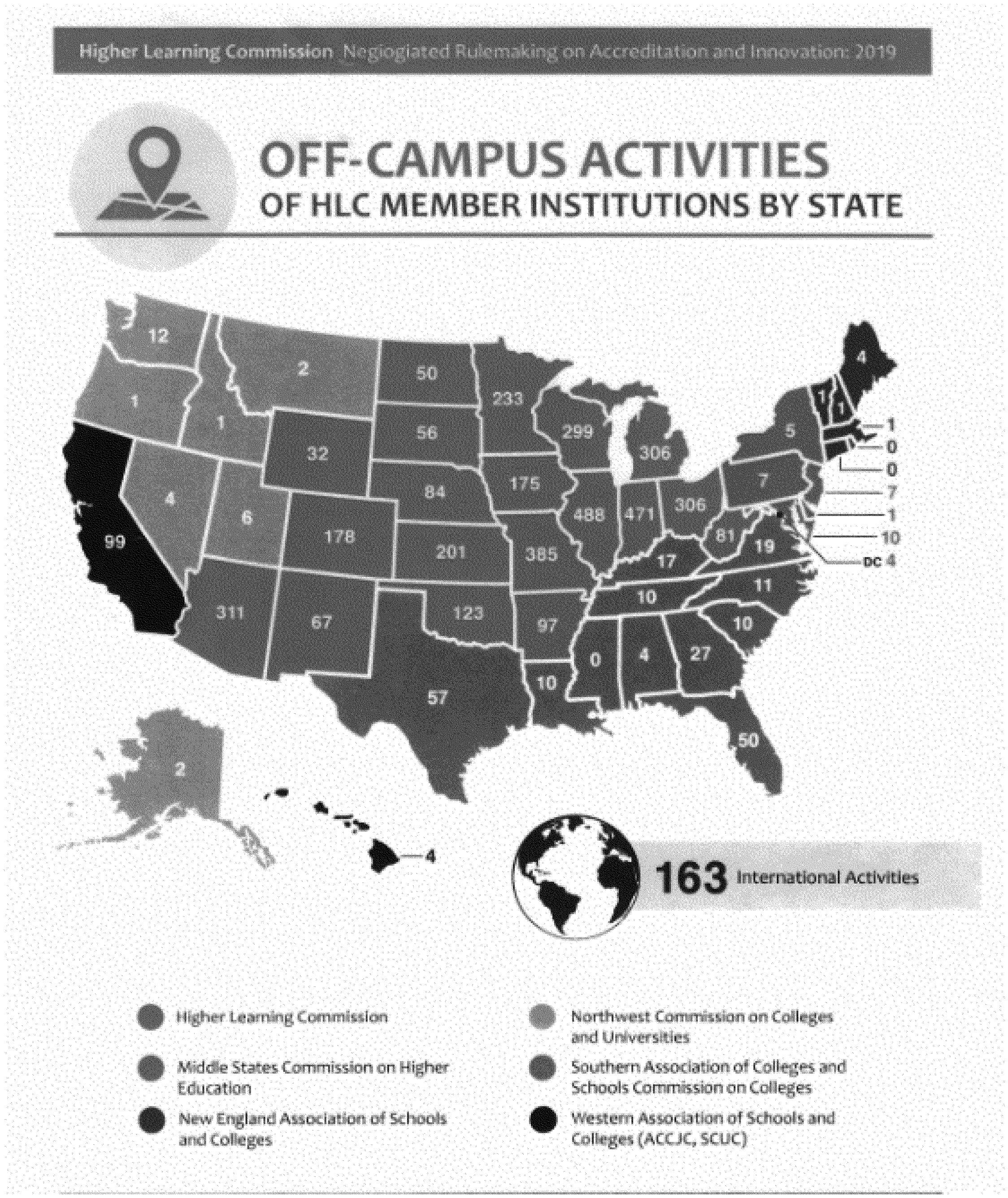


Chart 2: Off-Campus Activities of HLC Member Institutions by State[34]



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Under these final regulations, accrediting agencies may realize burden reduction, streamlined operations, and an increase in autonomous control. For example, under the current regulations, an agency found to have a minor deficiency (such as a missing document) would be required to submit a compliance report, of which there were 17 submitted between 2014 and 2018. Agencies required to prepare compliance reports need to invest a significant amount of time and resources. Additionally, compliance reports require extensive review by Department staff, NACIQI, and the senior Department official (SDO), at a minimum. Under these final regulations, the Department may find an agency to be substantially compliant and require it to submit a less burdensome monitoring report to address the concern without requiring NACIQI or SDO review, saving the agency and the Department time and money while maintaining ample oversight and preserving the same

[33] Council for Higher Education Accreditation, Regional Accrediting Organizations web page. Available at *https://www.chea.org/regional-accrediting-organizations-accreditor-type.*

[34] Higher Learning Commission, Accreditation and Innovation.pdf Available at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html.*

opportunity to require the more extensive review if the agency's shortcomings prove to be not as readily remediated as anticipated. The final regulations will also reduce burden by allowing accrediting agencies to use senior staff instead of the agency's accrediting commission to approve substantive changes proposed by accredited institutions or programs. This allows accrediting agencies to structure their work more efficiently and permit the accredited entities to obtain agency approval more expeditiously where appropriate.

Under these final regulations, for institutions to receive recognition of preaccreditation or accreditation by the Secretary, they must agree to submit any dispute with the accrediting agency to arbitration before bringing any other legal action. This requirement highlights the existing statutory requirement, enables agencies to pursue adverse actions without an immediate threat of a lawsuit, and potentially minimizes litigation costs for accrediting agencies and institutions. The relative costs of litigation and arbitration can vary depending upon the nature of the dispute, the parties involved, varied costs in different States, and several other factors. According to the Forum, previously known as the National Arbitration Forum, total arbitration costs can amount to only 25 percent of the cost to bring the same action to court.[35] Another article entitled ''The Iceberg: The True Cost of Litigation Versus Arbitration'' cites the average cost of arbitration for a business as approximately $70,000 while the average litigation costs for a given business total over $120,000.[36]

The Department does not receive information about the number of disputes between accrediting agencies and institutions that go to litigation or arbitration or data about the costs associated with both those actions. An initial review of legal news sources indicates a range of lawsuits and outcomes involving accrediting agencies and institutions.[37(14)]

The likelihood is that, from a cost perspective, arbitration will be considerably less expensive for the accrediting agencies and institutions than litigation in the first instance and the assumption is outcomes will not vary greatly according to the process pursued. We note, however, that the final regulations do not preclude an institution from pursuing a legal remedy—as provided for in statute—after going to arbitration. Therefore, the arbitration requirement may not ultimately change institutional behavior.

Under these final regulations, accrediting agencies are required to report a number of items to the Department, institutions, or the public, as shown in the *Paperwork Reduction Act* section of this preamble. Accrediting agencies must, among other things: (1) Notify the Department of, and publish on their websites, any changes to the geographic scope of recognition; (2) publish policies for any retroactive application of an accreditation decision; (3) provide institutions with written timelines for compliance and a policy for immediate adverse action when warranted; (4) provide notice to the Department and students of the initiation of an adverse action; (5) update and publish requirements related to teach-out plans and teach-out agreements; and (6) redact personally identifiable and other sensitive information prior to sending documents to the Department.

We estimate the burden for all accrediting agencies will be 6,562 hours and $297,652 annually at a $45.36 wage rate. There are also some provisions expected to reduce burden on accrediting agencies, including: (1) Allowing decisions to be made by a senior staff member; (2) using SDO determination and monitoring reports and reducing preparation and attendance at NACIQI meetings; and (3) removing existing requirements related to evaluating credit hours. We estimate that these changes will reduce burden for all accrediting agencies by 2,655 hours and $120,431 at a $45.36 wage rate. We estimate the net annual burden for all accrediting agencies to be 3,907 hours and $177,222. We based these estimates on the 2018 median hourly wage for postsecondary education administrators in the Bureau of Labor Statistics Occupational Outlook handbook.[38]

Institutions

These final regulations will also affect institutions. Institutions may benefit from a more efficient process to establish new programs and the opportunity to seek out alternate accrediting agencies that specialize in evaluating their type of institution. Institutions may also benefit from having the option to use alternative standards for accreditation under § 602.18, provided that the institution demonstrates the need for such an alternative and that it will not harm students. Institutions will also benefit from accrediting agencies having the authority to permit the institution to be out of compliance with policies, standards, and procedures otherwise required by the regulations, for a period of up to three years, and longer for good cause shown, where there are circumstances beyond the institution's or program's control requiring this exception. This gives institutions flexibility in the event of a natural disaster, a teach-out of another institution's students, significant documented local or national economic changes, changes in licensure requirements, undue hardship on students, and the availability of instructors who do not meet the agency's faculty standards but are qualified by education or work experience to teach courses within a dual or concurrent enrollment program.

In making decisions about changing accrediting agencies, institutions will have to balance the expense of maintaining existing accreditation while working with new agencies and the possible reputational effects of appearing to shop for accreditation. On the other hand, if accrediting agencies do realign over time, some institutions may need to seek out alternate accreditation as their current agency may elect to specialize in a different market segment.

The following table, based on Federal Student Aid (FSA) information as of April 2019, summarizes data related to title IV eligible institutions and their distribution according to type of primary accrediting agency, also known as the title IV gatekeeper accrediting agency.

[35] *www.ffiec.gov/press/comments/nationalarbforum.pdf.*

[36] *https://landwehrlawmn.com/cost-litigation-arbitration/.*

[37] See, *e.g. Wards Corner Beauty Academy* v. *National Accred. Comm'n of Arts & Sciences,* 922 F.3d 568 (4th Cir. 2019) (affirming denial of relief to institution challenging withdrawal of accreditation); *Professional Massage Training Center, Inc.* v. *Accreditation Alliance of Career Schools and Colleges,* 781 F.3d 161 (4th Cir. 2015) (reversing district court's decision to order reinstatement of accreditation and to award damages); *Escuela de Medicina San Juan Bautista, Inc.* v. *Liaison Committee on Medical Education,* 820 F. Supp. 2d 317 (D.P.R. 2011) (granting preliminary injunction vacating accrediting agency's appeal decision and requiring agency to conduct a new appeal); *St. Andrews Presbyterian College* v. *Southern Ass'n of Colleges and Schools, Inc.,* 679 F. Supp. 2d 1320 (N.D. Ga. 2009) (upholding withdrawal of accreditation after 2 years of litigation); *Western State University of Southern California* v. *American Bar Ass'n,* 301 F. Supp. 2d 1129 (C.D. Calif. 2004) (granting preliminary injunction against withdrawal of provisional accreditation).

[38] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook,* Postsecondary Education Administrators, on the internet at *https://www.bls.gov/ooh/management/postsecondary-education-administrators.htm* (visited May 21, 2019).

As currently configured, both public and private non-profit institutions overwhelmingly use regional accrediting agencies as their primary agency for title IV participation, whereas proprietary institutions almost exclusively use national agencies. We do not require foreign schools to report accreditation information, although they may do so. We show foreign schools simply to provide context for how many are participating.

Table 1: Summary of Title IV Gatekeeper Agencies by Type and Institutional Sector

Primary Agency Type	Public	Private, Non-profit	Proprietary	Foreign	Total
Regional	1,554	1,230	91	0	2,875
National	306	474	1,692	0	2,472
N/A				396	396
Total	1,860	1,704	1,783	396	5,743

As stated earlier, under these final regulations, the Department considers regional and national accrediting agencies under one overall ''institutional'' umbrella. One objective of this policy is to increase students' academic and career mobility, by making it easier for students to transfer credits to continue or attain an additional degree at a new institution, by eliminating artificial boundaries between institutions due in part to reliance on a reputation associated with certain types of accrediting agencies. While this change would primarily result in some realignment of accrediting agencies and institutions, there is potential that certain postsecondary students could benefit and be enabled to transfer and continue their education at four-year institutions where previously they could not do so. This may result in greater access and increased educational mobility for students coming from proprietary institutions that use national accrediting agencies. It also may result in the award of increased financial aid, such as Federal Direct Student Loans and Pell Grants, on behalf of students pursuing additional higher education.

From an impact perspective, there may be several outcomes. The likelihood in the near term is that the status quo—under which institutions, especially four-year institutions, maintain their distinction under institutional accreditation—prevails, and the impact is essentially zero or neutral. The Department is prohibited from dictating an institution's credit transfer or acceptance policy, though it strongly discourages anticompetitive practices or those that deny students the ability to continue their education without an evaluation of that student's academic ability or prior achievement. The Department is hopeful that changes in these regulations will make it easier for institutions to voluntarily set policies that promote competition, support strong academic rigor, and allow qualified credits to transfer. Nevertheless, we do not prohibit other practices in these final regulations, and certain institutions may initially resist the changes intended by these final regulations.

A shift from strictly geographic orientation may occur over time, probably measured in years, as the characterization of ''institutional'' in terms of accreditation becomes more prevalent and greater competition occurs, spurring an evolving dynamic marketplace. Accrediting agencies may align in different combinations that coalesce around specific institutional dimensions or specialties, such as institution size, specialized degrees, or employment opportunities. If access to higher-level educational programs by students improves, the Department anticipates some modest increase in financial aid, through Federal sources such as Direct Loans and Pell Grants.

The Department approaches estimates for increased financial aid in terms of a range of low, medium, and high impacts based on student risk groups and institution sectors. This analysis appears in the section on *Net Budget Impacts.* A factor that could increase the Federal aid received by institutions is the proposed extension of time for achieving compliance in § 602.20, which may reduce the likelihood an accrediting agency will drop an institution.

Institutions with a religious mission would benefit from the requirement that accrediting agencies do not hold positions and policies resulting from that religious mission that do not interfere with the institution's or program's curricula including all core components required by the agency against the institution in its review. As of June 14, 2018, 277 institutions participating in title IV programs hold a religious exemption from some part of the regulations applicable to postsecondary institutions. These institutions, and others that may have similar religious missions, will be able to pursue such exemptions without concern that it will harm their accreditation status.

Additionally, some institutions would benefit from the changes related to State authorization in § 600.9 that generally maintain State reciprocity agreements for distance education and correspondence programs as an important method by which institutions may comply with State requirements and reduce the burden on institutions that would otherwise be subject to numerous sets of varying requirements established by individual States. These final regulations allow religious institutions exempt from State authorization under § 600.9(b) to comply with requirements for distance education or correspondence courses by States in which the institution is not physically located through State authorization reciprocity agreements. The final regulations also make the administration of distance education programs more efficient by replacing the concept of a student's residence with that of the student's location. As noted in the State Authorization section of this preamble, residency requirements may differ within States for purposes of voting, paying in-State tuition, and other rights and responsibilities. By using a student's location instead of residence, the Department intends to make its regulations more consistent with existing State requirements, make it easier for institutions to administer, and ensure that students who have not established legal or permanent residence in a State benefit from State requirements for an institution to offer distance education and correspondence courses in that State. Finally, these final regulations remove the duplicative student complaint process requirements under current § 600.9(c)(2) as the regulations under § 668.43(b) already require institutions to disclose the complaint process in each of the States where its enrolled students are located.

Under the final regulations, institutions must make some new or revised disclosures to students and the Department, as shown in the *Paperwork Reduction Act* section of this preamble. Institutions will be required to (1) update their policies and procedures to ensure consistent determination of a student's location for distance education and correspondence course students, and, upon request, to provide written documentation from the policies and procedure manual of its method and basis for such determinations to the Secretary; (2) inform the Secretary of the establishment of direct assessment programs after the first; (3) inform the Secretary of written arrangements for an ineligible program to provide more than 25 percent of a program; and (4) provide disclosures to students about whether programs meet licensure requirements, acceptance of transfer credits, policies on prior learning assessment, and written arrangements for another entity to provide all or part of a program. We estimate the cost of these disclosures to institutions will be a burden increase of 581,980 hours annually, totaling $26,398,613 (581,980 * $45.36). This wage is based on the 2018 median hourly wage for postsecondary education administrators in the Bureau of Labor Statistics Occupational Outlook handbook.[39]

While institutions will incur some increased costs for these disclosures and notifications, we do think there will be time and cost savings from the consolidation of reporting requirements and several provisions in these final regulations. The final regulatory package will remove the current regulatory requirements in § 668.50. This removes seven public disclosures that institutions offering distance education or correspondence courses were required to provide to students enrolled or seeking enrollment in such programs. Several of these disclosures will be required under § 668.43 and are included in the $26 million in burden described previously.

As detailed in the *Paperwork Reduction Act* section of this preamble, we expect these consolidations to save 152,405 hours for a total estimated reduction in burden of $6,913,091 at the hourly wage of $45.36 described above. Together, we estimate the expected net impact of the changes to disclosures to be an increase of 429,575 hours totaling $19,485,522 at the hourly wage of $45.36. The changes to the substantive change requirements may reduce the time and expense to institutions by streamlining approval of institutional or programmatic changes by dividing them into those that the agency must approve and those the institution must simply report to the agency, and also by permitting some changes to be approved by accrediting agency senior staff rather than by the entire accrediting commission, as well as by setting deadlines for agency approvals of written arrangements.

Students

As discussed earlier, these final regulations will provide various benefits to students by improving access to higher education and mobility and promoting innovative ways for employers to partner with accrediting agencies in establishing appropriate quality standards that focus on clear expectations for success. The final regulations may make it easier for students to transfer credits to continue, or attain an additional degree, at a new institution, including students from proprietary institutions seeking additional education at four-year public or private nonprofit institutions. If institutions are better able to work with employers or communities to set up programs that efficiently respond to local needs, students could benefit from programs designed for specific in-demand skills. Students would have to consider if choosing a program in a preaccreditation status or one that takes an innovative approach provides a high-quality opportunity. The Department believes programs added in response to these final regulations will maintain the quality of current offerings because institutions are still required to obtain accrediting agency approval when they want to add programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution and when they want to add graduate programs. Lower-level programs that are related to what they are already offering are expected to leverage the strengths of the existing programs.

The Department does not believe many students rely on the distinction between regional and national accrediting agencies when deciding between programs or institutions but instead base their choice on other factors such as location, cost, programs offerings, campus, and career opportunities. Therefore, we do not think there are costs to students from the change to institutional versus regional accreditation, especially since institutions will be allowed to use whatever terms accurately reflect their accreditation to the extent it is useful for informing the audience of particular communications.

Additionally, if the accreditation market transforms over time and certain agencies develop strong reputations in specialized areas over time, that may be more informative for students interested in those outcomes.

Students may also be affected by the provisions related to the definition of a religious mission and the ability of institutions to have policies that support their religious mission without it being a negative factor in the institution's accreditation review. Institutions should be clear in their religious mission statements and students should evaluate if that mission is consistent with their beliefs or if they are willing to attend an institution with those policies and perspectives. For some students, this may limit the options in a given commuting range or lead them to attend an institution whose religious mission they do not share.

[39] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook,* Postsecondary Education Administrators, available at *www.bls.gov/ooh/management/postsecondary-education-administrators.htm* (visited May 21, 2019).

The changes to the institutional disclosures in these final regulations are also aimed at simplifying the disclosures and providing students more useful information. As detailed in the Disclosures section of the NPRM, these final regulations require disclosures to ensure that an institution provides adequate information for students to understand its transfer-of-credit policy, especially when that policy excludes credits from certain types of institutions. The Department also believes that disclosures relating to an institution's prior learning assessment policies are important to students, especially those who have not attended college before or who are returning to college after many years of experience or training in other fields. Students will also receive information about any written arrangements under which an entity other than the institution itself provides all or part of a program. Another key disclosure is whether the program meets educational requirements for licensure in the State in which the student is located. These final regulations about teach-out plans required by accrediting agencies and State actions are intended to ensure that students have clear information about serious problems at their institutions, and this is most likely to occur when those institutions are required to have a teach-out plan in place or are under investigation by a State or other agency.

Under these final regulations, in certain circumstances, such as when an accrediting agency places an institution on probation, the Department changes the institution to reimbursement payment method, or the institution receives an auditor's adverse opinion, an accrediting agency must require a teach-out plan to facilitate the opportunity for students to complete their academic program. A closing institution will also trigger a required teach-out opportunity. For students, this could enable them to complete a credential with less burden associated with transferring credits and finding a new program. Alternatively, they will have the option to choose a closed school discharge if it makes sense for their situation. The additional flexibility under these final regulations for accrediting agencies to sanction programs instead of entire institutions potentially creates a trade-off as the students in programs that close are not eligible for closed school discharges. However, by focusing on problematic programs, fewer institutions may close precipitously, and fewer students would have their programs disrupted.

Federal Government

Under these final regulations, the Federal government would incur some additional administrative costs.

We do not expect the costs associated with processing post-participation disbursements to be significant, as the disbursement system is well-established and designed to accommodate fluctuations in disbursements. A file review at the agency would be incorporated into the review of agency applications. Currently, the Department reviews approximately 10 accrediting agencies for initial or renewal applications annually and we expect a file review will take Department staff 6 hours at a GS–14 Step 1 hourly wage rate of $43.42. The potential increase in the number of reviews due to these final regulations is uncertain, but we estimate a cost of $261 per review (6 hours * $43.42). Additional costs may also arise from increased senior Department official reviews under proposed § 602.36(g), which provides an agency subject to a determination that a decision to deny, limit, or suspend recognition may be warranted with an opportunity to submit a written response and documentation addressing the finding, and the staff with an opportunity to present its analysis in writing. The Department has reviewed 17 compliance reports between 2014 and 2018; we do not expect the administrative burden on the Department from this provision to be significant.

The Federal government will benefit from savings due to a reduced number of closed school loan discharges as a result of an expected increase in students completing teach-outs, but it may also incur annual costs to fund more Pell Grants and some title IV loans for students participating in teach-outs and increased volume from new programs or extension of existing programs, as discussed in the *Net Budget Impacts* section.

Net Budget Impacts

We estimate that these final regulations will have a net Federal budget impact over the 2020–2029 loan cohorts of $35 million in outlays in the primary estimate scenario and an increase in Pell Grant outlays of $3,744 million over 10 years, for a total net impact of $3,779 million. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The Net Budget Impact is compared to a modified version of the 2020 President's Budget baseline (PB2020) that adjusts for the recent publication of the final Borrower Defense rule.

As the Department recognizes that the market transformations that could occur in connection with these final regulations are uncertain and we have limited data on which to base estimates of accrediting agency, institutional, and student responses to the regulatory changes, we present alternative scenarios to capture the potential range of impacts on Federal student aid transfers. An additional complicating factor in developing these estimates are the related regulatory changes on which the committee reached consensus in this negotiated rulemaking that we will propose in separate notices of proposed rulemaking. For example, we will address the potential expansion of distance education or direct assessment programs because of significant proposed changes in the regulations governing such programs in a separate notice of proposed rulemaking. In this analysis, we address the impact of the accreditation changes and other changes in these final regulations but recognize that attributing future changes in the Federal student aid disbursements to provisions that have overlapping effects is an inexact process. Therefore, in future proposed regulations, as appropriate, we will consider interactive effects related to the changes in these regulations.

The main budget impacts estimated from these final regulations come from changes in loan volumes and Pell Grants disbursed to students as establishing a program becomes less burdensome and additional students receive title IV, HEA funds for teach-outs. Changes that could allow volume increases include making it easier for the Department to recognize new accrediting agencies and reducing the experience requirement for expanding an agency's scope to new degree levels. Agencies will also be able to establish alternative standards that require the institution or program to demonstrate a need for the alternative approach, as long as the alternative will not harm students and that they will receive equivalent benefit. The alternative standard could allow for the faster introduction of innovative programs. The possibility of additional accrediting agencies would increase the chances for institutions to find an agency. Institutions' liability associated with acquiring additional locations and expanded time to come into compliance could also keep programs operating longer than they otherwise might. The tables below present the assumed grant and loan volume changes used in estimating the net budget impact of these final regulations for the primary scenario, with discussion about the assumptions following the tables.

TABLE 2A—ASSUMPTIONS ABOUT CHANGE IN PELL GRANTS BY AWARD YEAR
[Additional Pell recipients]

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
4-year public	0	8,845	15,075	30,789	39,292	48,153	57,375	66,980	68,903	70,333
2-year public	0	6,790	11,624	17,891	24,469	31,395	38,633	46,219	47,710	48,933
4-year private	0	3,252	5,514	11,215	14,272	17,456	20,806	24,230	24,869	25,369
2-year private	0	163	281	433	597	772	956	1,155	1,193	1,235
Proprietary	0	4,988	10,266	15,832	21,691	25,102	28,679	32,454	33,612	34,570
Total	....	24,038	42,760	76,161	100,321	122,879	146,450	171,037	176,288	180,441

Estimated program costs for Pell Grants range from $30.1 billion in AY 2021–22 to $37.2 billion in AY 2029–30, with a 10-year total estimate of $333.8 billion. On average, the FY 2020 President's Budget projects a baseline increase in Pell Grant recipients from 2020 to 2029 of approximately 200,000 annually. The increase in Pell Grant recipients estimated due to these final regulations ranges from about 12 percent in 2021 to approximately 90 percent by 2029 of the projected average annual increase that would otherwise occur. However, even the additional 180,441 recipients estimated for 2029 would account for approximately 2 percent of all estimated Pell recipients in 2029 and results in an increase in program costs of approximately $4,427 million, a 1.3 percent increase in estimated 10-year Pell Grant program costs of $333.8 billion.

TABLE 2B—ASSUMPTIONS ABOUT CHANGE IN LOAN VOLUME FROM FINAL REGULATIONS BY COHORT AND RISK-GROUP

	PB2020 vol est (subsidized and unsubsidized)	Percent change in loan volume by risk group and cohort—subsidized and unsubsidized loans									
	FY2020 ($mns)	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Proprietary	2,774	0	0.5	1	1.5	2	3	4	5	5	5
2-Year Non-Profit	4,981	0	0.3	0.5	0.75	1	1.25	1.5	2	2.25	2.5
4-Year Fr/So	17,118	0	0.3	0.5	1	1	1.5	2	2.75	3.5	4
4-Year Jr/Sr	20,063	0	0.3	0.5	1	1	1.5	2	2.75	3.5	4
Grads	50,734	0	0	−0.2	−0.2	−0.2	−0.2	−0.3	−0.3	−0.3	−0.3
	PB2020 vol est (PLUS)	Percent change in loan volume by risk group and cohort—PLUS loans									
	FY2020 ($mns)	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Proprietary	356	0	0.25	0.5	0.75	1	1.5	2	2.5	2.5	2.5
2-Year Non-Profit	133	0	0.15	0.25	0.375	0.5	0.625	0.75	1	1.125	1.25
4-Year Fr/So	8,003	0	0.15	0.25	0.5	0.5	0.75	1	1.375	1.75	2
4-Year Jr/Sr	5,713	0	0.15	0.25	0.5	0.5	0.75	1	1.375	1.75	2
Grads	11,888	0	0	−0.2	−0.2	−0.2	−0.2	−0.3	−0.3	−0.3	−0.3

As seen from the approximately $100 billion annual loan volume, even small changes will result in a significant amount of additional loan transfers. We update loan volume estimates regularly; for PB2020 the total non-consolidated loan volume estimates between FY2020 and FY2029 range from $100.2 billion to $116.1 billion. The additional high and low scenarios represent a 20 percent increase or decrease from the assumptions presented in the table. The Department does not anticipate that the changes in the final regulations will lead to widely different scenarios for volume growth and therefore believes the 20 percent range captures the likeliest outcomes. For the provisions aimed at reducing closed school discharges by enhancing teach-outs, the main assumption is that closed school discharges will decrease by 10 percent, with a 20 percent decrease in the high scenario and a 5 percent decrease in the low scenario. With some exceptions, the Department has limited information about teach-outs and what motivates students to pursue them versus a closed school discharge, but we assume proximity to completion, convenience, and perception of the quality of the teach-out option have a substantial effect. Absent any evidence of the effect of the proposed changes on student response to teach-out plans, the Department has made a conservative assumption about the decrease in closed school discharges and the potential savings from the proposed changes may be higher.

However, since the publication of the NPRM describing the accreditation changes, the final Borrower Defense rule was published on September 23, 2019 [40] and reduced expected discharges as the elimination of automatic closed school discharges generated more savings than the extension of the closed school window to 180 days increased discharges. In order to avoid attributing savings in these final regulations for reductions in closed school discharges that would occur because of the borrower defense changes, the Department re-estimated the savings from this provision against the PB2020 baseline with the borrower defense closed school changes incorporated in it. Evaluated against this reduced level of expected future closed school discharges, the estimated savings from the closed school provision decreased

[40] 84 FR 49788 published September 23, 2019. Available at *https://www.govinfo.gov/content/pkg/FR-2019-09-23/pdf/2019-19309.pdf.*

from $120 million in the main 10 percent reduction scenario to $79 million.

The assumed changes in loan volume would result in a small cost that represents the net impact of offsetting subsidy changes by loan type and risk group due to positive subsidy rates for Subsidized and Unsubsidized Stafford loans and negative subsidy rates for Parent PLUS Loans and the interaction of the potential reduction in closed school discharges and increases in loan volume. The costs of the volume increase do differ from the NPRM as a result of the modified baseline that takes the final Borrower Defense rule into account as reduced discharge rates reduce subsidy costs. We do not assume any changes in subsidy rates from the potential creation of new programs or the other changes reflected in these final regulations. Depending on how programs are configured, the market demand for them, and their quality, key subsidy components such as defaults, prepayments, and repayment plan choice may vary and affect the costs estimates. For example, if institutions with less favorable program outcomes find more lenient accrediting agencies or if they take advantage of the substantive change policy revisions to expand their program offerings, there could be an increase in default rates or other repayment issues. On the other hand, institutions with strong programs may take advantage of the flexibility allowed by the substantive change policy revisions to expand their program offerings, possibly by adding certificate programs. We do not have information at this point to assume that new programs established under these provisions would have a different range of performance from current programs or to estimate how performance could vary.

Table 3 summarizes the Pell and loan effects for the Low, Main, and High impact scenarios over a 10-year period with years 2022 through 2029 showing amounts of over $100 million in outlays per year. Each column reflects a low impact, medium impact, or high impact scenario showing estimated changes to Pell Grants and Direct Loans under those low, medium, and high conditions. Therefore, the overall amounts reflect the sum of outlay changes occurring under each scenario for Pell Grants and Direct Loans when combined. The loan amounts reflect the combined change in the volumes and closed school discharges, which do have interactive and offsetting effects. For example, the closed school changes had estimated savings ranging from $41 million to $164 million when evaluated without the volume changes, and the volume changes had costs of $81 million to $139 million when estimated without the closed school changes.

TABLE 3—ESTIMATED NET IMPACT OF PELL GRANT AND LOAN CHANGES—2020–2029 OUTLAYS

[$mns]

	Low	Main	High
Pell Grants	2,981	3,744	4,463
Loans	40	35	−25
Overall	3,021	3,779	4,438

When considering the impact of these final regulations on Federal student aid programs, a key question is the extent to which the changes will expand the pool of students who will receive grants or borrow loans compared to the potential shifting of students and associated aid to different programs that may arise because of the changes in accreditation. The Department believes many of the final regulatory provisions that clarify definitions or reflect current practice will not lead to significant expansion of program offerings that would not otherwise occur for reasons related to institutions' business plans or academic mission. We believe these provisions may ease the burden of setting up new programs and accelerate the timeframe for offering them. Accreditation is a significant consideration when establishing a program because of the expense and work involved in seeking and maintaining it, but institutions make decisions about programs to offer based on employment needs, student demand, availability of faculty, and several other factors. Therefore, the Department does not expect these final regulations to increase total loan volumes more than 2 percent or Pell Grant recipients more than 2 percent by 2029 compared to the FY 2020 President's Budget baseline.

Another factor reflected in Table 3 is that we do not expect the impacts of these final regulations to occur immediately upon implementation, but to be the result of changes in postsecondary education over time. Institutions generally undergo accreditation review every 7 to 10 years, depending upon the accrediting agency and their status. Additionally, accrediting agencies may develop a new focus area or geographic scope over time as they increase resources to expand their operations. To the extent that there is a change in the institutional accreditation landscape, we would not expect institutions to change agencies until their next review point, so the impacts of these final regulations will be gradual.

The changes to the substantive change requirements, which will allow institutions to respond quickly to market demand and create undergraduate programs at different credential levels and focus agency attention on the creation of graduate certificate and masters level programs where many loan dollars are directed, could lead to expansion in Federal aid disbursed. The increased volume change of the high scenario reflects uncertainty about the extent of this potential expansion, as well as the fact that much of the expansion may involve online programs subject to forthcoming proposed regulatory changes that would interact with these final regulations. The number of graduate programs awarding credentials has increased substantially since the introduction of graduate PLUS loans in 2006, as has the volume of loans disbursed to graduate borrowers, as shown in Table 5. These final regulations will not change the substantive change requirements for graduate programs. This emphasis reflects the Department's concern about the growing practice of elevating the level of the credential required to satisfy occupational licensure requirements. Focusing accrediting agency attention on graduate programs may slow down or prevent the creation of some new programs, which we reflect in the slight reduction in graduate loan volume in Table 2.

TABLE 4[41]—PROGRAMS AWARDING CREDENTIALS AND CREDENTIALS AWARDED IN SELECTED YEARS 2006–2017

	Programs				Awards			
	2006	2010	2013	2017	2006	2010	2013	2017
Undergraduate Certificates	50,960	58,870	60,440	64,490	1,461,460	734,880	1,987,740	1,919,950
Public 4 year	1,890	3,130	4,160	7,970	30,740	34,840	104,860	196,790
Private 4 year	1,810	2,280	2,490	2,810	21,640	9,990	27,320	27,720
Prop 4 year	950	1,550	2,150	1,820	30,220	13,680	61,200	61,470
Public 2 year or less	33,570	37,250	36,740	39,020	713,690	409,720	986,440	1,064,240
Private 2 year or less	1,290	1,050	1,010	890	58,490	22,350	41,920	40,030
Prop 2 year or less	11,440	13,620	13,900	11,990	606,670	244,290	766,010	529,700
+Undergraduate Degrees	136,190	149,840	161,220	168,980	4,596,970	2,144,470	5,942,860	6,164,090
Public 4 year	40,000	42,670	46,770	55,080	2,126,290	1,036,150	2,709,700	3,048,600
Private 4 year	57,240	61,950	67,070	71,550	1,101,850	488,020	1,289,280	1,349,090
Prop 4 year	4,680	9,460	11,270	7,170	202,920	159,620	519,650	342,520
Public 2 year or less	30,280	31,590	31,880	32,320	1,029,930	413,450	1,282,000	1,343,570
Private 2 year or less	840	620	570	540	19,480	4,240	13,200	14,090
Prop 2 year or less	3,160	3,550	3,660	2,330	116,510	42,980	129,020	66,210
Graduate Certificates	5,580	7,530	9,920	13,280	74,870	33,990	74,870	74,870
Public 4 year	2,320	3,250	4,480	6,740	31,620	14,560	48,950	65,420
Private 4 year	3,000	4,000	4,780	5,860	40,830	17,770	48,450	51,400
Prop 4 year	260	280	650	680	2,400	1,660	7,420	7,990
Public 2 year or less								
Private 2 year or less								
Prop 2 year or less					20			
Graduate Degrees	44,370	47,970	51,820	59,980	1,465,180	712,760	1,875,660	1,993,430
Public 4 year	24,850	25,850	27,370	32,250	731,320	335,760	870,070	935,950
Private 4 year	18,280	20,190	22,270	25,160	672,990	323,390	834,740	899,630
Prop 4 year	1,230	1,920	2,180	2,580	60,880	53,610	170,840	157,850
Public 2 year or less								
Private 2 year or less								
Prop 2 year or less								

TABLE 5[42]—GRADUATE PLUS AND GRADUATE UNSUBSIDIZED LOANS DISBURSED TO STUDENTS IN SELECTED YEARS 2006–2017

	AY2005–06	AY2009–10	AY2012–13		AY2016–17	
	Grad PLUS	Grad PLUS	Grad PLUS	Grad unsub	Grad PLUS	Grad unsub
Public	12,793,910	1,276,149,977	1,838,645,436	10,232,321,388	2,444,408,219	10,584,552,835
Private	59,288,547	3,909,981,128	4,934,939,609	12,629,730,564	6,094,281,420	13,030,559,389
Proprietary	4,000,483	575,779,471	830,210,361	3,967,504,952	1,106,645,769	3,410,171,851
Total	76,082,940	5,761,910,576	7,603,795,406	26,829,556,904	9,645,335,408	27,025,284,075

Note: Unsubsidized loans to graduate students not included as not split in volume reports until 2010–11.

These final regulations also aim to bring greater clarity to the nature of teach-outs and to create a more orderly process for students and institutions when institutions are closing precipitously. We seek through these final regulations to provide students with the opportunity to finish their program of study and attain their credential and keep closed school discharges to a minimum to reduce taxpayer cost.

These final regulations will permit an accrediting agency to sanction a specific program or location within an institution without acting against the entire institution if the agency found that only that program or location was noncompliant. The Department recognizes that this situation would preclude a student from obtaining a closed school discharge, since only a program was subject to closure and not the entire institution. However, accrediting agency actions have rarely been the sole cause of institutional closure, so the potential application of this more limited response may not change the level of closed school discharges significantly.

Nevertheless, students would be entitled to teach-outs that facilitate program completion and degree attainment. In turn, the expansion of teach-outs could have budgetary impacts related to financial aid amounts as students take out loans or grants to complete their programs. When participating in a teach-out, the receiving institution may not charge students more than what the closing or closed institution would have charged for the same courses. If teach-outs increase significantly, this could result in some increase in loan volume and Pell Grants to such students. Closed school discharges are a very small percent of cohort volume, so we do not expect the potential volume increase associated with increased teach-outs ranges to be substantial or to contribute to the volume increases presented in Table 2.

[41] U.S. Department of Education analysis of IPEDS completion data for 2006, 2010, 2013, and 2017. Available at *https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx.*

[42] FSA Data Center loan volume files available at *https://studentaid.ed.gov/sa/about/data-center/student/title-iv.*

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these final regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers and Pell Grant recipients.

TABLE 6—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Benefits	
Restored focus and clarity for accrediting agency recognition process	Not Quantified	
	Not Quantified	
Category	**Costs**	
	7%	3%
Cost of compliance with paperwork requirements	$20.1	$20.1
Category	**Transfers**	
	7%	3%
Increased Pell Grants transferred to students who enter postsecondary education because of programs established or that remain open because of accreditation changes or who participate in teach-outs	$323.2	$351.9
Change in transfers from increased Federal student loans transferred to students who enter postsecondary education because of programs established or that remain open because of accreditation changes or who participate in teach-outs and reduced closed school discharges from the Federal Government to affected borrowers	1.9	2.2

Regulatory Alternatives Considered

In the interest of ensuring that these final regulations produce the best possible outcome, we considered a broad range of proposals from internal sources as well as from non-Federal negotiators and members of the public as part of the negotiated rulemaking process. We reviewed these alternatives in detail in the preamble to the NPRM under the ''Reasons'' sections accompanying the discussion of each proposed regulatory provision. Among the items discussed was removing or revising the limit on how much of a program a non-accredited entity may offer, which could allow faster expansion of programs but raised concerns about maintaining program quality. Also, a variety of alternatives to the proposed elimination of the requirement that an agency must have conducted accrediting activities for at least two years prior to seeking recognition when the agency is affiliated with, or is a division of, a recognized agency were considered by the negotiating committee. The committee did not agree to a proposal to make all regional accrediting agencies national but did agree to using the institutional designation for Department business. The committee also considered stricter requirements for obtaining approval of graduate programs. These proposals would likely have had a stronger negative effect on graduate program creation than these final regulations.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 600, 602, and 668 contain information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In these final regulations, we display the control numbers assigned by OMB to any information collection requirements adopted in the final regulations. In the case of a new information collection, the OMB control number will be issued upon the information collection request approval.

Discussion

The goal of accreditation is to ensure that institutions of higher education meet acceptable levels of quality. Accreditation in the United States involves non-governmental entities as well as Federal and State government agencies. Accreditation's quality assurance function is one of the three main elements of oversight governing the HEA's Federal student aid programs. In order for students to receive Federal student aid from the Department for postsecondary study, the institution must be accredited by a ''nationally recognized'' accrediting agency (or, for certain vocational institutions, approved by a recognized State approval agency), be authorized by the State in which the institution is located, and receive approval from the Department through a program participation agreement.

Accrediting agencies, which are private educational associations operating in multiple states or with national scope, develop evaluation criteria and conduct peer evaluations to assess whether institutions and programs meet those criteria. Institutions and programs that request an accrediting agency's evaluation and that meet that agency's criteria are then ''accredited.''

As of April 2019, the Secretary recognized 53 accrediting agencies that are independent, membership-based organizations designed to ensure students have access to qualified faculty, appropriate curriculum, and other support services. Of these 53 accrediting agencies recognized by the Secretary, 36 are institutional for title IV HEA purposes and 18 are solely programmatic. Institutional accrediting agencies accredit institutions of higher education, and programmatic accrediting agencies accredit specific educational programs that prepare students for entry into a profession, occupation, or vocation. The PRA section will use these figures in assessing burden. Additionally, we use the number of title IV eligible institutions noted in the Regulatory Impact Analysis (1,860 public institutions, 1,704 private institutions, and 1,783 proprietary institutions) as the basis for assessing institutional burden in the PRA.

Through this process we identified areas where cost savings will likely occur under the final regulations; however, many of the associated criteria do not have existing information collection requests and consequently we did not then assign OMB numbers for data collection purposes. Instead, we included them in the collections table in a column titled: ''Estimated savings absent ICR requirement,'' and they are sometimes referred to as ''hours saved.'' We did not include these areas of anticipated costs savings in the total burden calculations.

Section 600.9—State Authorization

Requirements

Under § 600.9(c)(2)(i), the institution must determine in which State a student is located while enrolled in a distance education or correspondence course when the institution participates in a State authorization reciprocity agreement under which it is covered in accordance with the institution's policies and procedures. The institution must make such determinations consistently and apply them to all students.

Under § 600.9(c)(2)(ii), the institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.

Burden Calculation

We estimate that, on average, an institution will need 30 minutes to update its policies and procedures manual to ensure consistent location determinations for distance education and correspondence course students. Additionally, we estimate that it will take an institution 30 minutes to provide the Secretary, upon request, with written documentation from its policies and procedures manual of its method of determination of a student's location, including the basis for such determination.

TABLE 7—§ 600.9(c)(2)(i)

Entity	Responses	Time per response	Total hours
Public	1,860	.5 hours (30 min.)	= 930
Private	1,704	.5 hours (30 min.)	= 852
Proprietary	1,783	.5 hours (30 min.)	= 892
	....	....	= 2,674

We estimate that no more than five percent of institutions will be required to provide written documentation to the Secretary regarding the basis for the institutions' determinations of a State location for a student. We estimate that 93 public institutions will require 47 hours to provide written documentation of their basis for a location determination for a student as requested by the Secretary. We estimate that 85 private institutions will require 43 hours to provide written documentation of their basis for a location determination for a student as requested by the Secretary. We estimate that 89 proprietary institutions will require 45 hours to provide written documentation of their basis for a location determination for a student as requested by the Secretary.

TABLE 8—§ 600.9(c)(2)(ii)

Entity	Responses	Time per response	Total hours
Public	1,860	5% × .5 hours (30 min.)	= 47
Private	1,704	5% × .5 hours (30 min.)	= 43
Proprietary	1,783	5% × .5 hours (30 min.)	= 45
	....	....	= 135

The estimated burden for § 600.9 is 2,809 hours under OMB Control Number 1845–0144. The estimated institutional cost is $127,416 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.12—Accrediting Experience

Requirements

The Department will require under § 602.12(b)(1) that an accrediting agency notify the Department of its geographic expansion and to publicly disclose it on its website.

Burden Calculation

Under § 602.12(b)(1), we estimate that, on average, it will take an agency 1 hour to inform the Department that it has expanded its geographic scope and to disclose the information publicly on its website. However, overall burden will decrease because an agency will no longer need to request approval of such an expansion by the Department, which takes, on average, 20 hours. The Department has received, on average, one such request annually.

The estimated burden under § 602.12 will increase by 1 hour [1 × 1] under OMB Control Number 1840–0788. In addition, in absence of an ICR for expansion of scope, we estimate, on average, burden reduction under § 602.12 will be 19 hours [1 × (20 − 1)] under OMB Control Number 1840–0788. The estimated institutional cost is $45.36 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.18—Ensuring Consistency in Decision-Making; Section 602.20—Enforcement of Standards; Section 602.22—Substantive Changes and Other Reporting; Section 602.23—Operating Procedures All Agencies Must Have; Section 602.24—Additional Procedures Certain Institutional Agencies Must Have; and Section 602.26—Notifications of Accrediting Decisions: All Related to Final Accreditation Agency Policy Changes

Requirements

Under § 602.18(a)(6), we will require that accrediting agencies publish any policies for retroactive application of an accreditation decision. The policies must not provide for an effective date that predates an earlier denial by the agency of accreditation or preaccreditation to the institution or program or the agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

Under § 602.20(a)(2), we will require that accrediting agencies provide institutions or programs with written timelines for coming into compliance, which may include intermediate checkpoints as the institutions progress to full compliance.

Under § 602.20(b), we will require that accrediting agencies have a policy for taking immediate adverse action when warranted. We will require both changes to remove overly prescriptive timelines for accrediting agencies that will emphasize acting in the best interest of students rather than merely acting swiftly.

Under § 602.20(d), we will add that accrediting agencies could limit adverse actions to specific programs or additional locations without taking action against the entire institution. This change will provide accrediting agencies with more tools to hold programs or locations within institutions accountable.

The Department will revise substantive change regulations to provide accrediting agencies more flexibility to focus on the most important changes. Under § 602.22(a)(3)(i), we will allow accrediting agencies' decision-making bodies to designate agency senior staff members to approve or disapprove certain substantive changes. Under § 602.22(a)(3)(ii), we will allow a 90-day timeframe (180 days for those with significant circumstances) for accrediting agencies to make final decisions about substantive changes involving written arrangements for provision of 25 to 50 percent of a program by a non-eligible entity. Under § 602.22(b), we will add two additional substantive changes for which an institution placed on probation or equivalent status must receive prior approval and for which other institutions must provide notice to the accrediting agency. Under § 602.23(f)(1)(ii), agencies must require that all preaccredited institutions have a teach-out plan that ensures students completing the teach-out will meet curricular requirements for professional licensure or certification, if any. Further, the teach-out plan must include a list of academic programs offered by the institution, as well as the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution.

Under final § 602.24(a), agencies are no longer required to use an institution's business plan, submitted to the Department, to describe the operation, management, and physical resources of the branch campus and remove the requirement that an agency may only extend accreditation to a branch campus after the agency evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has enough educational, financial, operational, management, and physical resources to meet the agency's standards.

Under § 602.24(c), we will require new requirements for teach-out plans and teach-out agreements. These changes will add additional specificity and clarity to teach-out plans and agreements and new provisions regarding when they will be required, what they must include, and what accrediting agencies must consider before approving them.

Under § 602.24(f), we will require that agencies adopt and apply the definitions of ''branch campus'' and ''additional location'' in 34 CFR 600.2, and on the Secretary's request, conform its designations of an institution's branch campuses and additional locations with the Secretary's if it learns its designations diverge. This change will standardize the use of these terms and alleviate misunderstandings.

Under § 602.26(b), we will require that accrediting agencies provide written notice of a final decision of a probation or equivalent status, or an initiated adverse action to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision.

Further, we will require the institution or program to disclose such an action within seven business days of receipt to all current and prospective students.

Burden Calculation

Under § 602.18(a)(6), § 602.20(a)(2), § 602.20(b), § 602.20(d), § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b), § 602.23(f)(1)(ii), § 602.24(a), § 602.24(c), § 602.24(f), and § 602.26(b), we estimate that, on average, an agency will need 12 hours to develop policies regarding submitting written documentation to the Secretary, which includes obtaining approval from its decision-making bodies, updating its policies and procedures manual, distributing the new policies to its institutions, and training agency volunteers on the changes.

Collectively, the one-time estimated burden for § 602.18(a)(6), § 602.20(a)(2), § 602.20(b), § 602.20(d), § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b), § 602.23(f)(1)(ii), § 602.24(a), § 602.24(c), § 602.24(f), and § 602.26(b), is 636 hours (53 × 12) under OMB Control Number 1840–0788. The estimated institutional cost is $28,849 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 9—SUMMARY OF ACCREDITING AGENCY POLICY MANUAL CHANGES

Requirements	Hours	Number of agencies	Total burden
Write Policies	4	53	212
Obtain Approval	2	53	106
Update Manual	2	53	106
Distribute Policies	1	53	53
Train Volunteers	3	53	159
Total	12	53	636

Section 602.22—Substantive Changes and Other Reporting Requirements

Requirements

Under 602.22(a)(3)(i), for certain substantive changes, the agency's decision-making body may designate agency senior staff to approve or disapprove the request.

Burden Calculation

Although a formal ICR does not exist under §§ 602.22(a)(3)(i), we estimate that we will save time, on average, by 6 hours given that a designated agency staff member could approve or disapprove certain substantive changes in place of decision-making bodies.

The estimated amount of time saved under § 602.22(a)(3)(i) is 318 hours [53 × (−6)] under OMB Control Number 1840–0788. There is no estimated institutional cost under § 602.22(a)(3)(i), but we believe that there will be an overall savings of $14,424.48 for agencies.

Section 602.23—Operating Procedures All Agencies Must Have

Requirements

Under § 602.23(a)(2), we will require that accrediting agencies make publicly available the procedures that institutions or programs must follow in applying for substantive changes. While we are aware that some agencies voluntarily make such procedures publicly available, we will now require it. Further, we will require that the agencies make publicly available the sequencing of steps relative to any applications or decisions required by States or the Department relative to the agency's preaccreditation, accreditation or substantive change decisions.

Burden Calculation

Under § 602.23(a)(2), we estimate that, on average, it will take an agency a one-time effort of 2 hours to make its application procedures publicly available. We anticipate that accrediting agencies will use their websites to comply, but any reasonable method is acceptable if the information is available to the public.

The estimated one-time burden for § 602.23 is 106 hours (53 × 2) under OMB Control Number 1840–0788. The estimated institutional cost is $4,808 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.24—Additional Procedures Certain Institutional Agencies Must Have

Requirements

Under final § 602.24(a), agencies will not have to require an institution's business plan, submitted to the Department, to describe the operation, management, and physical resources of the branch campus and we will remove the requirement that an agency may only extend accreditation to a branch campus after the agency evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has enough educational, financial, operational, management, and physical resources to meet the agency's standards. Final § 602.24(c) will establish new requirements for teach-out plans and teach-out agreements, including when an agency must require them and what elements the agency must include.

Final § 602.24(f) will remove the requirement that an agency conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

Burden Calculation

We believe the requirements under § 602.24 that we are deleting are unnecessarily prescriptive and administratively burdensome without adding significant assurance that the agency review will result in improved accountability or protection for students or taxpayers.

Institutional accrediting agencies reviewed and extended accreditation to 53 branch campuses in 2018; and 26 to date in 2019. Given these figures, we estimate that under final § 602.24(a), an agency will save, on average, three hours ([2 hours × 53 business plans = 106]/36 institutional accrediting agencies = 3 hours) not reviewing business plans for branch campus applications. Under § 602.24(c), we estimate that an agency will need, on average, an additional hour to review the extra requirements for teach-out plans and teach-out agreements of their Title IV gatekeeping institutions (1 hour × 5,347 institutions).

Accrediting agencies review their institutions at different intervals with a maximum of 10 years. Using a five-year interval as a "mean," agencies will review and evaluate credit hours of 5,347 Title IV gatekeeping institutions every five years. Under § 602.24(f), we estimate that accrediting agencies have conducted the one-time review and evaluation of 80 percent (4,277) of their institutions' credit hours given the requirement became effective eight years ago (2011) leaving, no more than likely, 20 percent (1,070) of institutions' credit hours to be reviewed and evaluated.

Collectively, under § 602.24(a), (c), and (f), we estimate, on average, added burden of 5,347 hours (1 × 5,347); and 2,246 saved hours (106 + 2,140) if an ICR was associated with the final changes to lift required review of institutions' business plans and credit hours.

The estimated institutional cost is $242,540 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 10—SUMMARY OF PROPOSED BURDEN AND HOURS SAVED FOR ADDITIONAL PROCEDURES CERTAIN INSTITUTIONAL AGENCIES MUST HAVE

Changes	Hours	Branch campus	Total burden	Hours saved
Business Plans—Applications	2	53		106
Teach-out Plans & Agreements	1	5,347	5,347	
Credit Hours	2 ×	5,347 × 20		2,140
Total	1		5,347	2,246

Section 602.31—Agency Applications and Reports To Be Submitted to the Department

Requirements

Given the increased number of Freedom of Information Act (FOIA) requests, in § 602.31(f), we will require that accrediting agencies redact personally identifiable information and other sensitive information prior to sending documents to the Department to help prevent public disclosure of that sensitive information.

Burden Calculation

In FY 2018, the Department closed 10 FOIA requests that were associated with accreditation. The estimated calculations are based on the time Department staff spent redacting PII, not the total time staff used to conduct searches and process the requests. Using the FY 2018 FOIA data related to accrediting agencies, we estimate that, on average, it will take an agency 5.37 hours to comply with the final redaction requirements under § 602.31(f).

The estimated burden for § 602.31 is 285 hours ([285 hours/53 agencies] = 5.37) under OMB Control Number 1840–0788. The estimated institutional cost is $12,928 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 11—SUMMARY OF BURDEN FOR AGENCIES TO REDACT PII

	Hours	Cost per hour	Total cost burden	Per agency
Total	285	$45.36	$12,928	$244

Section 602.32—Procedures for Applying for Recognition, Renewal of Recognition, or for Expansion of Scope, Compliance Reports, and Increases in Enrollment

Requirements

Under § 602.32(a), we will specify what accrediting agencies preparing for recognition renewal will submit to the Department 24 months prior to the date their current recognition expires.

Under § 602.32(j)(1), we will outline the process for an agency seeking an expansion of scope, either as a part of the regular renewal of recognition process or during a period of recognition.

Burden Calculation

Under § 602.32(a), we anticipate that, on average, it will take an agency 3 hours to gather, in conjunction with materials required by § 602.31(a), a list of all institutions or programs that the agency plans to consider for an award of initial or renewed accreditation over the next year or, if none, over the succeeding year, and any institutions subject to compliance reports or reporting requirements. Also, under § 602.32(j)(1), we anticipate that, on average, it will take an agency 20 hours to compose and submit a request for an expansion of scope of recognition.

Over the last five years, the Department has received fewer than five requests for expansion of scope.

The estimated burden for § 602.32 is 179 hours (53 × 3) + (1 × 20) under OMB Control Number 1840–0788. The estimated institutional cost is $8,119 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.36—Senior Department Official's Decision

Requirements

Under final § 602.36(f), the SDO will determine whether an agency is compliant or substantially compliant, which will give accrediting agencies opportunities to make minor modifications to reflect progress toward full compliance using periodic monitoring reports.

Burden Calculation

If we determine that an agency is substantially compliant, the SDO will allow the agency to submit periodic monitoring reports for review by Department staff in place of the currently used compliance report; the compliance report, requires a review by the NACIQI, attendance at one of its bi-annual meetings, and conceivably comments filed with the SDO and an appeal to the Secretary. From 2014 through 2018, the Department reviewed 17 compliance reports. Under final § 602.36(f) these 17 compliance reports would have had the following designations: Five monitoring reports (one annually); two requiring both compliance and monitoring reports (less than one annually); and 10 (two annually) as compliance reports. Using data from our findings during reviews, we anticipate that final changes will reduce the burden on an agency.

If an accrediting agency is required to submit a monitoring report, we estimate that, on average, the final changes will save an agency 72 hours for travel and meeting attendance, given we will not require attendance at one of NACIQI's bi-annual meetings unless the agency does not address the initial areas of noncompliance satisfactorily through the use of monitoring reports. However, if we require an accrediting agency to submit both a monitoring report and a compliance report, we estimate that the final changes in § 602.36(f) will increase the burden for an accrediting agency by 8 hours as the agency completes its application for renewal of recognition by the Secretary.

We estimate that, on average, the burden for § 602.36 will increase 8 hours (1 × 8) under OMB Control Number 1840–0788. However, considering the time saved for travel, we estimate (72 − 8 = 64) 64 saved hours overall. The estimated institutional cost is $363 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 12—SUMMARY OF BURDEN AND HOURS SAVED USING MONITORING REPORTS

Report type	Number	Hours	Total burden	Hours saved
Monitoring	1	72	....	72
Monitoring and Compliance	1	8	8	....

Section 668.26—End of an Institution's Participation in the Title IV, HEA Programs

Requirements

Under final § 668.26, the Secretary may permit an institution that has ended its participation in title IV programs to continue to originate, award, or disburse title IV funds for up to 120 days under specific circumstances. The institution must notify the Secretary of its plans to conduct an orderly closure in accordance with its accrediting agency, teach out its students, agree to abide by the conditions of the program participation agreement in effect at the time of the loss of participation, and provide written assurances of the health and safety of the students, the adequate financial resources to complete the teach-out and the institution is not subject to adverse action by the institution's State authorizing body or the accrediting agency.

Burden Calculation

We estimate that, on average, an institution will need 5 hours to draft, and finalize for the appropriate institutional management signature, the written request for extension of eligibility from the Secretary. We anticipate that 5 institutions may utilize this opportunity annually.

TABLE 13—§ 668.26

Respondent	Responses	Time per Response (hours)	Total hours
Public	1	5	= 5
Private	2	5	= 10
Proprietary	2	5	= 10
Total	....	....	= 25

The estimated burden for § 668.26 is 25 hours under OMB Control Number 1845–0156. The estimated institutional cost is $1,134 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 668.43—Institutional Information

Requirements

The final regulations in § 668.43(a)(5) will require an institution to disclose whether the program will fulfill educational requirements for licensure or certification if the program is designed to or advertised as meeting such requirements. Institutions will be required to disclose, for each State, whether the program did or did not meet such requirements, or whether the institution had not made such a determination.

The final regulations in § 668.43(a)(11) will revise the information about an institution's transfer of credit policies to require the disclosure of any types of institutions from which the institution will not accept transfer credits. Institutions will also be required to disclose any written criteria used to evaluate and award credit for prior learning experience.

The final regulations in § 668.43(a)(12) will require institutions to provide disclosures in the program description regarding written arrangements under which an entity other than the institution itself provides all or part of a program.

The final regulations will add disclosure requirements that are in statute but not reflected fully in the regulations as well as new disclosure requirements. These disclosures will include: In § 668.43(a)(13), the percentage of the institution's enrolled students disaggregated by gender, race, ethnicity, and those who are Pell Grant recipients; in § 668.43(a)(14) placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs; in § 668.43(a)(15) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; in § 668.43(a)(16) the fire safety report prepared by the institution pursuant to § 668.49; in § 668.43(a)(17) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students; and in § 668.43(a)(18) institutional policies regarding vaccinations.

The final regulations in § 668.43(a)(19) will require an institution to disclose to students if its accrediting agency requires it to maintain a teach-out plan under § 602.24(c)(1), and to indicate the reason why the accrediting agency required such a plan.

The final regulations in § 668.43(a)(20) will require that an institution must disclose enforcement actions or prosecutions by law enforcement agencies that, upon a final judgment, would result in an adverse action by an accrediting agency, revocation of State authorization, or suspension, limitation or termination of eligibility to participate in title IV. Investigations that have not progressed to pending enforcement actions or prosecutions need not be disclosed—regardless of their subject matter.

The final regulations will add a new paragraph (c) requiring an institution to make direct disclosures to individual students in certain circumstances.

Institutions will be required to disclose to a prospective student that the program in which they intended to enroll did not meet the educational requirements for licensure in the State in which the student was located, or if such a determination of whether the program met the licensure requirements in that State had not been made. We will also require an institution to make a similar disclosure to a student who was enrolled in a program previously meeting those requirements which ceased to meet the educational requirements for licensure in that State. The final regulations will hold the institutions responsible for establishing and consistently applying policies for determining the State in which each of its students is located. Such a determination will have to be made at the time of initial enrollment, and upon receipt of information from the student, in accordance with institutional policies, that his or her location had changed to another State. The final regulations require institutions to provide the Secretary, on request, with written documentation of its determination regarding a student's location.

Comments

Several commenters disagreed with the proposed estimated time in the NPRM regarding the licensure and certification disclosure requirements as well as the estimated time to gather and complete the individualized disclosures. They felt that the proposed hours per institution was underestimating the time it would take an institution to research and maintain programmatic license or certification information.

Discussion

As we stated in the preamble, the Department does not require that an institution determine the licensure and certification requirements for their eligible programs for each State. If an institution does not make such a determination for each State, it can inform students that it has not made such a determination and comply with the regulations. The Department has not made an adjustment to the estimated burden hours.

Burden Calculation

We anticipate that most institutions will provide this disclosure information electronically on either the general institution website or individual program websites as required. Using data from the National Center for Educational Statistics, there were approximately 226,733 certificate and degree granting programs in 2017 identified for the public, private and proprietary sectors. Of those, public institutions offered 134,387 programs, private institutions offered 70,678 programs, and proprietary institutions offered 21,668 programs.

For § 668.43(a)(5)(v), we estimate that five percent or 11,337 of all programs will be designed for specific professional licenses or certifications required for employment in an occupation or is advertised as meeting such State requirements. We further estimate that it will take an institution an estimated 50 hours per program to research individual State requirements, determine program compatibility and provide a listing of the States where the program curriculum meets the State requirements, where it does not meet the State requirements, or list the States where no such determination has been made. We base this estimate on institutions electing not to research and report licensing requirements for States in which they had no enrollment or expressed interest. Additionally, we believe that some larger institutions and associations have gathered such data and have shared it with other institutions so there is less burden as they complete this research.

The estimated burden for § 668.43(a)(5)(v) will be 566,850 hours under OMB Control Number 1845–0156.

TABLE 14—§ 668.43(a)(5)(v)

Respondent	Responses	Time per response (hours)	Total hours
Public	6,719	50	= 335,950
Private	3,534	50	= 176,700
Proprietary	1,084	50	= 54,200
Total			= 566,850

For § 668.43(a)(11) through (20), we estimate that it will take institutions an average of 2 hours to research, develop and post on institutional or programmatic websites the required information. The estimated burden for § 668.43(a)(13) through (20) will be 10,694 hours under OMB Control Number 1845–0156.

TABLE 15—§ 668.43(a)(11) THROUGH (20)

Respondent	Responses	Time per response (hours)	Total hours
Public	1,860	2	= 3,720
Private	1,704	2	= 3,408
Proprietary	1,783	2	= 3,566
Total			= 10,694

For § 668.43(c), we anticipate that institutions will provide this information electronically to prospective students regarding the determination of a program's curriculum to meet State requirements for students located in that State or if no such determination has been made. Likewise, we anticipate that institutions will provide this information electronically to enrolled students when a determination has been made that the program's curriculum no longer meets State requirements. We estimate that institutions will take an average of 2 hours to develop the language for the individualized disclosures. We estimate that it will take an additional average of 4 hours for the institutions to disclose this information to prospective and enrolled students for a total of 6 hour of burden. We estimate that five percent of the institutions will meet the criteria to require these disclosures. The estimated burden for § 668.43(c) will be 1,602 hours under OMB Control Number 1845–0156.

TABLE 16—§ 668.43(c)

Respondent	Responses	Time per response (hours)	Total hours
Public	1,860 × 5% = 93	6	= 558
Private	1,704 × 5% = 85	6	= 510
Proprietary	1,783 × 5% = 89	6	= 534
Total			= 1,602

Section	Total hours
668.43(a)(5)	566,850
668.43(a)(11)–(20)	10,694
668.43(c)	1,602

The total estimated burden for final § 668.43 will be 579,146 hours under OMB Control Number 1845–0156. The estimated institutional cost is $26,270,062.56 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

668.50—Institutional Disclosures for Distance or Correspondence Programs

Requirements

The final regulatory package will remove the current regulatory requirements in § 668.50, add in its place a severability provision.

Burden Calculation

The final regulatory package will remove the current regulatory requirements in § 668.50. This removes seven public disclosures that institutions offering distance education or correspondence courses were required to provide to students enrolled or seeking enrollment in such programs. These disclosures included whether the distance education program was authorized by the State where the student resided, if the institution was part of a State reciprocity agreement and consequences of a student moving to a State where the institution did not meet State authorization requirements.

Other disclosures covered the process of submitting a complaint to the appropriate State agency where the main campus is located, process of submitting a complaint if the institution is covered under a State reciprocity agreement, disclosure of adverse actions initiated by the institution's State entity related to distance education, disclosure of adverse actions initiated by the institution accrediting agency, the disclosure of any refund policy required by any State in which the institution enrolls a student, and disclosure of whether the distance education program meets the applicable prerequisites for professional licensure or certification in the State where the student resides, if such a determination has been made. Also, there were two disclosures that were required to be provided directly to currently enrolled and prospective students in either distance education. Those disclosures included notice of an adverse action taken by a State or accrediting agency related to the distance education program and provided within 30 days of when the institution became aware of the action; and, a notice of the institution's determination the distance education program no longer meets the prerequisites for licensure or certification of a State. This disclosure had to be made within seven days of such a determination.

The removal of these regulations will eliminate the burden as assessed § 668.50 which is associated with OMB Control Number 1845–0145. The total burden hours of 152,405 are currently in the information collection 1845–0145 that will be discontinued upon the final effective date of the regulatory package. The estimated institutional cost savings is $ − 6,913,091 based on $45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Consistent with the discussion above, the following chart describes the sections of the final regulations involving information collection, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized costs of the increased burden on institutions and accrediting agencies using wage data developed using Bureau of Labor Statistics data, available at *https://www.bls.gov/ooh/management/postsecondary-education-adminstrators.htm* is $26,696,265 as shown in the chart below. At the effective date of July 1, 2020, there will be a savings of $7,033,522 for a total annual net cost of $19,662,744. This cost is based on the estimated hourly rate of $45.36 for institutions and accrediting agencies.

COLLECTION INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated costs	Estimated savings absent ICR requirement
§ 600.9(c)(2)(i), § 600.9(c)(2)(ii)—State authorization.	Institution must determine in which State a student is located while enrolled in a distance education or correspondence course when the institution participates in a State authorization reciprocity agreement under which it is covered in accordance with the institution's policies and procedures, and make such determinations consistently and apply them to all students. Institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.	OMB 1845–0144. We estimate that the burden will increase by 2,809 hours.	$127,417.	
§ 602.12(b)(1)—Accrediting experience.	Agency will notify the Department of a geographic expansion and publicly disclose it on the agency's website, without requesting permission.	OMB 1840–0788. We estimate that the burden will increase by 1 hour.	$45	We estimate that, on average, agencies will save 19 hours given they will inform the Department of a geographic expansion rather than request it, amounting to a $861.84 savings.
§ 602.18(a)(6)—Ensuring consistency in decision-making. § 602.20(a)(2); § 602.20(b), § 602.20(d)—Enforcement of standards. § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b)—Substantive changes and other reporting requirements. § 602.23(f)(1)(ii)—Operating procedures all agencies must have. § 602.24(a), § 602.24(c), § 602.24(f)—Additional procedures certain institutional agencies must have. § 602.26(b)—Notifications of accrediting decisions.	Agency will publish and distribute new policies, with detailed requirements.	OMB 1840–0788. We estimate that the burden will increase by 636 hours.	$28,849.	
§ 602.22(a)(3)(i)—Substantive changes and other reporting requirements.	Agency will designate a staff member to approve or disapprove certain substantive changes.			We estimate agencies will save, on average, 318 hours, given designated substantive approvals could be determined by a senior staff member in place of the now required decision-making body, amounting to $14,424.48.
§ 602.23(a)(2), § 602.23(f)(1)(ii)—Operating procedures all agencies must have.	Agency will make publicly available the procedures that institutions or programs must follow in applying for accreditation, preaccreditation, or substantive changes and the sequencing of those steps relative to any applications or decisions required by States or the Department relative to the agency's preaccreditation, accreditation or substantive change decisions; require that all preaccredited institutions have a teach-out plan with specific requirements.	OMB 1840–0788. We estimate that the burden will increase by 106 hours.	$4,808.	
§ 602.24—Additional procedures certain institutional agencies must have.	Agency will delete existing credit hour policy requirements and overly prescriptive language; and add new language with definition clarifications.	OMB 1840–0788. We estimate that the burden will increase by 5,347 hours.	$242,540	We estimate that agencies will save overall, on average, 2,246 hours given the final regulation will delete existing requirements related to evaluating credit hours amounting to a $101,878.56 savings.
§ 602.31(f)—Agency applications and reports to be submitted to the Department.	Agency will redact personally identifiable information and other sensitive information prior to sending documents to the Department.	OMB 1840–0788. We estimate that the burden will increase by 285 hours.	$12,928.	

COLLECTION INFORMATION—Continued

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated costs	Estimated savings absent ICR requirement
§ 602.32(a), § 602.32(j)(1)—Procedures for applying for recognition, renewal of recognition, or for expansion of scope, compliance reports, and increases in enrollment.	Specifies what accrediting agencies preparing for recognition renewal will submit to the Department 24 months prior to the date their current recognition expires; outlines the process for an agency seeking an expansion of scope, either as a part of the regular renewal of recognition process or during a period of recognition.	OMB 1840–0788. We estimate that the burden will increase by 179 hours.	$8,119.	
§ 602.36(f)—Senior Department official's decision.	Senior Department Official will determine whether an agency is compliant or substantially compliant, which will give accrediting agencies opportunities to make minor modifications to reflect progress toward full compliance using periodic monitoring reports.	OMB 1840–0788. We estimate that the burden will increase by 8 hours.	$363	The increase in burden does not reflect the time saved for preparing and attending NACIQI meetings. We estimate that there will be 72 hours saved, on average, amounting to $3,265.92.
§ 668.26—End of an institution's participation in the Title IV, HEA programs.	Secretary may permit an institution that has ended its participation in title IV programs to continue to originate, award, or disburse title IV funds for up to 120 days under specific circumstances. The institution must notify the Secretary of its plans to conduct an orderly closure in accordance with its accrediting agency, teach out its students, agree to abide by the conditions of the program participation agreement in effect at the time of the loss of participation, and provide written assurances of the health and safety of the students, the adequate financial resources to complete the teach-out and the institution is not subject to adverse action by the institution's State authorizing body or the accrediting agency.	OMB 1845–0156. We estimate that the burden will increase by 25 hours.	$1,134.	
§ 668.43(a)(5)—Institutional information.	The final regulations will require an institution to disclose whether a program will fulfill educational requirements for licensure or certification if the program is designed to or advertised as meeting such requirements. Institutions will be required to disclose, for each State, whether the program did or did not meet such requirements, or whether the institution had not made such a determination.	OMB 1845–0156. We estimate that the burden will increase by 566,850 hours.	$25,712,316.	
§ 668.43(a)(11) through (20)—Institutional information.	The final regulations will add disclosure requirements that are in statute but not reflected fully in the regulations as well as new disclosure requirements.	OMB 1845–0156. We estimate that the burden will increase by 10,694 hours.	$485,080.	
§ 668.43(c)—Institutional information.	The final regulations will require direct disclosure to individual students in circumstances where an offered program no longer met the education requirements for licensure in a State where a prospective student was located, as well as to students enrolled in a program that ceased to meet such requirements.	OMB 1845–0156. We estimate that the burden will increase by 1,602 hours.	$72,667.	
§ 668.50—Institutional Disclosure for Distance or Correspondence Programs.	The final regulations will remove and replace this language with a severability provision. The final regulations have moved some of the disclosure requirements from this section to § 668.43. Other requirements have been deemed duplicative.	OMB 1845–0145. We estimate a decrease of 152,405 hours. We will discontinue this collection upon the final effective date of the regulatory package.	This represents a cost savings of $6,913,091.	

The total burden hours and change in burden hours associated with each OMB Control number affected by the regulations follows:

Control No.	Total burden hours	Change in burden hours
1840–0788	10,550	+6,562
1845–0144	2,969	+2,809
1845–0145	−152,405	−152,405
1845–0156	579,171	+579,171

If you want to comment on the final information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for these collections. You may to review the ICR, which is available at *www.reginfo.gov.* Click on Information Collection Review. These final collections are identified as final collections 1840–0788, 1845–0012, 1845–0144, 1845–0145, and 1845–0156.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

Of the entities that the final regulations will affect, we consider many institutions to be small. The Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various sectors considered to be small entities, as shown in Table 17. We described this size classification in the NPRM published in the **Federal Register** on July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). The Department discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

TABLE 17—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	342	1,240	28
2-year	Private	219	259	85
2-year	Proprietary	2,147	2,463	87
4-year	Public	64	759	8
4-year	Private	799	1,672	48
4-year	Proprietary	425	558	76
Total		3,996	6,951	57

However, we do not expect the final regulations to have a significant economic impact on small entities. Nothing in the final regulations will compel institutions, small or not, to engage in substantive changes to programs that will trigger reporting to accrediting agencies or the Department. The final regulations will consolidate or relocate several institutional disclosures and add disclosure requirements under § 668.43, including disclosures relating to whether a program meets requirements for licensure, transfer of credit policies, written criteria to evaluate and award credit for prior learning experience, and written agreements under which an entity other than the institution itself provides all or part of a program. The final regulations will also add disclosure requirements that exist in statute but are not currently reflected in the regulations, including: (1) The percentage of the institution's enrolled students who are Pell Grant recipients, disaggregated by race, ethnicity, and gender; (2) placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs if its accrediting agency or State required it to calculate such rates; (3) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; (4) the fire safety report prepared by the institution pursuant to § 668.49; (5) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students; and (6) institutional policies regarding vaccinations. The small institutions that have distance education or correspondence programs will benefit from the elimination of the disclosure requirement related to the complaints process. Across all institutions, the net result of the institutional disclosure changes is $19,485,522 and there is no reason to believe the burden will fall disproportionately on small institutions. Using the 57 percent figure for small institutions in Table 17, the estimated cost of the disclosures in the final regulations for small institutions is $11,106,748. Institutions of any size will benefit from the opportunity to seek out a different or additional accreditation in a timeframe that suits them, but there is no requirement to do so.

The other group affected by the final regulations are accrediting agencies. The State agencies that act as accrediting are not small, as we define public institutions as ''small organizations'' if they are operated by a government overseeing a population below 50,000.

The Department does not have revenue information for accrediting agencies and believes most organize as nonprofit entities that we define as ''small entities'' if they are independently owned and operated and not dominant in their field of operation. While dominance in accreditation is hard to determine, as it currently stands, the Department believes regional accrediting agencies are dominant within their regions and programmatic accrediting agencies very often dominate their field. Therefore, we do not consider the 53 accrediting agencies to be small entities.

Even if we considered the accrediting agencies to be small entities, we designed these final regulations to grant the agencies greater operational flexibility and to reduce administrative burden so they can focus on higher risk changes to institutions and programs. Nothing in the final regulations will require accrediting agencies to expand their operations or take on new institutions, but they will give them that opportunity. There could even be potential opportunities for accrediting agencies that are small entities to develop in specialized areas and potentially grow.

Thus, the Department believes small entities will experience regulatory relief and a positive economic impact as a result of these final regulations with effects that will develop over years as accrediting agencies and institutions decide how to react to the changes in the final regulations.

Intergovernmental Review

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

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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.

In the NPRM we noted that §§ 600, 602, 603, and 668 may have federalism implications and encouraged State and local elected officials to review and provide comments on these final regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

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

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List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 602

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 603

Colleges and universities, Vocational education.

34 CFR Part 654

Grant programs-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 674

Loan programs-education, Reporting and recordkeeping, Student aid.

Dated: October 18, 2019.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 600, 602, 603, 654, 668 and 674 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965 AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:

■ a. Adding in alphabetical order a definition for ''Additional location'';

■ b. Revising the definition of ''Branch Campus'';

■ c. Adding in alphabetical order a definition for ''Preaccreditation'';

■ d. Removing the definition of ''Preaccredited'';

■ e. Adding in alphabetical order a definition for ''Religious mission'';

■ f. Revising in alphabetical order the definition of ''State authorization reciprocity agreement'';

■ g. Adding in alphabetical order definitions for Teach-out'' and ''Teach-out agreement''; and

■ h. Revising the definition of ''Teach-out plan''.

The additions and revisions read as follows:

§ 600.2 Definitions.

* * * * *

Additional location: A facility that is geographically apart from the main campus of the institution and at which the institution offers at least 50 percent of a program and may qualify as a branch campus.

* * * * *

Branch campus: An additional location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

* * * * *

Preaccreditation: The status of accreditation and public recognition that a nationally recognized accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing toward full accreditation and is likely to attain full accreditation before the expiration of that limited period of time (sometimes referred to as ''candidacy'').

* * * * *

Religious mission: A published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

* * * * *

State authorization reciprocity agreement: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement and cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.

* * * * *

Teach-out: A process during which a program, institution, or institutional location that provides 100 percent of at least one program engages in an orderly closure or when, following the closure of an institution or campus, another institution provides an opportunity for the students of the closed school to complete their program, regardless of their academic progress at the time of closure.

Teach-out agreement: A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides 100 percent of at least one program offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

* * * * *

■ 3. Section 600.4 is amended by revising paragraph (c) to read as follows:

§ 600.4 Institution of higher education.

* * * * *

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

* * * * *

■ 4. Section 600.5 is amended by revising paragraphs (d) and (e) to read as follows:

§ 600.5 Proprietary institution of higher education.

* * * * *

(d) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

(e) For purposes of this section, a ''program leading to a baccalaureate degree in liberal arts'' is a program that is a general instructional program falling within one or more of the following generally accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literature, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraphs (e)(1) through (3) of this section.

* * * * *

■ 5. Section 600.6 is amended by revising paragraph (d) to read as follows:

§ 600.6 Postsecondary vocational institution.

* * * * *

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

* * * * *

■ 6. Section 600.9 is amended by:

■ a. Revising paragraphs (b) and (c); and

■ b. Revising paragraph (d)(1)(iii). The revisions read as follows:

§ 600.9 State authorization.

* * * * *

(b) An institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt as a religious institution from State authorization under the State constitution or by State law.

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses to students located in a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State's approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State not relating to State authorization of distance education. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(c)(2)(i) For purposes of this section, an institution must make a determination, in accordance with the institution's policies or procedures, regarding the State in which a student is located, which must be applied consistently to all students.

(ii) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.

(iii) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures, that the student's location has changed to another State.

* * * * *

(d) * * *

(1) * * *

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with § 602.22(a)(2)(ix) and (c).

* * * * *

■ 7. Section 600.11 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 600.11 Special rules regarding institutional accreditation or preaccreditation.

(a) *Change of accrediting agencies.* (1) For purposes of §§ 600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides the following to the Secretary and receives approval:

(i) All materials related to its prior accreditation or preaccreditation.

(ii) Materials demonstrating reasonable cause for changing its accrediting agency. The Secretary will not determine such cause to be reasonable if the institution—

(A) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(B) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

(2) Notwithstanding paragraph (a)(1)(ii) of this section, the Secretary may determine the institution's cause for changing its accrediting agency to be reasonable if the agency did not provide the institution its due process rights as defined in § 602.25, the agency applied its standards and criteria inconsistently, or if the adverse action or show cause or suspension order was the result of an agency's failure to respect an institution's stated mission, including religious mission.

(b) * * *

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation.

(i) The Secretary determines the institution's cause for multiple accreditation to be reasonable unless the institution—

(A) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(B) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

(ii) Notwithstanding paragraphs (b)(2)(i)(A) and (B) of this section, the Secretary may determine the institution's cause for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on that agency's geographic area, program-area focus, or mission; and

* * * * *

■ 8. Add § 600.12 to read as follows:

§ 600.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 9. Section 600.31 is amended by:

■ a. Revising paragraph (a)(1);

■ b. In paragraph (b), revising the definitions of "Closely-held corporation", "Ownership or ownership interest", "Parent", and "Person"; and

■ c. Revising paragraphs (c)(3) through (5).

The revisions read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change of ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns the institution or the parent of that entity, acquires or loses the ability to control the institution.

* * * * *

(b) * * *

Closely-held corporation. Closely-held corporation (including the term "close corporation") means—

(1) A corporation that qualifies under the law of the State of its incorporation or organization as a closely-held corporation; or

(2) If the State of incorporation or organization has no definition of closely-held corporation, a corporation the stock of which—

(i) Is held by no more than 30 persons; and

(ii) Has not been and is not planned to be publicly offered.

* * * * *

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7);

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or its corporate parent are included in the plan; or

(iv) An employee stock ownership plan (ESOP).

Parent. The parent or parent entity is the entity that controls the specified entity directly or indirectly through one or more intermediaries.

Person. Person includes a legal entity or a natural person.

* * * * *

(c) * * *

(3) *Other entities.* The term "other entities" includes limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities. A change in ownership and control of an entity that is neither closely-held nor required to be registered with the SEC occurs when—

(i) A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total of outstanding voting stock of the corporation and control of the corporation; or

(ii) A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation.

(4) *General partnership or sole proprietorship.* A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

(5) *Wholly owned subsidiary.* An entity that is a wholly owned subsidiary changes ownership and control when its parent entity changes ownership and control as described in this section.

* * * * *

■ 10. Section 600.32 is amended by revising paragraphs (c) introductory text, (c)(1) and (2), (d)(1), (d)(2)(i) introductory text, and (d)(2)(i)(A) and (B) to read as follows:

§ 600.32 Eligibility of additional locations.

* * * * *

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of § 600.5(a)(7) or § 600.6(a)(6) if the applicant institution and the original institution are not related parties and there is no commonality of ownership, control, or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b) and the applicant institution agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received during the current academic year and up to one academic year prior by the institution that has closed or ceased to provide educational programs;

(2) To be liable for all unpaid refunds owed to students who received title IV, HEA program funds during the current academic year and up to one academic year prior; and

* * * * *

(d)(1) An institution that conducts a teach-out at a site of a closed institution or an institution engaged in a teach-out plan approved by the institution's agency may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations, or the closing institution is engaged in an orderly teach-out plan and the Secretary has evaluated and approved that plan; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed or closing institution's accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the requirement of § 600.5(a)(7) or § 600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed or closing institution as provided under paragraph (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

* * * * *

■ 11. Add § 600.33 to read as follows:

§ 600.33 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 12. Section 600.41 is amended by:

■ a. Removing paragraph (a)(1)(ii)(B) and redesignating paragraphs (a)(1)(ii)(C) through (G) as paragraphs (a)(1)(ii)(B) through (F); and

■ b. Revising paragraph (d) introductory text.

The revision reads as follows:

§ 600.41 Termination and emergency action proceedings.

* * * * *

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution may not originate applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

* * * * *

■ 13. Add § 600.42 to read as follows:

§ 600.42 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

■ 14. The authority citation for part 602 continues to read as follows:

Authority: 20 U.S.C. 1099b, unless otherwise noted.

■ 15. Section 602.3 is amended by:

■ a. Redesignating the introductory text as paragraph (b);

■ b. Adding paragraph (a); and

■ c. In newly redesignated paragraph (b):

■ i. Removing the definition of ''Branch campus'';

■ ii. Revising the definition of ''Compliance report'';

■ iii. Removing the definition of ''Correspondence education'' and ''Direct assessment program'';

■ iv. Revising the definition of ''Final accrediting action'';

■ v. Removing the definition of ''Institution of higher education or institution'';

■ vi. Adding in alphabetical order a definition for ''Monitoring report'';

■ vii. Removing the definitions of ''Nationally recognized accrediting agency, nationally recognized agency, or recognized agency'' and ''Preaccreditation'';

■ viii. Revising the definitions of ''Programmatic accrediting agency'' and ''Scope of recognition or scope'';

■ ix. Removing the definition of ''Secretary'';

■ x. Revising the definition of ''Senior Department official'';

■ ix. Removing the definition of ''State'';

■ x. Adding in alphabetical order a definition for ''Substantial compliance''; and

■ xi. Removing the definitions of ''Teach-out agreement'' and ''Teach-out plan''.

The additions and revisions read as follows:

§ 602.3 What definitions apply to this part?

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

(1) Accredited
(2) Additional location
(3) Branch campus
(4) Correspondence course
(5) Direct assessment program
(6) Institution of higher education
(7) Nationally recognized accrediting agency
(8) Preaccreditation
(9) Religious mission
(10) Secretary
(11) State
(12) Teach-out
(13) Teach-out agreement
(14) Teach-out plan

(b) * * *

* * * * *

Compliance report means a written report that the Department requires an agency to file when the agency is found to be out of compliance to demonstrate that the agency has corrected deficiencies specified in the decision letter from the senior Department official or the Secretary. Compliance reports must be reviewed by Department staff and the Advisory Committee and approved by the senior Department official or, in the event of an appeal, by the Secretary.

* * * * *

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is a decision made by the agency, at the conclusion of any appeals process available to the institution or program under the agency's due process policies and procedures.

* * * * *

Monitoring report means a report that an agency is required to submit to Department staff when it is found to be substantially compliant. The report contains documentation to demonstrate that—

(i) The agency is implementing its current or corrected policies; or

(ii) The agency, which is compliant in practice, has updated its policies to align with those compliant practices.

* * * * *

Programmatic accrediting agency means an agency that accredits specific educational programs, including those that prepare students in specific academic disciplines or for entry into a profession, occupation, or vocation.

* * * * *

Scope of recognition or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to—

(i) Types of degrees and certificates covered;

(ii) Types of institutions and programs covered;

(iii) Types of preaccreditation status covered, if any; and

(iv) Coverage of accrediting activities related to distance education or correspondence courses.

Senior Department official means the official in the U.S. Department of Education designated by the Secretary who has, in the judgment of the Secretary, appropriate seniority and relevant subject matter knowledge to make independent decisions on accrediting agency recognition.

Substantial compliance means the agency demonstrated to the Department that it has the necessary policies, practices, and standards in place and generally adheres with fidelity to those policies, practices, and standards; or the agency has policies, practices, and standards in place that need minor modifications to reflect its generally compliant practice.

* * * * *

■ 16. Add § 602.4 to read as follows:

§ 602.4 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 17. Section 602.10 is amended by revising paragraph (a) to read as follows:

§ 602.10 Link to Federal programs.

* * * * *

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs. If, pursuant to 34 CFR 600.11(b), an agency accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, the agency satisfies this requirement, even if the institution currently designates another institutional accrediting agency as its Federal link; or

* * * * *

■ 18. Section 602.11 is revised to read as follows:

§ 602.11 Geographic area of accrediting activities.

The agency must demonstrate that it conducts accrediting activities within—

(a) A State, if the agency is part of a State government;

(b) A region or group of States chosen by the agency in which an agency provides accreditation to a main campus, a branch campus, or an additional location of an institution. An agency whose geographic area includes a State in which a branch campus or additional location is located is not required to also accredit a main campus in that State. An agency whose geographic area includes a State in which only a branch campus or additional location is located is not required to accept an application for accreditation from other institutions in such State; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

■ 19. Section 602.12 is revised to read as follows:

§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has—

(1) Granted accreditation or preaccreditation prior to submitting an application for recognition—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(iii) In the geographic area for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition, unless the agency seeking initial recognition is affiliated with, or is a division of, an already recognized agency.

(b)(1) A recognized agency seeking an expansion of its scope of recognition must follow the requirements of §§ 602.31 and 602.32 and demonstrate that it has accreditation or preaccreditation policies in place that meet all the criteria for recognition covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope and has engaged and can show support from relevant constituencies for the expansion. A change to an agency's geographic area of accrediting activities does not constitute an expansion of the agency's scope of recognition, but the agency must notify the Department of, and publicly disclose on the agency's website, any such change.

(2) An agency that cannot demonstrate experience in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope may—

(i) If it is an institutional accrediting agency, be limited in the number of institutions to which it may grant accreditation under the expanded scope for a designated period of time; or

(ii) If it is a programmatic accrediting agency, be limited in the number of programs to which it may grant accreditation under that expanded scope for a certain period of time; and

(iii) Be required to submit a monitoring report regarding accreditation decisions made under the expanded scope.

(Authority: 20 U.S.C. 1099b)

§ 602.13 [Removed and Reserved]

■ 20. Section 602.13 is removed and reserved.

■ 21. Section 602.14 is revised to read as follows:

§ 602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of accrediting agencies:

(1) A State agency that—

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991.

(2) An accrediting agency that—

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is used to provide a link to Federal HEA programs in accordance with § 602.10; and

(iii) Satisfies the ''separate and independent'' requirements in paragraph (b) of this section.

(3) An accrediting agency that—

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of institutions of higher education or programs, and the accreditation it offers is used to provide a link to non-HEA Federal programs in accordance with § 602.10.

(4) An accrediting agency that, for purposes of determining eligibility for title IV, HEA programs—

(i)(A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii) Satisfies the ''separate and independent'' requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraph (d) of this section.

(b) For purposes of this section, ''separate and independent'' means that—

(1) The members of the agency's decision-making body, who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both, are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association, professional organization, or membership organization and are not staff of the related, associated, or affiliated trade association, professional organization, or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of the body consists of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body including guidelines on avoiding conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the ''separate and independent'' requirements in paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d) For purposes of paragraph (a)(4) of this section, the Secretary may waive the ''separate and independent'' requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991, and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently;

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the ''separate and independent'' requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(Authority: 20 U.S.C. 1099b)

■ 22. Section 602.15 is revised to read as follows:

§ 602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that—

(a) The agency has—

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

(2) Competent and knowledgeable individuals, qualified by education or experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence courses;

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators, practitioners, and/or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;

(5) Representatives of the public, which may include students, on all decision-making bodies; and

(6) Clear and effective controls, including guidelines, to prevent or resolve conflicts of interest, or the appearance of conflicts of interest, by the agency's—

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

(b) The agency maintains complete and accurate records of—

(1) Its last full accreditation or preaccreditation review of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

(2) All decision letters issued by the agency regarding the accreditation and preaccreditation of any institution or program and any substantive changes.

(Authority: 20 U.S.C. 1099b)

■ 23. Section 602.16 is revised to read as follows:

§ 602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if the following conditions are met:

(1) The agency's accreditation standards must set forth clear expectations for the institutions or programs it accredits in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

(2) The agency's preaccreditation standards, if offered, must—

(i) Be appropriately related to the agency's accreditation standards; and

(ii) Not permit the institution or program to hold preaccreditation status for more than five years before a final accrediting action is made.

(b) Agencies are not required to apply the standards described in paragraph (a)(1)(x) of this section to institutions that do not participate in title IV, HEA programs. Under such circumstance, the agency's grant of accreditation or preaccreditation must specify that the grant, by request of the institution, does not include participation by the institution in title IV, HEA programs.

(c) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(d)(1) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education, correspondence courses, or direct assessment education, the agency's standards must effectively address the quality of an institution's distance education, correspondence courses, or direct assessment education in the areas identified in paragraph (a)(1) of this section.

(2) The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence courses.

(e) If none of the institutions an agency accredits participates in any title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(f) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

(g) Nothing in paragraph (a) of this section restricts—

(1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency;

(2) An institution from developing and using institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review; or

(3) Agencies from having separate standards regarding an institution's or a program's process for approving curriculum to enable programs to more effectively meet the recommendations of—

(i) Industry advisory boards that include employers who hire program graduates;

(ii) Widely recognized industry standards and organizations;

(iii) Credentialing or other occupational registration or licensure; or

(iv) Employers in a given field or occupation, in making hiring decisions.

(4) Agencies from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses, as long as the instructors, in the agency's judgment, are qualified by education or work experience for that role.

(Authority: 20 U.S.C. 1099b)

■ 24. Section 602.17 is revised to read as follows:

§ 602.17 Application of standards in reaching accreditation decisions.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded;

(2) Is successful in achieving its stated objectives at both the institutional and program levels; and

(3) Maintains requirements that at least conform to commonly accepted academic standards, or the equivalent, including pilot programs in § 602.18(b);

(b) Requires the institution or program to engage in a self-study process that assesses the institution's or program's education quality and success in meeting its mission and objectives, highlights opportunities for improvement, and includes a plan for making those improvements;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other information substantiated by the agency from other sources to determine whether the institution or program complies with the agency's standards;

(f) Provides the institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards, including areas needing improvement, and the institution's or program's performance with respect to student achievement;

(g) Requires institutions to have processes in place through which the institution establishes that a student who registers in any course offered via distance education or correspondence is the same student who academically engages in the course or program; and

(h) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

(Authority: 20 U.S.C. 1099b)

■ 25. Section 602.18 is revised to read as follows:

§ 602.18 Ensuring consistency in decision-making.

(a) The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education, correspondence courses, or direct assessment education is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period.

(b) The agency meets the requirement in paragraph (a) of this section if the agency—

(1) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited or preaccredited;

(2) Has effective controls against the inconsistent application of the agency's standards;

(3) Bases decisions regarding accreditation and preaccreditation on the agency's published standards and does not use as a negative factor the institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii) provided, however, that the agency may require that the institution's or program's curricula include all core components required by the agency;

(4) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate;

(5) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards; and

(6) Publishes any policies for retroactive application of an accreditation decision, which must not provide for an effective date that predates either—

(i) An earlier denial by the agency of accreditation or preaccreditation to the institution or program; or

(ii) The agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

(c) Nothing in this part prohibits an agency, when special circumstances exist, to include innovative program delivery approaches or, when an undue hardship on students occurs, from applying equivalent written standards, policies, and procedures that provide alternative means of satisfying one or more of the requirements set forth in 34 CFR 602.16, 602.17, 602.19, 602.20, 602.22, and 602.24, as compared with written standards, policies, and procedures the agency ordinarily applies, if—

(1) The alternative standards, policies, and procedures, and the selection of institutions or programs to which they will be applied, are approved by the agency's decision-making body and otherwise meet the intent of the agency's expectations and requirements;

(2) The agency sets and applies equivalent goals and metrics for assessing the performance of institutions or programs;

(3) The agency's process for establishing and applying the alternative standards, policies, and procedures is set forth in its published accreditation manuals; and

(4) The agency requires institutions or programs seeking the application of alternative standards to demonstrate the need for an alternative assessment approach, that students will receive equivalent benefit, and that students will not be harmed through such application.

(d) Nothing in this part prohibits an agency from permitting the institution or program to be out of compliance with one or more of its standards, policies, and procedures adopted in satisfaction of §§ 602.16, 602.17, 602.19, 602.20, 602.22, and 602.24 for a period of time, as determined by the agency annually, not to exceed three years unless the agency determines there is good cause to extend the period of time, and if—

(1) The agency and the institution or program can show that the circumstances requiring the period of noncompliance are beyond the institution's or program's control, such as—

(i) A natural disaster or other catastrophic event significantly impacting an institution's or program's operations;

(ii) Accepting students from another institution that is implementing a teach-out or closing;

(iii) Significant and documented local or national economic changes, such as an economic recession or closure of a large local employer;

(iv) Changes relating to State licensure requirements;

(v) The normal application of the agency's standards creates an undue hardship on students; or

(vi) Instructors who do not meet the agency's typical faculty standards, but who are otherwise qualified by education or work experience, to teach courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses;

(2) The grant of the period of noncompliance is approved by the agency's decision-making body;

(3) The agency projects that the institution or program has the resources necessary to achieve compliance with the standard, policy, or procedure postponed within the time allotted; and

(4) The institution or program demonstrates to the satisfaction of the agency that the period of noncompliance will not—

(i) Contribute to the cost of the program to the student without the student's consent;

(ii) Create any undue hardship on, or harm to, students; or

(iii) Compromise the program's academic quality.

(Authority: 20 U.S.C. 1099b)

■ 26. Section 602.19 is revised to read as follows:

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must demonstrate it has, and effectively applies, monitoring and evaluation approaches that enable the agency to identify problems with an institution's or program's continued compliance with agency standards and that take into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of § 602.16(g). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect head-count enrollment data from those institutions or programs.

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(e) Any agency that has notified the Secretary of a change in its scope in accordance with § 602.27(a) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence courses. The Secretary will require a review, at the next meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency if the enrollment of an institution that offers distance education or correspondence courses that is accredited by such agency increases by 50 percent or more within any one institutional fiscal year. If any such institution has experienced an increase in head-count enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.

(Authority: 20 U.S.C. 1099b)

■ 27. Section 602.20 is revised to read as follows:

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Follow its written policy for notifying the institution or program of the finding of noncompliance;

(2) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency's decision-making body, based on the nature of the finding, the stated mission, and educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150 percent of the—

(i) Length of the program in the case of a programmatic accrediting agency; or

(ii) Length of the longest program at the institution in the case of an institutional accrediting agency;

(3) Follow its written policies and procedures for granting a good cause extension that may exceed the standard timeframe described in paragraph (a)(2) of this section when such an extension is determined by the agency to be warranted; and

(4) Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires, provide ongoing monitoring, if warranted, and evaluate an institution's or program's progress in resolving the finding of noncompliance.

(b) Notwithstanding paragraph (a) of this section, the agency must have a policy for taking an immediate adverse action, and take such action, when the agency has determined that such action is warranted.

(c) If the institution or program does not bring itself into compliance within the period specified in paragraph (a) of this section, the agency must take adverse action against the institution or program, but may maintain the institution's or program's accreditation or preaccreditation until the institution or program has had reasonable time to complete the activities in its teach-out plan or to fulfill the obligations of any teach-out agreement to assist students in transferring or completing their programs.

(d) An agency that accredits institutions may limit the adverse or other action to particular programs that are offered by the institution or to particular additional locations of an institution, without necessarily taking action against the entire institution and all of its programs, provided the noncompliance was limited to that particular program or location.

(e) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e).

(f) An agency is not responsible for enforcing requirements in 34 CFR 668.14, 668.15, 668.16, 668.41, or 668.46, but if, in the course of an agency's work, it identifies instances or potential instances of noncompliance with any of these requirements, it must notify the Department.

(g) The Secretary may not require an agency to take action against an institution or program that does not participate in any title IV, HEA or other Federal program as a result of a requirement specified in this part.

(Authority: 20 U.S.C. 1099b)

■ 28. Section 602.21 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 602.21 Review of standards.

(a) The agency must maintain a comprehensive systematic program of review that involves all relevant constituencies and that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.

* * * * *

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time.

(d) Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency's relevant constituencies, and other parties who have made their interest known to the agency, of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and

(3) Take into account and be responsive to any comments on the proposed changes submitted timely by the relevant constituencies and other interested parties.

* * * * *

■ 29. Section 602.22 is revised to read as follows:

§ 602.22 Substantive changes and other reporting requirements.

(a)(1) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change, as defined in this section, after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—

(i) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(ii) The agency's definition of substantive change covers high-impact, high-risk changes, including at least the following:

(A) Any substantial change in the established mission or objectives of the institution or its programs.

(B) Any change in the legal status, form of control, or ownership of the institution.

(C) The addition of programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered or used when the agency last evaluated the institution.

(D) The addition of graduate programs by an institution that previously offered only undergraduate programs or certificates.

(E) A change in the way an institution measures student progress, including whether the institution measures progress in clock hours or credit-hours, semesters, trimesters, or quarters, or uses time-based or non-time-based methods.

(F) A substantial increase in the number of clock hours or credit hours awarded, or an increase in the level of credential awarded, for successful completion of one or more programs.

(G) The acquisition of any other institution or any program or location of another institution.

(H) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

(I) The addition of a new location or branch campus, except as provided in paragraph (c) of this section. The agency's review must include assessment of the institution's fiscal and administrative capability to operate the location or branch campus, the regular evaluation of locations, and verification of the following:

(*1*) Academic control is clearly identified by the institution.

(*2*) The institution has adequate faculty, facilities, resources, and academic and student support systems in place.

(*3*) The institution is financially stable.

(*4*) The institution had engaged in long-range planning for expansion.

(J) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 and up to 50 percent of one or more of the accredited institution's educational programs.

(K) Addition of each direct assessment program.

(2)(i) For substantive changes under only paragraph (a)(1)(ii)(C), (E), (F), (H), or (J) of this section, the agency's decision-making body may designate agency senior staff to approve or disapprove the request in a timely, fair, and equitable manner; and

(ii) In the case of a request under paragraph (a)(1)(ii)(J) of this section, the agency must make a final decision within 90 days of receipt of a materially complete request, unless the agency or its staff determine significant circumstances related to the substantive change require a review by the agency's decision-making body to occur within 180 days.

(b) Institutions that have been placed on probation or equivalent status, have been subject to negative action by the agency over the prior three academic years, or are under a provisional certification, as provided in 34 CFR 668.13, must receive prior approval for the following additional changes (all other institutions must report these changes within 30 days to their accrediting agency):

(1) A change in an existing program's method of delivery.

(2) An aggregate change of 25 percent or more of the clock hours, credit hours, or content of a program since the agency's most recent accreditation review.

(3) The development of customized pathways or abbreviated or modified courses or programs to—

(i) Accommodate and recognize a student's existing knowledge, such as knowledge attained through employment or military service; and

(ii) Close competency gaps between demonstrated prior knowledge or competency and the full requirements of a particular course or program.

(4) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers up to 25 percent of one or more of the accredited institution's educational programs.

(c) Institutions that have successfully completed at least one cycle of accreditation and have received agency approval for the addition of at least two additional locations as provided in paragraph (a)(1)(ii)(I) of this section, and that have not been placed on probation or equivalent status or been subject to a negative action by the agency over the prior three academic years, and that are not under a provisional certification, as provided in 34 CFR 668.13, need not apply for agency approval of subsequent additions of locations, and must report these changes to the accrediting agency within 30 days, if the institution has met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including, at a minimum, satisfactory evidence of a system to ensure quality across a distributed enterprise that includes—

(1) Clearly identified academic control;

(2) Regular evaluation of the locations;

(3) Adequate faculty, facilities, resources, and academic and student support systems;

(4) Financial stability; and

(5) Long-range planning for expansion.

(d) The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraphs (a)(1)(ii)(H) and (I) of this section.

(e) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, on which the change is included in the program's or institution's grant of accreditation or preaccreditation. The date of prior approval must not pre-date either an earlier agency denial of the substantive change, or the agency's formal acceptance of the application for the substantive change for inclusion in the program's or institution's grant of accreditation or preaccreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraphs (d) and (f) of this section, an agency may require a visit before granting such an approval.

(f) Except as provided in paragraph (c) of this section, if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location that is not a branch campus where at least 50 percent of an educational program is offered must include—

(1) A visit, within six months, to each additional location the institution establishes, if the institution—

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that the additional location is meeting all of the agency's standards that apply to that additional location; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) A mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

(3) A mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain education quality.

(g) The purpose of the visits described in paragraph (f) of this section is to verify that the additional location has the personnel, facilities, and resources the institution claimed it had in its application to the agency for approval of the additional location.

(h) The agency's substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.

(Authority: 20 U.S.C. 1099b)

■ 30. Section 602.23 is amended by:

■ a. Revising paragraphs (a)(2), (a)(5) introductory text, and (d);

■ b. Redesignating paragraph (f) as paragraph (g); and

■ c. Adding a new paragraph (f).

The revisions and addition read as follows:

§ 602.23 Operating procedures all agencies must have.

(a) * * *

(2) The procedures that institutions or programs must follow in applying for accreditation, preaccreditation, or substantive changes and the sequencing of those steps relative to any applications or decisions required by States or the Department relative to the agency's preaccreditation, accreditation, or substantive change decisions;

* * * * *

(5) A list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of—

* * * * *

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name and contact information for the agency.

* * * * *

(f)(1) If preaccreditation is offered—

(i) The agency's preaccreditation policies must limit the status to institutions or programs that the agency has determined are likely to succeed in obtaining accreditation;

(ii) The agency must require all preaccredited institutions to have a teach-out plan, which must ensure students completing the teach-out would meet curricular requirements for professional licensure or certification, if any, and which must include a list of academic programs offered by the institution and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution;

(iii) An agency that denies accreditation to an institution it has preaccredited may maintain the institution's preaccreditation for currently enrolled students until the institution has had a reasonable time to complete the activities in its teach-out plan to assist students in transferring or completing their programs, but for no more than 120 days unless approved by the agency for good cause; and

(iv) The agency may not move an accredited institution or program from accredited to preaccredited status unless, following the loss of accreditation, the institution or program applies for initial accreditation and is awarded preaccreditation status under the new application. Institutions that participated in the title IV, HEA programs before the loss of accreditation are subject to the requirements of 34 CFR 600.11(c).

(2) All credits and degrees earned and issued by an institution or program holding preaccreditation from a nationally recognized agency are considered by the Secretary to be from an accredited institution or program.

* * * * *

■ 31. Section 602.24 is revised to read as follows:

§ 602.24 Additional procedures certain institutional agencies must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) *Branch campus.* The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(1) The educational program to be offered at the branch campus; and

(2) The projected revenues and expenditures and cash flow at the branch campus.

(b) *Site visits.* The agency must undertake a site visit to a new branch campus or following a change of ownership or control as soon as practicable, but no later than six months, after the establishment of that campus or the change of ownership or control.

(c) *Teach-out plans and agreements.* (1) The agency must require an institution it accredits to submit a teach-out plan as defined in 34 CFR 600.2 to the agency for approval upon the occurrence of any of the following events:

(i) For a nonprofit or proprietary institution, the Secretary notifies the agency of a determination by the institution's independent auditor expressing doubt about the institution's ability to operate as a going concern or indicating an adverse opinion or a finding of material weakness related to financial stability.

(ii) The agency acts to place the institution on probation or equivalent status.

(iii) The Secretary notifies the agency that the institution is participating in title IV, HEA programs under a provisional program participation agreement and the Secretary has required a teach-out plan as a condition of participation.

(2) The agency must require an institution it accredits or preaccredits to submit a teach-out plan and, if practicable, teach-out agreements (as defined in 34 CFR 600.2) to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that it has placed the institution on the reimbursement payment method under 34 CFR 668.162(c) or the heightened cash monitoring payment method requiring the Secretary's review of the institution's supporting documentation under 34 CFR 668.162(d)(2).

(ii) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA.

(iii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iv) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program, including if the location is being moved and is considered by the Secretary to be a closed school.

(v) A State licensing or authorizing agency notifies the agency that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(3) The agency must evaluate the teach-out plan to ensure it includes a list of currently enrolled students, academic programs offered by the institution, and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution.

(4) If the agency approves a teach-out plan that includes a program or institution that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(5) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

(6) The agency must require a closing institution to include in its teach-out agreement—

(i) A complete list of students currently enrolled in each program at the institution and the program requirements each student has completed;

(ii) A plan to provide all potentially eligible students with information about how to obtain a closed school discharge and, if applicable, information on State refund policies;

(iii) A record retention plan to be provided to all enrolled students that delineates the final disposition of teach-out records (*e.g.,* student transcripts, billing, financial aid records);

(iv) Information on the number and types of credits the teach-out institution is willing to accept prior to the student's enrollment; and

(v) A clear statement to students of the tuition and fees of the educational program and the number and types of credits that will be accepted by the teach-out institution.

(7) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, to submit that teach-out agreement for approval. The agency may approve the teach-out agreement only if the agreement meets the requirements of 34 CFR 600.2 and this section, is consistent with applicable standards and regulations, and provides for the equitable treatment of students being served by ensuring that the teach-out institution—

(i) Has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, delivery modality, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; however, while an option via an alternate method of delivery may be made available to students, such an option is not sufficient unless an option via the same method of delivery as the original educational program is also provided;

(ii) Has the capacity to carry out its mission and meet all obligations to existing students; and

(iii) Demonstrates that it—

(A) Can provide students access to the program and services without requiring them to move or travel for substantial distances or durations; and

(B) Will provide students with information about additional charges, if any.

(8) Irrespective of any teach-out plan or signed teach-out agreement, the agency must not permit an institution to serve as a teach-out institution under the following conditions:

(i) The institution is subject to the conditions in paragraph (c)(1) or (2) of this section.

(ii) The institution is under investigation, subject to an action, or being prosecuted for an issue related to academic quality, misrepresentation, fraud, or other severe matters by a law enforcement agency.

(9) The agency is permitted to waive requirements regarding the percentage of credits that must be earned by a student at the institution awarding the educational credential if the student is completing his or her program through a written teach-out agreement or transfer.

(10) The agency must require the institution to provide copies of all notifications from the institution related to the institution's closure or to teach-out options to ensure the information accurately represents students' ability to transfer credits and may require corrections.

(d) *Closed institution.* If an institution the agency accredits or preaccredits closes without a teach-out plan or agreement, the agency must work with the Department and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

(e) *Transfer of credit policies.* The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that—

(1) Are publicly disclosed in accordance with § 668.43(a)(11); and

(2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

(f) *Agency designations.* In its accrediting practice, the agency must—

(1) Adopt and apply the definitions of ''branch campus'' and ''additional location'' in 34 CFR 600.2;

(2) On the Secretary's request, conform its designations of an institution's branch campuses and additional locations with the Secretary's if it learns its designations diverge; and

(3) Ensure that it does not accredit or preaccredit an institution comprising fewer than all of the programs, branch campuses, and locations of an institution as certified for title IV participation by the Secretary, except with notice to and permission from the Secretary.

(Authority: 20 U.S.C. 1099b)

■ 32. Section 602.25 is amended by revising paragraphs (f)(1)(iii) and (iv) to read as follows:

§ 602.25 Due process.

* * * * *

(f) * * *

(1) * * *

(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: To affirm, amend, or remand adverse actions of the original decision-making body; and

(iv) Affirms, amends, or remands the adverse action. A decision to affirm or amend the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option; however, in the event of a decision by the appeals panel to remand the adverse action to the original decision-making body for further consideration, the appeals panel must explain the basis for a decision that differs from that of the original decision-making body and the original decision-making body in a remand must act in a manner consistent with the appeals panel's decisions or instructions.

* * * * *

■ 33. Section 602.26 is amended by:

■ a. Redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f);

■ b. Adding a new paragraph (b); and

■ c. Revising newly redesignated paragraphs (c), (d), (e), and (f).

The addition and revisions read as follows:

§ 602.26 Notification of accrediting decisions.

* * * * *

(b) Provides written notice of a final decision of a probation or equivalent status or an initiated adverse action to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision and requires the institution or program to disclose such an action within seven business days of receipt to all current and prospective students;

(c) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program.

(2) A final decision to take any other adverse action, as defined by the agency, not listed in paragraph (c)(1) of this section;

(d) Provides written notice to the public of the decisions listed in paragraphs (b) and (c) of this section within one business day of its notice to the institution or program;

(e) For any decision listed in paragraph (c) of this section, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt and makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment;

(f) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 10 business days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 10 business days of the date on which accreditation or preaccreditation lapses.

* * * * *

■ 34. Section 602.27 is revised to read as follows:

§ 602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department—

(1) A list, updated annually, of its accredited and preaccredited institutions and programs, which may be provided electronically;

(2) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(3) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its—

(i) Scope of recognition, except as provided in paragraph (a)(4) of this section; or

(ii) Compliance with the criteria for recognition;

(4) Notification that the agency has expanded its scope of recognition to include distance education or correspondence courses as provided in section 496(a)(4)(B)(i)(I) of the HEA. Such an expansion of scope is effective on the date the Department receives the notification;

(5) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(6) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(5) or (6) of this section, it must provide for a case-by-case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. When the Department determines a compelling need for confidentiality, the agency must consider that contact confidential upon specific request of the Department.

■ 35. Add § 602.29 to read as follows:

§ 602.29 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1099b)

§ 602.30 [Removed and Reserved]

■ 36. Section 602.30 is removed and reserved.

■ 37. Section 602.31 is revised to read as follows:

§ 602.31 Agency applications and reports to be submitted to the Department.

(a) *Applications for recognition or renewal of recognition.* An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision, and, for an agency seeking renewal of recognition, 24 months prior to the date on which the current recognition expires. The application, to be submitted concurrently with information required by § 602.32(a) and, if applicable, § 602.32(b), must consist of—

(1) A statement of the agency's requested scope of recognition;

(2) Documentation that the agency complies with the criteria for recognition listed in subpart B of this part, including a copy of its policies and procedures manual and its accreditation standards; and

(3) Documentation of how an agency that includes or seeks to include distance education or correspondence courses in its scope of recognition applies its standards in evaluating programs and institutions it accredits that offer distance education or correspondence courses.

(b) *Applications for expansions of scope.* An agency seeking an expansion of scope by application must submit a written application to the Secretary. The application must—

(1) Specify the scope requested;

(2) Provide copies of any relevant standards, policies, or procedures developed and applied by the agency for its use in accrediting activities conducted within the expansion of scope proposed and documentation of the application of these standards, policies, or procedures; and

(3) Provide the materials required by § 602.32(j) and, if applicable, § 602.32(l).

(c) *Compliance or monitoring reports.* If an agency is required to submit a compliance or monitoring report, it must do so within 30 days following the end of the period for achieving compliance as specified in the decision of the senior Department official or Secretary, as applicable.

(d) *Review following an increase in headcount enrollment.* If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence courses in accordance with § 602.27(a)(4) reports an increase in headcount enrollment in accordance with § 602.19(e) for an institution it accredits, or if the Department notifies the agency of such an increase at one of the agency's accredited institutions, the agency must, within 45 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report explaining—

(1) How the agency evaluates the capacity of the institutions or programs it accredits to accommodate significant growth in enrollment and to maintain education quality;

(2) The specific circumstances regarding the growth at the institution or program that triggered the review and the results of any evaluation conducted by the agency; and

(3) Any other information that the agency deems appropriate to demonstrate the effective application of the criteria for recognition or that the Department may require.

(e) *Consent to sharing of information.* By submitting an application for recognition, the agency authorizes Department staff throughout the application process and during any period of recognition—

(1) To observe its site visits to one or more of the institutions or programs it accredits or preaccredits, on an announced or unannounced basis;

(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decision meetings take place, on an announced or unannounced basis;

(3) To obtain copies of all documents the staff deems necessary to complete its review of the agency; and

(4) To gain access to agency records, personnel, and facilities.

(f) *Public availability of agency records obtained by the Department.*

(1) The Secretary's processing and decision-making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. 552; the Trade Secrets Act, 18 U.S.C. 1905; the Privacy Act of 1974, as amended, 5 U.S.C. 552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies must, before submission to the Department—

(i) Redact the names and any other personally identifiable information about individual students and any other individuals who are not agents of the agency or of an institution or program the agency is reviewing;

(ii) Redact the personal addresses, personal telephone numbers, personal email addresses, Social Security numbers, and any other personally identifiable information regarding individuals who are acting as agents of the agency or of an institution or program under review;

(iii) Designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded; and

(iv) Ensure documents submitted are only those required for Department review or as requested by Department officials.

(2) The agency may, but is not required to, redact the identities of institutions or programs that it believes are not essential to the Department's review of the agency and may identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from public disclosure.

(3) The Secretary processes FOIA requests in accordance with 34 CFR part 5 and makes all documents provided to the Advisory Committee available to the public.

(4) Upon request by Department staff, the agency must disclose to Department staff any specific material the agency has redacted that Department staff believes is needed to conduct the staff review. Department staff will make any arrangements needed to ensure that the materials are not made public if prohibited by law.

(g) *Length of submissions.* The Secretary may publish reasonable, uniform limits on the length of submissions described in this section.

(Authority: 20 U.S.C. 1099b)

■ 38. Section 602.32 is revised to read as follows:

§ 602.32 Procedures for submitting an application for recognition, renewal of recognition, expansion of scope, compliance reports, and increases in enrollment.

(a) An agency preparing for renewing recognition will submit, 24 months prior to the date on which the current recognition expires, and in conjunction with the materials required by § 602.31(a), a list of all institutions or programs that the agency plans to consider for an award of initial or renewed accreditation over the next year or, if none, over the succeeding year, as well as any institutions or programs currently subject to compliance report review or reporting requirements. An agency that does not anticipate a review of any institution or program for an initial award of accreditation or renewed accreditation in the 24 months prior to the date of recognition expiration may submit a list of institutions or programs it has reviewed for an initial award of accreditation or renewal of accreditation at any time since the prior award of recognition or leading up to the application for an initial award of recognition.

(b) An agency seeking initial recognition must follow the policies and procedures outlined in paragraph (a) of this section, but in addition must also submit—

(1) Letters of support for the agency from at least three accredited institutions or programs, three educators, and, if appropriate, three employers or practitioners, explaining the role for such an agency and the reasons for their support; and

(2) Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency or intends to seek multiple accreditation which will allow it in the future to designate the agency as its Federal link.

(c) Department staff publishes a notice of the agency's submission of an application in the **Federal Register** inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

(d) The Department staff analyzes the agency's application for initial or renewal of recognition, to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and the agency's consistency in applying the criteria. The analysis of an application may include and, after January 1, 2021, will include—

(1)(i) Observations from site visits, on an announced or unannounced basis, to the agency or to a location where the agency conducts activities such as training, review and evaluation panel meetings, or decision meetings;

(ii) Observations from site visits, on an announced or unannounced basis, to one or more of the institutions or programs the agency accredits or preaccredits;

(iii) A file review at the agency of documents, at which time Department staff may retain copies of documents needed for inclusion in the administrative record;

(iv) Review of the public comments and other third-party information Department staff receives by the established deadline, the agency's responses to the third-party comments, as appropriate, and any other information Department staff obtains for purposes of evaluating the agency under this part; and

(v) Review of complaints or legal actions involving the agency; and

(2) Review of complaints or legal actions against an institution or program accredited or preaccredited by the agency, which may be considered but are not necessarily determinative of compliance.

(e) The Department may view as a negative factor when considering an application for initial, or expansion of scope of, recognition as proposed by an agency, among other factors, any evidence that the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession.

(f) Department staff's evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards, but must make all materials relied upon in the evaluation available to the agency for review and comment.

(g) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§ 602.10 through 602.15, the staff—

(1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and

(2) Requires that the agency withdraw its application and instructs the agency that it may reapply when the agency is able to demonstrate compliance.

(h) Except with respect to an application that has been returned and is withdrawn under paragraph (g) of this section, when Department staff completes its evaluation of the agency, the staff may and, after July 1, 2021, will—

(1) Prepare a written draft analysis of the agency's application;

(2) Send to the agency the draft analysis including any identified areas of potential noncompliance and all third-party comments and complaints, if applicable, and any other materials the Department received by the established deadline or is including in its review;

(3) Invite the agency to provide a written response to the draft analysis and third-party comments or other material included in the review, specifying a deadline that provides at least 180 days for the agency's response;

(4) Review the response to the draft analysis the agency submits, if any, and prepares the written final analysis—

(i) Indicating that the agency is in full compliance, substantial compliance, or noncompliance with each of the criteria for recognition; and

(ii) Recommending that the senior Department official approve, renew with compliance reporting requirements due in 12 months, renew with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit, suspend, or terminate recognition; and

(5) Provide to the agency, no later than 30 days before the Advisory Committee meeting, the final staff analysis and any other available information provided to the Advisory Committee under § 602.34(c).

(i) The agency may request that the Advisory Committee defer acting on an application at that Advisory Committee meeting if Department staff fails to provide the agency with the materials described, and within the timeframes provided, in paragraphs (g)(3) and (5) of this section. If the Department staff's failure to send the materials in accordance with the timeframe described in paragraph (g)(3) or (5) of this section is due to the failure of the agency to, by the deadline established by the Secretary, submit reports to the Department, other information the Secretary requested, or its response to the draft analysis, the agency forfeits its right to request a deferral of its application.

(j) An agency seeking an expansion of scope, either as part of the regular renewal of recognition process or during a period of recognition, must submit an application to the Secretary, separately or as part of the policies and procedures outlined in paragraph (a) of this section, that satisfies the requirements of §§ 602.12(b) and 602.31(b) and—

(1) States the reason for the expansion of scope request;

(2) Includes letters from at least three institutions or programs that would seek accreditation under one or more of the elements of the expansion of scope; and

(3) Explains how the agency must expand capacity to support the expansion of scope, if applicable, and, if necessary, how it will do so and how its budget will support that expansion of capacity.

(k) The Department may view as a negative factor when considering an application for initial or expansion of scope of recognition as proposed by an agency, among other factors, any evidence that the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession.

(l) Department staff's evaluation of a compliance report includes review of public comments solicited by Department staff in the **Federal Register** received by the established deadline, the agency's responses to the third-party comments, as appropriate, other third-party information Department staff receives, and additional information described in paragraphs (d) and (e) of this section, as appropriate.

(m) The Department will process an application for an expansion of scope, compliance report, or increase in enrollment report in accordance with paragraphs with paragraphs (c) through (h) of this section.

(Authority: 20 U.S.C. 1099b)

■ 39. Section 602.33 is revised to read as follows:

§ 602.33 Procedures for review of agencies during the period of recognition, including the review of monitoring reports.

(a) Department staff may review the compliance of a recognized agency with the criteria for recognition at any time—

(1) Based on the submission of a monitoring report as directed by a decision by the senior Department official or Secretary; or

(2) Based on any information that, as determined by Department staff, appears credible and raises concerns relevant to the criteria for recognition.

(b) The review may include, but need not be limited to, any of the activities described in § 602.32(d) and (f).

(c) If, in the course of the review, and after providing the agency the documentation concerning the inquiry and consulting with the agency, Department staff notes that one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria, Department staff—

(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern;

(2) Sends to the agency the draft analysis including any identified areas of noncompliance and all supporting documentation;

(3) Invites the agency to provide a written response to the draft analysis within 90 days; and

(4) Reviews any response provided by the agency, including any monitoring report submitted, and either—

(i) Concludes the review;

(ii) Continues monitoring of the agency's areas of deficiencies; or

(iii)(A) Notifies the agency, in the event that the agency's response or monitoring report does not satisfy the staff, that the draft analysis will be finalized for presentation to the Advisory Committee;

(B) Publishes a notice in the **Federal Register** with an invitation for the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(C) Provides the agency with a copy of all public comments received and invites a written response from the agency;

(D) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received;

(E) Provides to the agency, no later than 30 days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c); and

(F) Submits the matter for review by the Advisory Committee in accordance with § 602.34.

(Authority: 20 U.S.C. 1099b)

■ 40. Section 602.34 is revised to read as follows:

§ 602.34 Advisory Committee meetings.

(a) Department staff submits a proposed schedule to the Chairperson of the Advisory Committee based on anticipated completion of staff analyses.

(b) The Chairperson of the Advisory Committee establishes an agenda for the next meeting and, in accordance with the Federal Advisory Committee Act, presents it to the Designated Federal Official for approval.

(c) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with—

(1) The agency's application for recognition, renewal of recognition, or expansion of scope when Advisory Committee review is required, or the agency's compliance report and supporting documentation submitted by the agency;

(2) The final Department staff analysis of the agency developed in accordance with § 602.32 or § 602.33, and any supporting documentation;

(3) The agency's response to the draft analysis;

(4) Any written third-party comments the Department received about the agency on or before the established deadline;

(5) Any agency response to third-party comments; and

(6) Any other information Department staff relied upon in developing its analysis.

(d) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the **Federal Register** inviting interested parties to make oral presentations before the Advisory Committee.

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section in a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations during the meeting. A transcript is made of all Advisory Committee meetings.

(f) The written motion adopted by the Advisory Committee regarding each agency's recognition will be made available during the Advisory Committee meeting. The Department will provide each agency, upon request, with a copy of the motion on recognition at the meeting. Each agency that was reviewed will be sent an electronic copy of the motion relative to that agency as soon as practicable after the meeting.

(g) After each meeting of the Advisory Committee, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to—

(1)(i) For an agency that is fully compliant, approve initial or renewed recognition;

(ii) Continue recognition with a required compliance report to be submitted to the Department within 12 months from the decision of the senior Department official;

(iii) In conjunction with a finding of exceptional circumstances and good cause, continue recognition for a specified period in excess of 12 months pending submission of a compliance report;

(iv) In the case of substantial compliance, grant initial recognition or renewed recognition and recommend a monitoring report with a set deadline to be reviewed by Department staff to ensure that corrective action is taken, and full compliance is achieved or maintained (or for action by staff under § 602.33 if it is not); or

(v) Deny, limit, suspend, or terminate recognition;

(2) Grant or deny a request for expansion of scope; or

(3) Revise or affirm the scope of the agency.

(Authority: 20 U.S.C. 1099b)

■ 41. Section 602.35 is amended:

■ a. In paragraph (a), by adding the word ''business'' between ''ten'' and ''days'';

■ b. In paragraph (c)(1), by removing the words ''documentary evidence'' and adding in their place the word ''documentation''; and

■ c. In paragraph (c)(2), by adding the word ''business'' between ''ten'' and ''days'' and adding a sentence to the end of the paragraph.

The addition reads as follows:

§ 602.35 Responding to the Advisory Committee's recommendation.

* * * * *

(c) * * *

(2) * * * No additional comments or new documentation may be submitted after the responses described in this paragraph are submitted.

* * * * *

■ 42. Section 602.36 is revised to read as follows:

§ 602.36 Senior Department official's decision.

(a) The senior Department official makes a decision regarding recognition of an agency based on the record compiled under §§ 602.32, 602.33, 602.34, and 602.35 including, as applicable, the following:

(1) The materials provided to the Advisory Committee under § 602.34(c).

(2) The transcript of the Advisory Committee meeting.

(3) The recommendation of the Advisory Committee.

(4) Written comments and responses submitted under § 602.35.

(5) New documentation submitted in accordance with § 602.35(c)(1).

(6) A communication from the Secretary referring an issue to the senior Department official's consideration under § 602.37(e).

(b) In the event that statutory authority or appropriations for the Advisory Committee ends, or there are fewer duly appointed Advisory Committee members than needed to constitute a quorum, and under extraordinary circumstances when there are serious concerns about an agency's compliance with subpart B of this part that require prompt attention, the senior Department official may make a decision on an application for renewal of recognition or compliance report on the record compiled under § 602.32 or § 602.33 after providing the agency with an opportunity to respond to the final staff analysis. Any decision made by the senior Department official under this paragraph from the Advisory Committee may be appealed to the Secretary as provided in § 602.37.

(c) Following consideration of an agency's recognition under this section, the senior Department official issues a recognition decision.

(d) Except with respect to decisions made under paragraph (f) or (g) of this section and matters referred to the senior Department official under § 602.37(e) or (f), the senior Department official notifies the agency in writing of the senior Department official's decision regarding the agency's recognition within 90 days of the Advisory Committee meeting or conclusion of the review under paragraph (b) of this section.

(e) The senior Department official's decision may include, but is not limited to, approving for recognition; approving with a monitoring report; denying, limiting, suspending, or terminating recognition following the procedures in paragraph (g) of this section; granting or denying an application for an expansion of scope; revising or affirming the scope of the agency; or continuing recognition pending submission and review of a compliance report under §§ 602.32 and 602.34 and review of the report by the senior Department official under this section.

(1)(i) The senior Department official approves recognition if the agency has demonstrated compliance or substantial compliance with the criteria for recognition listed in subpart B of this part. The senior Department official may determine that the agency has demonstrated compliance or substantial compliance with the criteria for recognition if the agency has a compliant policy or procedure in place but has not had the opportunity to apply such policy or procedure.

(ii) If the senior Department official approves recognition, the recognition decision defines the scope of recognition and the recognition period. The recognition period does not exceed five years, including any time during which recognition was continued to permit submission and review of a compliance report.

(iii) If the scope of recognition is less than that requested by the agency, the senior Department official explains the reasons for continuing or approving a lesser scope.

(2)(i) Except as provided in paragraph (e)(3) of this section, if the agency fails to comply with the criteria for recognition listed in subpart B of this part, the senior Department official denies, limits, suspends, or terminates recognition.

(ii) If the senior Department official denies, limits, suspends, or terminates recognition, the senior Department official specifies the reasons for this decision, including all criteria the agency fails to meet and all criteria the agency has failed to apply effectively.

(3)(i) If the senior Department official concludes an agency is noncompliant, the senior Department official may continue the agency's recognition, pending submission of a compliance report that will be subject to review in the recognition process, provided that—

(A) The senior Department official concludes that the agency will demonstrate compliance with, and effective application of, the criteria for recognition within 12 months from the date of the senior Department official's decision; or

(B) The senior Department official identifies a deadline more than 12 months from the date of the decision by which the senior Department official concludes the agency will demonstrate full compliance with, and effective application of, the criteria for recognition, and also identifies exceptional circumstances and good cause for allowing the agency more than 12 months to achieve compliance and effective application.

(ii) In the case of a compliance report ordered under paragraph (e)(3)(i) of this section, the senior Department official specifies the criteria the compliance report must address, and the time period for achieving compliance and effective application of the criteria. The compliance report documenting compliance and effective application of criteria is due not later than 30 days after the end of the period specified in the senior Department official's decision.

(iii) If the record includes a compliance report required under paragraph (e)(3)(i) of this section, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not effectively applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (e)(3)(i) of this section, the senior Department official denies, limits, suspends, or terminates recognition, except, in extraordinary circumstances, upon a showing of good cause for an extension of time as determined by the senior Department official and detailed in the senior Department official's decision. If the senior Department official determines good cause for an extension has been shown, the senior Department official specifies the length of the extension and what the agency must do during it to merit a renewal of recognition.

(f) If the senior Department official determines that the agency is substantially compliant, or is fully compliant but has concerns about the agency maintaining compliance, the senior Department official may approve the agency's recognition or renewal of recognition and require periodic monitoring reports that are to be reviewed and approved by Department staff.

(g) If the senior Department official determines, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with one or more criteria for recognition, or if the agency does not hold institutions or programs accountable for complying with one or more of the agency's standards or criteria for accreditation that were not identified earlier in the proceedings as an area of noncompliance, the senior Department official provides—

(1) The agency with an opportunity to submit a written response addressing the finding; and

(2) The staff with an opportunity to present its analysis in writing.

(h) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the senior Department official's attention while a decision regarding the agency's recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under § 602.32 or § 602.33, as appropriate, and consideration by the Advisory Committee under § 602.34; or

(2)(i) Provides the information to the agency and Department staff;

(ii) Permits the agency to respond to the senior Department official and the Department staff in writing, and to include additional documentation relevant to the issue, and specifies a deadline;

(iii) Provides Department staff with an opportunity to respond in writing to the agency's submission under paragraph (h)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on the record described in paragraph (a) of this section, as supplemented by the information provided under this paragraph (h).

(i) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (h) of this section. Before invoking paragraph (h) of this section, the senior Department official will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(e)(2).

(j) If the senior Department official does not reach a final decision to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the senior Department official automatically extends the recognition period until a final decision is reached.

(k) Unless appealed in accordance with § 602.37, the senior Department official's decision is the final decision of the Secretary.

(Authority: 20 U.S.C. 1099b)

■ 43. Section 602.37 is revised to read as follows:

§ 602.37 Appealing the senior Department official's decision to the Secretary.

(a) The agency may appeal the senior Department official's decision to the Secretary. Such appeal stays the decision of the senior Department official until final disposition of the appeal. If an agency wishes to appeal, the agency must—

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision of the senior Department official, no later than 10 business days after receipt of the decision;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the decision; and

(3) Provide the senior Department official with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The senior Department official may file a written response to the appeal. To do so, the senior Department official must—

(1) Submit a response to the Secretary no later than 30 days after receipt of a copy of the appeal; and

(2) Provide the agency with a copy of the senior Department official's response at the same time it is submitted to the Secretary.

(c) Once the agency's appeal and the senior Department official's response, if any, have been provided, no additional written comments may be submitted by either party.

(d) Neither the agency nor the senior Department official may include in its submission any new documentation it did not submit previously in the proceeding.

(e) On appeal, the Secretary makes a recognition decision, as described in § 602.36(e). If the decision requires a compliance report, the report is due within 30 days after the end of the period specified in the Secretary's decision. The Secretary renders a final decision after taking into account the senior Department official's decision, the agency's written submissions on appeal, the senior Department official's response to the appeal, if any, and the entire record before the senior Department official. The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's recognition.

(f) The Secretary may determine, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application with respect to, a criterion or criteria for recognition not identified as an area of noncompliance earlier in the proceedings. In that case, the Secretary, without further consideration of the appeal, refers the matter to the senior Department official for consideration of the issue under § 602.36(g). After the senior Department official makes a decision, the agency may, if desired, appeal that decision to the Secretary.

(g) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the Secretary's attention while a decision regarding the agency's recognition is pending before the Secretary, and if the Secretary concludes the recognition decision should not be made without consideration of the information, the Secretary either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under § 602.32 or § 602.33, as appropriate; review by the Advisory Committee under § 602.34; and consideration by the senior Department official under § 602.36; or

(2)(i) Provides the information to the agency and the senior Department official;

(ii) Permits the agency to respond to the Secretary and the senior Department official in writing, and to include additional documentation relevant to the issue, and specifies a deadline;

(iii) Provides the senior Department official with an opportunity to respond in writing to the agency's submission under paragraph (g)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on all the materials described in paragraphs (e) and (g) of this section.

(h) No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph (g) of this section. Before invoking paragraph (g) of this section, the Secretary will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(c).

(i) If the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.

(Authority: 20 U.S.C. 1099b)

■ 44. Add § 602.39 to read as follows:

§ 602.39 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1099b)

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

■ 45. The authority citation for part 603 continues to read as follows:

Authority: 20 U.S.C. 1094(C)(4), unless otherwise noted.

§ 603.24 [Amended]

■ 46. Section 603.24 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

■ 47. Add § 603.25 to read as follows:

§ 603.25 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 654—[REMOVED AND RESERVED]

■ 48. Under the authority of 20 U.S.C. 1099b, part 654 is removed and reserved.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 49. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

§ 668.8 [Amended]

■ 50. Section 668.8 is amended in paragraph (l)(2) introductory text by removing the words ''in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c),''.

■ 51. Section 668.26 is amended by:

■ a. Redesignating paragraph (e) as paragraph (f); and

■ b. Adding new paragraph (e).

The addition reads as follows:

§ 668.26 End of an institution's participation in the Title IV, HEA programs.

* * * * *

(e)(1) Notwithstanding the requirements of any other provision in this section, with agreement from the institution's accrediting agency and State, the Secretary may permit an institution to continue to originate, award, or disburse funds under a Title IV, HEA program for no more than 120 days following the date of a final, non-appealable decision by an accrediting agency to withdraw, suspend, or terminate accreditation, by a State authorizing agency to remove State authorization, or by the Secretary to end the institution's participation in title IV, HEA programs if—

(i) The institution has notified the Secretary of its plans to conduct an orderly closure in accordance with any applicable requirements of its accrediting agency;

(ii) As part of the institution's orderly closure, it is performing a teach-out that has been approved by its accrediting agency;

(iii) The institution agrees to abide by the conditions of the program participation agreement that was in effect on the date of the decision under paragraph (e)(1), except that it will originate, award, or disburse funds under that agreement only to enrolled students who can complete the program within 120 days of the decision under paragraph (e)(1) or who can transfer to a new institution; and

(iv) The institution presents the Secretary with acceptable written assurances that—

(A) The health and safety of the institution's students are not at risk;

(B) The institution has adequate financial resources to ensure that instructional services remain available to students during the teach-out; and

(C) The institution is not subject to probation or its equivalent, or adverse action by the institution's State authorizing body or accrediting agency, except as provided in paragraph (e)(1).

(2) An institution is prohibited from engaging in misrepresentation, consistent with 34 CFR part 668 subpart F and consistent with 34 CFR part 685 subpart B, about the nature of its teach-out plans, teach-out agreements, and transfer of credit.

* * * * *

■ 52. Add § 668.29 to read as follows:

§ 668.29 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

§ 668.41 [Amended]

■ 53. Section 668.41 is amended by:

■ a. Removing the word ''calculates'' and adding in its place the phrase ''publishes or uses in advertising'' in paragraph (d)(5)(i)(A);

■ b. Removing and reserving paragraph (d)(5)(ii); and

■ c. Removing paragraph (d)(5)(iii).

■ 54. Section 668.43 is amended by:

■ a. Removing the word ''and'' at the end of paragraph (a)(5)(iii);

■ b. Adding the word ''and'' at the end of paragraph (a)(5)(iv);

■ c. Adding paragraph (a)(5)(v);

■ d. Removing the word ''and'' at the end of paragraph (a)(10)(iii);

■ e. Revising paragraphs (a)(11) and (12);

■ f. Adding paragraphs (a)(13) through (20); and

■ g. Adding paragraph (c).

The additions and revisions read as follows:

§ 668.43 Institutional information.

(a) * * *

(5) * * *

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

(A) A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification;

(B) A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification; and

(C) A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification;

* * * * *

(11) A description of the transfer of credit policies established by the institution, which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution and any types of institutions or sources from which the institution will not accept credits;

(ii) A list of institutions with which the institution has established an articulation agreement; and

(iii) Written criteria used to evaluate and award credit for prior learning experience including, but not limited to, service in the armed forces, paid or unpaid employment, or other demonstrated competency or learning;

(12) A description in the program description of written arrangements the institution has entered into in accordance with § 668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement;

(13) The percentage of those enrolled, full-time students at the institution who—

(i) Are male;

(ii) Are female;

(iii) Receive a Federal Pell Grant; and

(iv) Are a self-identified member of a racial or ethnic group;

(14) If the institution's accrediting agency or State requires the institution to calculate and report a placement rate, the institution's placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources approved by the institution's accrediting agency as applicable;

(15) The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;

(16) The fire safety report prepared by the institution pursuant to § 668.49;

(17) The retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering the institution;

(18) Institutional policies regarding vaccinations;

(19) If the institution is required to maintain a teach-out plan by its accrediting agency, notice that the institution is required to maintain such teach-out plan and the reason that the accrediting agency required such plan under § 602.24(c)(1); and

(20) If an enforcement action or prosecution is brought against the institution by a State or Federal law enforcement agency in any matter where a final judgment against the institution, if rendered, would result in an adverse action by an accrediting agency against the institution, revocation of State authorization, or limitation, suspension, or termination of eligibility under title IV, notice of that fact.

* * * * *

(c)(1) If the institution has made a determination under paragraph (a)(5)(v) of this section that the program's curriculum does not meet the State educational requirements for licensure or certification in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student's enrollment in the program.

(2) If the institution makes a determination under paragraph (a)(5)(v)(B) of this section that a program's curriculum does not meet the State educational requirements for licensure or certification in a State in which a student who is currently enrolled in such program is located, the institution must provide notice to that effect to the student within 14 calendar days of making such determination.

(3)(i) Disclosures under paragraphs (c)(1) and (2) of this section must be made directly to the student in writing, which may include through email or other electronic communication.

(ii)(A) For purposes of this paragraph (c), an institution must make a determination regarding the State in which a student is located in accordance with the institution's policies or procedures, which must be applied consistently to all students.

(B) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location under paragraph (c)(3)(ii)(A) of this section, including the basis for such determination.

(C) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures under paragraph (c)(3)(ii)(A) of this section, that the student's location has changed to another State.

* * * * *

■ 55. Section 668.50 is revised to read as follows:

§ 668.50 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

§ 668.188 [Amended]

■ 56. Section 668.188 is amended in paragraph (c) introductory text by removing the citation ''34 CFR 602.3'' and adding in its place ''34 CFR 600.2''.

■ 57. Add § 668.198 to read as follows:

§ 668.198 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 58. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

§ 674.33 [Amended]

■ 59. Section 674.33 is amended in paragraph (g)(4)(i)(C) by removing the citation ''34 CFR 602.2'' and adding in its place ''34 CFR 600.2''.

[FR Doc. 2019–23129 Filed 10–31–19; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; Surface Coating of Miscellaneous Metal Parts and Products; Surface Coating of Plastic Parts and Products; Surface Coating of Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture Residual Risk and Technology Reviews; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0314, EPA–HQ–OAR–2019–0312, EPA–HQ–OAR–2019–0313, EPA–HQ–OAR–2017–0670, EPA–HQ–OAR–2017–0668, EPA–HQ–OAR–2017–0669; FRL–9998–77–OAR]

RIN 2060–AT49 and RIN 2060–AT72

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; Surface Coating of Miscellaneous Metal Parts and Products; Surface Coating of Plastic Parts and Products; Surface Coating of Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture Residual Risk and Technology Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to address the results of the residual risk and technology reviews (RTR) that the EPA is required to conduct in accordance with the Clean Air Act (CAA) with regard to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for the Surface Coating of Automobiles and Light-Duty Trucks (ALDT), the NESHAP for the Surface Coating of Miscellaneous Metal Parts and Products (MMPP), and the NESHAP for the Surface Coating of Plastic Parts and Products (PPP). The EPA is proposing to find the risks due to emissions of air toxics from these source categories under the current standards are acceptable and the standards provide an ample margin of safety to protect public health. We are proposing no revisions to the numerical emission limits based on these analyses. The EPA is proposing to amend provisions addressing emissions during periods of startup, shutdown, and malfunction (SSM); to amend provisions regarding electronic reporting of performance test results; to amend provisions regarding monitoring requirements; and to make miscellaneous clarifying and technical corrections. This notice also proposes technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture.

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 December 2, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before November 6, 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/surface-coating-automobiles-and-light-duty-trucks-national-emission, https://www.epa.gov/stationary-sources-air-pollution/surface-coating-miscellaneous-metal-parts-and-products-national* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-plastic-parts-and-products-national-emission. 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–2019–0314 for 40 Code of Federal Regulations (CFR) part 63, subpart IIII, Automobiles and Light-Duty Trucks; Docket ID No. EPA–HQ–OAR–2019–0312 for 40 CFR part 63, subpart MMMM, Surface Coating of Miscellaneous Metal Parts and Products; Docket ID No. EPA–HQ–OAR–2019–0313 for 40 CFR part 63, subpart PPPP, Surface Coating of Plastic Parts and Products; Docket ID No. EPA–HQ–OAR–2017–0668 for 40 CFR part 63, subpart OOOO, Printing Coating, and Dyeing of Fabrics and Other Textiles; EPA–HQ–OAR–2017–0669 for 40 CFR part 63, subpart RRRR, Surface Coating of Metal Furniture; Docket ID No. EPA–HQ–OAR–2017–0670, for 40 CFR part 63 subpart NNNN for Surface Coating of Large Appliances 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–2019–0312, EPA–HQ–OAR–2019–0313, EPA–HQ–OAR–2019–0314, HQ–OAR–2017–0668, EPA–HQ–OAR–2017–0669, or EPA–HQ–OAR–2017–0670 (specify the applicable docket number) in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2019–0312, EPA–HQ–OAR–2019–0313, or EPA–HQ–OAR–2019–0314, HQ–OAR–2017–0668, EPA–HQ–OAR–2017–0669, or EPA–HQ–OAR–2017–0670 (specify the applicable docket number).
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2019–0312, EPA–HQ–OAR–2019–0313, or EPA–HQ–OAR–2019–0314, HQ–OAR–2017–0668, EPA–HQ–OAR–2017–0669, or EPA–HQ–OAR–2017–0670 (specify the applicable docket number), 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 applicable 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 for the Surface Coating of Miscellaneous Metal Parts and Products (MMPP) NESHAP, the Surface Coating of Plastic Parts and Products (PPP) NESHAP, and the technical corrections to the NESHAP for Surface Coating of Large Appliances contact Ms. Kim Teal, Minerals and Manufacturing Group, 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) 541–5580; fax number: (919) 541–4991; and email address: *teal.kim@epa.gov.* For questions about the proposed action for the Surface Coating of Automobiles and Light-Duty Trucks (ALDT) NESHAP and the technical corrections to the NESHAP for Surface Coating of Metal Furniture contact Ms. J. Kaye Whitfield, Minerals and Manufacturing Group, 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) 541–2509; fax number: (919) 541–4991; and email address: *whitfield.kaye@epa.gov.* For questions about the technical corrections to the Printing, Coating, and Dyeing of Fabrics and Other Textiles contact Ms. Paula

Hirtz, Minerals and Manufacturing Group, 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) 541–2618; fax number: (919) 541–4991; and email address: *hirtz.paula@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, 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) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.* For information about the applicability of any of these NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA 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.* For questions about monitoring and testing requirements, contact Mr. Muntasir Ali, Measurement Policy Group, Sector Policies and Programs Division (D221–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; fax number: (919) 541–4991; and email address: *ali.muntasir@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 three separate dockets for these rulemakings. Docket ID No. EPA–HQ–OAR–2019–0314 has been established for 40 CFR part 63, subpart IIII, Surface Coating of Automobiles and Light-Duty Trucks. Docket ID No. EPA–HQ–OAR–2019–0312 has been established for 40 CFR part 63, subpart MMMM, Surface Coating of Miscellaneous Metal Parts and Products. EPA–HQ–OAR–2019–0313 has been established for 40 CFR part 63, subpart PPPP, Surface Coating of Plastic Parts and Products. In addition, docket numbers for the technical corrections have been established: Docket ID No. EPA–HQ–OAR–2017–0670 for 40 CFR part 63, subpart NNNN, Surface Coating of Large Appliances; Docket ID No. EPA–HQ–OAR–2017–0669 for 40 CFR part 63, subpart RRRR, Surface Coating of Metal Furniture; and Docket ID No. EPA–HQ–OAR–2017–0668 for 40 CFR part 63, subpart OOOO, Printing, Coating, and Dyeing of Fabrics and Other Textiles. All documents in the dockets 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.

The dockets related to the technical corrections to the NESHAP for Surface Coating of Large Appliances, the NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles, and the NESHAP for Surface Coating of Metal Furniture are discussed in section II.E of this preamble.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2019–0314 for 40 CFR part 63, subpart IIII, Surface Coating of Automobiles and Light-Duty Trucks, Docket ID No. EPA–HQ–OAR–2019–0312 for 40 CFR part 63, subpart MMMM, Surface Coating of Miscellaneous Metal Parts and Products, or Docket ID No. EPA–HQ–OAR–2019–0313 for 40 CFR part 63, subpart PPPP, Surface Coating of Plastic Parts and Products, as applicable to your comments. Direct your comments for the technical corrections to Docket ID No. EPA–HQ–OAR–2017–0670 for 40 CFR part 63, subpart NNNN, Surface Coating of Large Appliances; Docket ID No. EPA–HQ–OAR–2017–0669 for 40 CFR part 63, subpart RRRR, Surface Coating of Metal Furniture; and Docket ID No. EPA–HQ–OAR–2017–0668 for 40 CFR part 63, subpart OOOO, Printing, Coating, and Dyeing of Fabrics and Other Textiles. 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 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–2019–0314 for 40 CFR part 63, subpart IIII, Surface Coating of Automobiles and Light-Duty Trucks (ALDT Docket); Docket ID No. EPA–HQ–OAR–2019–0312 for 40 CFR part 63, subpart MMMM, Surface Coating of Miscellaneous Metal Parts and Products (MMPP Docket); and Docket ID No. EPA–HQ–OAR–2019–0313 for 40 CFR part 63, subpart PPPP, Surface Coating of Plastic Parts and Products (PPP Docket), as applicable.

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:

ACA American Coatings Association
AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
ALDT automobile and light-duty truck
BACT best available control technology
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emissions monitoring systems
CFR Code of Federal Regulations
ECHO Enforcement and Compliance History Online
EPA Environmental Protection Agency
EPFP extreme performance fluoropolymer
ERPG emergency response planning guideline
ERT Electronic Reporting Tool
GACT generally available control technology
gal gallon
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
IBR incorporation by reference
ICAC Institute of Clean Air Companies
IRIS Integrated Risk Information System
kg kilogram
km kilometer
LAER lowest achievable emission rate
lb pound
MACT maximum achievable control technology
MIBK methyl isobutyl ketone
MIR maximum individual risk
MMPP miscellaneous metal parts and products
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NEI National Emission Inventory
NESHAP national emission standards for hazardous air pollutants
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PDF portable document format
POM polycyclic organic matter
PPP plastic parts and products
PRA Paperwork Reduction Act
PTE permanent total enclosure
RACT reasonably available control technology
RBLC RACT/BACT/LAER Clearinghouse
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTO regenerative thermal oxidizer
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
UF uncertainty factor
$\mu g/m^3$ micrograms per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standards
VOC volatile organic compounds

Organization of this document. The information in this preamble is organized as follows:

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B. What are the source categories and how do the current NESHAP regulate their HAP emissions?
C. What data collection activities were conducted to support this action?
D. What other relevant background information and data are available?
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VI. Request for Comments
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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) and 1 CFR Part 51
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 categories that are 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 Surface Coating of Automobiles and Light-Duty Trucks (ALDT) source category includes any facility that is a major source of hazardous air pollutants (HAP) and is engaged in the surface coating of new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks. We estimate that 43 major source facilities engaged in surface coating of automobiles and light-duty trucks would be subject to this proposal. The MMPP source category includes any facility engaged in the surface coating of miscellaneous metal parts and products that is a major source of HAP emissions. Miscellaneous metal parts and products include, but are not limited to, metal components of the following types of products as well as the products themselves: Motor vehicle parts and accessories; bicycles and sporting goods; recreational vehicles; extruded aluminum structural components; railroad cars; heavy-duty trucks; medical equipment; lawn and garden equipment; electronic equipment; magnet wire; steel drums; industrial machinery; metal pipes; and numerous other industrial, household, and consumer products. We estimate that 368 major source facilities engaged in surface coating of miscellaneous metal parts and products would be subject to this proposal. The PPP source category includes any facility engaged in the surface coating of plastic parts or products that is a major source of HAP emissions. Plastic parts and products include, but are not limited to, plastic components of the following types of products as well as the products themselves: Motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products. We estimate that 125 major source facilities engaged in plastic parts and products surface coating would be subject to this proposal.

TABLE 1—NESHAP, INDUSTRIAL AND GOVERNMENT SOURCES AFFECTED BY THIS PROPOSED ACTION

NESHAP source category	NAICS code [1]	Regulated entities [2]
Surface Coating of Automobiles and Light-Duty Trucks.	336111, 336112, 336211	Automobile and light-duty truck assembly plants, producers of automobile and light-duty truck bodies.
Surface Coating of Miscellaneous Metal Parts and Products.	335312, 336111, 336211, 336312, 33632, 33633, 33634, 33637, 336399.	Automobile parts (engine parts, vehicle parts and accessories, brakes, axles, etc.).
	331316, 331524, 332321, 332323	Extruded aluminum, architectural components, rod, and tubes.
	33312, 333611, 333618	Heavy equipment (tractors, earth moving machinery).
	332312, 332722, 332813, 332991, 332999, 334119, 336413, 339999.	Job shops (making any of the products from the miscellaneous metal parts and products segments).
	33612, 336211	Large trucks and buses.
	331319, 331422, 335929	Magnet wire.
	332311	Prefabricated metal buildings, carports, docks, dwellings, greenhouses, panels for buildings.
	33242, 81131, 322214, 326199, 331513, 332439.	Metal drums, kegs, pails, shipping containers.
	331111, 33121, 331221, 331511	Metal pipe and foundry (plate, tube, rods, nails, spikes, etc.).
	33651, 336611, 482111	Rail transportation (brakes, engines, freight cars, locomotives.
	3369, 331316, 336991, 336211, 336112, 336213, 336214, 336399.	Recreational vehicles (motorcycles, motor homes, semitrailers, truck trailers).
	326291, 326299	Rubber to metal products (engine mounts, rubberized tank tread, harmonic balancers.
	332311, 332312	Structural steel (joists, railway bridge sections, highway bridge sections).
	336212, 336999, 33635, 56121, 8111. 56211.	Miscellaneous transportation related equipment and parts.
Surface Coating of Plastic Parts and Products.	337214	Office furniture, except wood.
	32614, 32615	Plastic foam products (*e.g.,* pool floats, wrestling mats, life jackets).
	326199	Plastic products not elsewhere classified (*e.g.,* name plates, coin holders, storage boxes, license plate housings, cosmetic caps, cup holders).
	333313	Office machines.
	33422	Radio and television broadcasting and communications equipment (*e.g.,* cellular telephones).
	336211	Motor vehicle body manufacturing.
	336399	Motor vehicle parts and accessories.
	336212	Truck trailer manufacturing.
	336213	Motor home manufacturing.
	336214	Travel trailer and camper manufacturing.
	336999	Transportation equipment not elsewhere classified (*e.g.,* snowmobile hoods, running boards, tractor body panels, personal watercraft parts).
	339111, 339112	Medical equipment and supplies.
	33992	Sporting and athletic goods.
	33995	Signs and advertising specialties.

TABLE 1—NESHAP, INDUSTRIAL AND GOVERNMENT SOURCES AFFECTED BY THIS PROPOSED ACTION—Continued

NESHAP source category	NAICS code [1]	Regulated entities [2]
	339999	Manufacturing industries not elsewhere classified (*e.g.,* bezels, consoles, panels, lenses).

[1] North American Industry Classification System.
[2] Regulated entities means major source facilities that apply surface coatings to these parts or products.

B. Where can I get a copy of this document and other related information?

In addition to being available in the dockets for this action, an electronic copy of this proposed 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/surface-coating-automobiles-and-light-duty-trucks-national-emission, https://www.epa.gov/stationary-sources-air-pollution/surface-coating-miscellaneous-metal-parts-and-products-national,* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-plastic-parts-and-products-national-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at these same websites. 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 are available in the Automobiles and Light-Duty Trucks, the Metal Parts and Products, and the Plastic Parts and Products Dockets (Docket ID No. EPA–HQ–OAR–2019–0314, Docket ID No. EPA–HQ–OAR–2019–0312, and Docket ID No. EPA–HQ–OAR–2019–0313, respectively).

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.*).[1] Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of 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 further 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 dockets for each subpart in this rulemaking (Docket ID No. EPA–HQ–OAR–2019–0314 for Automobiles and Light-Duty Trucks, Docket ID No. EPA–HQ–OAR–2019–0312 for Miscellaneous Metal Parts and Products, and Docket ID No. EPA–HQ–OAR–2019–0313 for Plastic Parts and Products).

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section112(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) 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

[1] In addition, section 301 of the CAA provides general authority for the Administrator to ''prescribe such regulations as are necessary to carry out his functions'' under the CAA.

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)[2] of approximately [1-in-10 thousand] [*i.e.,* 100-in-1 million].'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks 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 frequently 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).

[2] 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.

B. What are the source categories and how do the current NESHAP regulate their HAP emissions?

1. What is the surface coating of automobiles and light-duty trucks source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The NESHAP for the ALDT source category was promulgated on April 26, 2004 (69 FR 22602), and is codified at 40 CFR part 63, subpart IIII. Technical corrections and clarifying amendments were promulgated on December 22, 2006 (71 FR 76922) and April 24, 2007 (72 FR 20227). The ALDT NESHAP applies to any coating operations which apply topcoats to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and/or coatings to new other motor vehicle bodies or body parts for new other motor vehicles; parts intended for use in new automobiles, new light-duty trucks, or new other motor vehicles; or aftermarket repair or replacement parts for automobiles, light-duty trucks, or other motor vehicles; and the affected source is located at a facility that is a major source, is located at a major source, or is part of a major source of emissions of HAP (40 CFR 63.3081). The ALDT NESHAP (40 CFR 63.3176) defines an ''automobile'' as ''a motor vehicle designed to carry up to eight passengers, excluding vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property,'' and ''light-duty truck'' as ''vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property with gross vehicle weight rating of 8,500 lbs [pounds] or less.''

The ALDT NESHAP defines a ''coating'' as ''a material that is applied to a substrate for decorative, protective or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, primers, deadeners, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.'' (40 CFR 63.3176).

The ALDT NESHAP does not apply to a surface coating operation that is subject to any other NESHAP as of June 25, 2004, except when a source chooses to comply with the ALDT NESHAP instead of the MMPP NESHAP (40 CFR part 63, subpart MMMM) or the PPP NESHAP (40 CFR part 63, subpart PPPP). (40 CFR 63.3082(c).)

Based on our search of the National Emission Inventory (NEI) (*www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei*) and the EPA's Enforcement and Compliance History Online (ECHO) database (*echo.epa.gov)* and a review of active air emissions permits, we estimate that 43 facilities are subject to the ALDT NESHAP. A complete list of facilities subject to the ALDT NESHAP is available in Table 1 of Appendix 10 to the memorandum titled *Residual Risk Assessment for the Surface Coating of Automobiles and Light-duty Trucks Source Category in Support of the 2019 Risk and Technology Review Proposed Rule (*hereafter referred to as the *Automobiles and Light-Duty Trucks Risk Assessment Report),* in the ALDT Docket (Docket ID No. EPA–HQ–OAR–2019–0314).

b. HAP Emission Sources

The primary HAP emitted from ALDT surface coating operations are organic HAP and included toluene, xylene, glycol ethers, methyl isobutyl ketone (MIBK), ethyl benzene, and methanol. The HAP emissions are from coating application and drying and curing ovens in the ALDT surface coating operations. Some emissions occur from the cleaning of spray booths and equipment. In most cases, HAP emissions from surface preparation, storage and handling are relatively small (*i.e.,* not quantifiable) for this source category.

Inorganic (metal) HAP emissions were considered in the development of the ALDT NESHAP and the EPA determined that, although very low levels of emissions were reported in coatings, no inorganic HAP are emitted. Based on data obtained during development of the 2004 proposed NESHAP (67 FR 78612, December 24, 2002), some coatings in the ALDT source category reported emissions of inorganic HAP that likely were not emitted due to coating application techniques used. Instead, the 2004 proposed NESHAP found that the inorganic HAP components of the coatings mostly remained as solids in the dry coating film on the parts being coated, were collected by the circulating water under the spray booth floor grates, or were deposited on the walls, floor, and grates of the spray booths and other equipment in which they are applied. More recent data from the 2011 NEI data, used to inform this RTR, show total reported source category inorganic HAP emissions of 0.008 tpy from antimony, chromium, manganese, and nickel, and no reported emissions of inorganic HAP in thinners or cleaning materials. (See Appendix 1 to the *Automobiles and Light-Duty Trucks Risk Assessment Report,* in the ALDT Docket). Based on feedback from industry and information gleaned from EPA site visits, facilities in the ALDT source category employ high-efficiency spray equipment (including robotic spraying) to minimize the overall amount of coating used, thereby reducing inorganic HAP emissions further. Therefore, we conclude that, although inorganic HAP are reported components of coatings, no inorganic HAP are emitted.

c. Current NESHAP Requirements for Control of HAP

The NESHAP specifies numerical limits for the organic HAP emissions from both existing sources and new or reconstructed sources. These emissions limits are established for each of several process groupings at the source including (1) electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations; (2) primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations; (3) adhesives and sealers, other than glass bonding adhesive materials; and (4) deadener materials.

The specific organic HAP emission limits are summarized in Table 2 of the memorandum titled *Technology Review for Surface Coating Operations in the Automobiles and Light-Duty Trucks Source Category* in the ALDT Docket.

Compliance with the ALDT NESHAP emission limits can be achieved using several different options, including a compliant material option, an emission rate without add-on controls option (averaging option), and an emission rate with add-on controls option. For bake ovens used to cure electrodeposition primers, an alternative is to capture the emissions and duct them to a control device having a destruction or removal efficiency of at least 95 percent. For any coating operation(s) on which the facility uses the compliant material option or the emission rate without add-on controls option, the facility is not required to meet any work practice standards. Facilities that have multiple paint lines may choose to group operations from two or more paint lines together, or to make a separate grouping of the operations from individual paint lines. Operating limits may apply for facilities that use an emission capture and control system to reduce emissions.

If the facility uses the emission rate with add-on controls option, they must develop and implement a work practice plan to minimize organic HAP emissions from all processes associated with the coating operations (*i.e.,* storage; mixing and conveying of coatings; thinners; cleaning materials; and waste materials). The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented. The facility must also comply with site-specific operating limits for the emission capture and control system.

2. What is the surface coating of miscellaneous metal parts and products source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The MMPP NESHAP was promulgated on January 2, 2004 (69 FR 130), and is codified at 40 CFR part 63, subpart MMMM. A technical correction to the final rule was published on April 26, 2004 (69 FR 22602) and December 22, 2006 (71 FR 76922). The MMPP NESHAP applies to owners or operators of metal parts and products surface coating operations at facilities that are major sources of HAP.

Miscellaneous metal parts and products include, but are not limited to, metal components of the following types of products as well as the products themselves: motor vehicle parts and accessories, bicycles and sporting goods, recreational vehicles, extruded aluminum structural components, railroad cars, heavy-duty trucks, medical equipment, lawn and garden equipment, electronic equipment, magnet wire, steel drums, industrial machinery, metal pipes, and numerous other industrial, household, and consumer products. The MMPP NESHAP (40 CFR 63. 3881(c)) does not apply to the surface coating or coating operations that meet the applicability criteria of eleven other surface coating NESHAP, *e.g.,* surface coating of metal components of wood furniture (subpart JJ of 40 CFR part 63), surface coating of metal components of large appliances (subpart NNNN of 40 CFR part 63), and surface coating of metal components of automobiles and light-duty trucks (subpart IIII of 40 CFR part 63).

Based on our search of the NEI and the EPA's ECHO database and a review of active air emission permits, we estimate that 368 facilities are subject to the MMPP NESHAP. A list of facilities we identified as subject to the MMPP NESHAP is available in Table 1 to Appendix 10 to the memorandum titled *Residual Risk Assessment for the Surface Coating of Miscellaneous Metal Parts and Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* (hereafter referred to as the *Miscellaneous Metal Parts and Products Risk Assessment Report*), in the MMPP Docket (Docket ID No. EPA–HQ–OAR–2019–0312).

b. HAP Emission Sources

The primary HAP emitted from MMPP surface coating operations are organic HAP and include xylenes, toluene, glycol ethers, ethyl benzene, MIBK, methanol, ethylene glycol, and dimethyl phthalate. The majority of organic HAP emissions can be attributed to the application, drying, and curing of coatings.

Inorganic HAP emissions were considered in the development of the MMPP NESHAP and the EPA determined that inorganic HAP emissions would be very low based on the coating application techniques in place at the time of the rule development. Based on information reported in survey responses during the development of the proposal for the 2004 NESHAP, inorganic HAP, including chromium, cobalt, lead, and manganese compounds, are components of some coatings used by this source category. Inorganic HAP in the coatings would only have the potential to be emitted if they were spray-applied, but the inorganic HAP would be either deposited on the part being coated as part of the surface coating, on the walls and floors of the spray booth, or captured by the spray booth filters (typically either a dry fabric filter or a water-wash filter system). No inorganic HAP were documented in thinners or cleaning materials. Emissions would be further reduced by the use of high efficiency spray equipment, often combined with robotic spraying, that minimize the amount of coating that is sprayed. For more detailed information please see the emissions memorandum in Appendix 1 to the *Miscellaneous Metal Parts and Products Risk Assessment Report,* in the MMPP Docket.

In response to comments on the 2004 proposed NESHAP,[3] the EPA argued

[3] *Surface Coating of Miscellaneous Metal Parts and Products, Summary of Public Comments and*

that given the combination of very low usage of coatings containing inorganic HAP in this source category, and the current and expected continued use of controls (dry filters and waterwash systems on spray booths and high efficiency equipment) to reduce overspray emissions, the EPA believed that levels of inorganic HAP emissions did not warrant federal regulation because those regulations would not be expected to result in additional emissions reduction.

c. Current NESHAP Requirements for Control of HAP

The MMPP NESHAP establishes the organic HAP emissions limits for new and existing sources. The final rule contains five subcategories: (1) General use coating, (2) high performance coating, (3) magnet wire coating, (4) rubber-to-metal coating, and (5) extreme performance fluoropolymer coating (EPFP).

Compliance can be demonstrated with using a variety of compliance options including, (1) a compliant coatings option, where all coatings used have organic HAP contents that individually meet the organic HAP emissions limit, and all thinners and cleaning materials contain no organic HAP; (2) an emission rate without add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emission rate and determined on a monthly basis, is equal to or less than the organic HAP emissions limit; or (3) an emission rate with add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emissions rate and determined on a monthly basis, taking into account the emissions reduction achieved through the use of one or more emissions capture and control devices, is equal to or less than the organic HAP emissions limit. A facility using the add-on control option must also comply with work practice standards to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, cleaning materials, and waste materials associated with the coating operation(s) and must also comply with operating limits for the emissions capture systems and add-on control devices.

If a facility's surface coating operations meet the applicability criteria of more than one of the coating subcategories in the MMPP NESHAP, the facility may comply separately with each emissions limit or comply using one of the following options:

- If general use coating or magnet wire coating constitute 90 percent or more of the surface coating activity at the facility (*i.e.,* it is the predominant activity), then the facility can comply with that one emissions limit for all surface coating at the facility.
- The facility can comply with a facility-specific emissions limit calculated on the basis of the applicable emissions limits and the amount of coating activity performed in each coating subcategory, where activity is measured as the volume of coating solids used.

The specific organic HAP emission limits for each coating subcategory and the operating limits are summarized in Tables 4 and 5 of the memorandum titled *Technology Review for Surface Coating Operations in the Miscellaneous Metal Parts and Products Category.*

3. What is the surface coating of plastic parts and products source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The NESHAP for the PPP source category was promulgated on April 19, 2004 (69 FR 20968), and is codified at 40 CFR part 63, subpart PPPP. Technical corrections to the final rule were published on December 22, 2006 (71 FR 76922) and April 24, 2007 (72 FR 20227). The PPP NESHAP applies to owners or operators of PPP surface coating operations at facilities that are major sources of HAP. Plastic parts and products include, but are not limited to, plastic components of the following types of products as well as the products themselves: Motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products. The PPP NESHAP (40 CFR 63. 4481(c)) does not apply to the surface coating or coating operations of items that meet the applicability criteria of eleven other surface coating NESHAP, *e.g.,* surface coating of plastic components of wood furniture (subpart JJ of 40 CFR part 63), surface coating of plastic components of large appliances (subpart NNNN of 40 CFR part 63), and surface coating of plastic components of automobiles and light-duty trucks (subpart IIII of 40 CFR part 63).

Based on our search of the NEI and the EPA's ECHO database and a review of active air emission permits, we estimate that 125 facilities are subject to the PPP NESHAP. A list of facilities we identified as subject to the PPP NESHAP is available in Table 1 to Appendix 10 to the memorandum titled *Residual Risk Assessment for the Surface Coating of Plastic Parts and Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* (hereafter referred to as the *Plastic Parts and Products Risk Assessment Report*), in the PPP Docket (Docket ID No. EPA–HQ–OAR–2019–0313).

b. HAP Emission Sources

The primary HAP emitted from PPP surface coating operations are organic HAP and, based on the 2011 NEI, include xylene, toluene, MIBK, ethylbenzene, styrene, glycol ethers, and methanol, in order of decreasing emissions. These compounds account for about 96 percent of the nationwide HAP emissions from this source category, based on an analysis of the NEI.

No inorganic HAP are currently associated with the coatings used in this source category, based on the data in the NEI.

c. Current NESHAP Requirements for Control of HAP

The PPP NESHAP specifies numerical emission limits for existing sources and for new and reconstructed sources for organic HAP emissions. The final rule contains four subcategories: (1) General use coating, (2) thermoplastic olefin coating, (3) automotive lamp coating, and (4) assembled on-road vehicle coating.

Compliance can be demonstrated with a variety of compliance options including, (1) a compliant material option, where the HAP content of each coating used is less than or equal to the applicable organic HAP emissions limit and each thinner, additive, and cleaning material uses no organic HAP; (2) an emission rate without add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emission rate and determined on a monthly basis, is equal to or less than the organic HAP emissions limit; or (3) an emission rate with add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emissions rate and determined on a monthly basis, taking into account the emissions reduction achieved through the use of one or more emissions capture and control devices, is equal to or less than the organic HAP emissions limit. A facility using the add-on control option must also comply with work practice standards to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, cleaning materials, and waste materials associated with the coating operation(s) and must also comply with

Responses on Proposed Rule. August 2003. EPA–453/R–03–008; p. 83.

operating limits for the emissions capture systems and add-on control devices.

The specific organic HAP emission limits for each coating subcategory are summarized in Table 2 of the memorandum titled *Technology Review for Surface Coating Operations in the Plastic Parts and Products Category.*

C. What data collection activities were conducted to support this action?

For the risk modeling portion of these RTRs, the EPA used data from the 2011 and 2014 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 risk modeling, including annual HAP emissions estimates from individual emission points at facilities and the related emissions release parameters. We used NEI emissions and supporting data as the primary data to develop the model input files for the risk assessments for each of these three source categories. Detailed information on the development of the modeling file for the ALDT source category can be found in Appendix 1 to the *Automobiles and Light-Duty Trucks Risk Assessment Report,* in the ALDT Docket (Docket ID No. EPA–HQ–OAR–2017–0314). Detailed information on the development of the modeling file for the MMPP source category can be found in Appendix 1 to the *Miscellaneous Metal Parts and Products Risk Assessment Report,* in the MMPP Docket (Docket ID No. EPA–HQ–OAR–2019–0312). Detailed information on the development of the modeling file for the PPP source category can be found in Appendix 1 to the *Plastic Parts and Products Risk Assessment Report,* in the PPP Docket (Docket ID No. EPA–HQ–OAR–2019–0313).

For each risk modeling and technology review portion of these three RTRs, we 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 for many, but not all, of the facilities in each source category. The facility permits were also used to confirm that the facilities were major sources of HAP and were subject to the NESHAP that are the subject of these risk assessments. In certain cases, we contacted industry associations and facility owners or operators to confirm and clarify the sources of emissions that were reported in the NEI.

For the technology review portion of these RTRs, we also used information from the EPA's ECHO database as a tool to identify which facilities were potentially subject to the NESHAP. The ECHO database provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. Using the search feature in ECHO, the EPA identified facilities that could potentially be subject to each of these three NESHAP. We then reviewed operating permits for these facilities, when available, to confirm that they were major sources of HAP with emission sources subject to these NESHAP. For many sources in the MMPP source category in the rubber-to-metal bonding and the high-performance coating subcategories, we also reviewed recent semi-annual compliance reports to confirm the compliance option they were using and the emission rates they were achieving.

Also, for the technology reviews, we collected information from the reasonably available control technology (RACT), best available control technology (BACT), and lowest achievable emission rate (LAER) determinations in the EPA's RACT/BACT/LAER Clearinghouse (RBLC).[4] This database contains case-specific information on air pollution technologies that have been required to reduce the emissions of air pollutants from stationary sources. Under the EPA's New Source Review (NSR) program, an NSR permit must be obtained if a facility is planning new construction that increases the air emissions of any regulated NSR pollutant at or above 100 or 250 tpy (could be a lower threshold depending upon nonattainment severity) or a modification that results in a significant emissions increase and a significant net emissions increase of any regulated NSR pollutant (''significant'' emissions increase is defined in the NSR regulations and is pollutant-specific, ranging from less than 1 pound (lb) to 100 tpy of the applicable regulated NSR pollutant). This central database 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 surface coating operations to reduce air emissions.

Additional information about these data collection activities for the technology reviews is contained in the technology review memoranda titled *Technology Review for Surface Coating Operations in the Automobiles and Light-Duty Trucks Category,* July 2019 (hereafter referred to as the *Automobiles and Light-Duty Trucks Technology Review Memo*), *Technology Review for the Surface Coating Miscellaneous Metal Parts and Products Source Category,* July 2019 (hereafter referred to as the *Miscellaneous Metal Parts and Products Technology Review Memo*), and *Technology Review for Surface Coating Operations in the Plastic Parts and Products Category,* July 2019 (hereafter referred to as the *Plastic Parts and Products Technology Review Memo*), available in the respective ALDT, MMPP, and PPP Dockets.

D. What other relevant background information and data are available?

As part of the technology review for the ALDT, the MMPP, and the PPP NESHAP source categories, we reviewed information available in the American Coatings Association's (ACA) *Industry Market Analysis,* 9th Edition (2014—2019).[5] The *ACA Industry Market Analysis* provided information on trends in coatings technology that can affect emissions from the ALDT, the MMPP, and the PPP source categories. Additional details regarding our review of these information sources are contained in the *Automobiles and Light-Duty Trucks Technology Review Memo, Miscellaneous Metal Parts and Products Technology Review Memo,* and the Plastic Parts and Products *Technology Review Memo,* available in the respective ALDT, MMPP, and PPP Dockets.

III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTRs 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

[4] *https://www.epa.gov/catc/ractbactlaer-clearinghouse-rblc-basic-information.*

[5] Prepared for the ACA, Washington, DC, by The ChemQuest Group, Inc., Cincinnati, Ohio. 2015.

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, ''[t]he 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.[6] The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The scope of EPA's risk analysis is consistent with EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that:

> ''[t]he 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 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 risks. The Benzene NESHAP explained that ''an MIR of approximately one 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 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 those HAP risks that may be associated with emissions from other facilities that do not include the source categories under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the categories.

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 risks, 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 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.'' [7]

In response to the SAB recommendations, the EPA is incorporating cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency is (1) conducting facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combining exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzing the ingestion route of exposure. In addition, the RTR risk assessments have always considered aggregate cancer risk from all carcinogens and aggregate noncancer HQs from all noncarcinogens affecting the same target organ system.

Although we are interested in placing source category and facility-wide HAP risks in the context of total HAP risks 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

[6] 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.

[7] Recommendations of the SAB Risk and Technology Review Methods Panel are provided in their report, which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

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 reviews focus 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 NESHAPs (*i.e.,* the 2004 ALDT NESHAP; the 2004 MMPP NESHAP; and the 2004 PPP NESHAP), we review a variety of data sources in our investigation of potential practices, processes, or controls that may have not been considered for each of the three source categories during development of the NESHAP. Among the sources we reviewed were the NESHAP for various industries that were promulgated after the MACT standards being reviewed in this action (*e.g.,* NESHAP for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (40 CFR part 63, subpart HHHHHH)). We also reviewed the results of other technology reviews for other surface coating source categories since the promulgation of the NESHAPs (*e.g.,* the technology reviews conducted for the Shipbuilding and Ship Repair (Surface Coating) NESHAP (40 CFR part 63, subpart II) and the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ)). We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could be applied to emission sources in the ALDT, the MMPP, and the PPP source categories, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-specific market analyses and trade journals, to research advancements in add-on controls and lower HAP technology for coatings and solvents. For a more detailed discussion of our methods for performing these technology reviews, refer to the *Automobiles and Light-Duty Trucks Technology Review Memo, the Miscellaneous Metal Parts and Products Technology Review Memo* and the *Plastic Parts and Products Technology Review Memo,* available in the respective ALDT, MMPP, and PPP Dockets.

C. How do we estimate post-MACT risks posed by these source categories?

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 the presentation of results in sections IV.A.1, IV.B.1, and IV.C.1 of this preamble).

The EPA conducted risk assessments that provide estimates of the MIR for cancer posed by the HAP emissions from each source in each 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 assessments also provide estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessments. The ALDT, MMPP, and PPP Dockets contain the respective *Automobiles and Light-Duty Trucks Risk Assessment Report, Miscellaneous Metal Parts and Products Risk Assessment Report* and the *Plastic Parts and Products Risk Assessment Report,* which provide more information on the risk assessment inputs and models. The methods used to assess risks (as described in the seven primary steps below) are consistent with those peer-reviewed by a panel of the EPA's SAB in 2009 [8] 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 actual emissions and the emission release characteristics for each facility were obtained primarily from either the 2011 NEI or the 2014 NEI. Most data were obtained from the 2011 NEI, unless the 2014 NEI included HAP data for emission units or processes for which the 2011 NEI included only volatile organic compounds (VOC) or particulate matter. In some cases, the industry association or the specific facilities were contacted to confirm emissions that appeared to be outliers, that were otherwise inconsistent with our understanding of the industry, or that were associated with high risk values in our initial risk screening analyses. When appropriate, emission values and release characteristics were revised based on these facility contacts, and these changes were documented. Additional information on the development of the modeling file for each source category, including the development of the actual emissions estimates and emissions release characteristics, can be found in Appendix 1 to the *Automobiles and*

[8] U.S. EPA SAB. *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–09–0006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

Light-Duty Trucks Risk Assessment Report, in the ALDT Docket; in Appendix 1 to the *Miscellaneous Metal Parts and Products Risk Assessment Report,* in the MMPP Docket; and Appendix 1 to the *Plastic Parts and Products Risk Assessment Report,* in the PPP Docket.

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 level allowed to be emitted under the MACT standards is referred to as the ''MACT-allowable'' emissions level. We discussed the use 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 RTRs (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect 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.)

For the ALDT, MMPP, and PPP source categories, the EPA calculated allowable emissions by developing source category-specific multipliers of 1.1 for Automobiles and Light-duty Trucks and 1.2 for both Miscellaneous Metal Parts and Plastic Parts and Products. These multipliers were applied to the current emissions for each category to estimate the allowable emissions. The multipliers were based on information obtained from the facility operating permits and industry information.

For details on how the EPA estimated the MACT allowable emissions for the ALDT source category, please *see* Appendix 1 to the *Automobiles and Light-Duty Trucks Risk Assessment Report,* in the ALDT Docket (Docket ID No. EPA–HQ–OAR–2019–0314). For details on how the EPA calculated the MACT allowable emissions for the MMPP source category, please *see* Appendix 1 to the *Miscellaneous Metal Parts and Products Risk Assessment Report,* in the MMPP Docket (Docket ID No. EPA–HQ–OAR–2019–0312). For details on how the EPA calculated the MACT allowable emissions for the PPP source category, please *see* Appendix 1 to the *Plastic Parts and Products Risk Assessment Report,* in the PPP Docket (Docket ID No. EPA–HQ–OAR–2019–0313).

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risks from the source categories addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[9] 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 risks 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.[10] 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 U.S. and Puerto Rico. A second library of U.S. Census Bureau census block [11] 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 risks. 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 categories. 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 limitation of Gaussian dispersion modules, 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, for a 70-year period) 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 ($\mu g/m^3$)) by its unit risk estimate (URE). The URE is an upper bound estimate of an individual's probability 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 [12] emitted

[9] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[10] 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).

[11] A census block is the smallest geographic area for which census statistics are tabulated.

[12] 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

Continued

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://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,[13] 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 *Automobiles and Light-Duty Trucks Risk Assessment Report, the Miscellaneous Metal Parts and Products Risk Assessment Report, and the Plastic Parts and Products Risk Assessment Report,* 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,[14] reasonable worst-case air 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.''[15] 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.[16] They are guideline levels for

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.*

[13] *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*).

[14] 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 to account for variability. This is documented in the *Automobiles and Light-Duty Trucks Risk Assessment Report, the Miscellaneous Metal Parts and Products Risk Assessment Report, and the Plastic Parts and Products Risk Assessment Report* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* These documents are available in the ALDT Docket, the MMPP Docket, and the PPP Docket.

[15] 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.*

[16] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute*

''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.'' [17] *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 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).

For these source categories, we did not have short-term emissions data; therefore, we developed source category-specific factors based on information about each industry. We request comment on our assumptions regarding hour-to-hour variation in emissions and our methods of calculating the multiplier for estimating the peak 1-hour emissions for each source category and any additional information that could help refine our approach.

The ALDT process is a continuous (non-batch) coating application and curing process which results in consistent emission rates. The sources in this category dip and spray-apply coatings onto the surface of the vehicle. The sources employ the use of various compliance options, which include the use of compliant coatings, averaging among coatings to meet the emission limits, and the use of add-on controls by facilities that cannot use the first two options. We expect that the hourly variations in emissions from these processes during routine operations to be minimal. Thus, applying the default multiplier of 10 to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variations in emissions occur due to variations in the organic HAP content of the coatings. We calculated acute emissions by developing a source category-specific multiplier of 1.2 that was applied to the actual annual emissions, which were then divided by the total number of hours in a year (8,760 hours). A further discussion of why this factor was chosen can be found in Appendix 1 to the *Automobiles and Light-Duty Trucks Risk Assessment Report* in the ALDT Docket.

Similarly, for the MMPP source category, we expect to see minimal hour-to-hour variation in emissions during routine operations because coating operations dip or spray-apply coating onto the surface of metal parts and products in a continuous coating process. Thus, the default multiplier of 10 to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variation in emissions occur due to variations in the organic HAP content of the coatings from batch to batch. We calculated acute emissions by developing a source category-specific multiplier of 1.2 that was applied to the actual annual emissions, which were then divided by the total number of hours in a year (8,760 hours). A further discussion of why this factor was chosen can be found in Appendix 1 to the *Miscellaneous Metal Parts and Products Risk Assessment Report* in the MMPP Docket.

For the PPP source category, we expect to see minimal hour-to-hour variation in emissions during routine operations because coating operations spray-apply coating onto the surface of plastic parts and products in a continuous coating process. Thus, the default multiplier of 10 to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variation in emissions occur due to variations in the organic HAP content of the coatings from batch to batch. We calculated acute emissions by developing a source category-specific multiplier of 1.2 that was applied to the actual annual emissions, which were then divided by the total number of hours in a year (8,760 hours). A further discussion of why this factor was chosen can be found in Appendix 1 to the *Plastic Parts and Products Risk Assessment Report* in the PPP Docket.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP where 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 assess the site-specific data to ensure that the acute HQ is at an off-site location. For the three source categories in this action, the acute data refinements consisted of plotting the HEM–3 polar grid results for each HAP with an acute HQ value greater than 1 on aerial photographs of the facilities. We then assessed whether the highest acute HQs were off-site and at locations that may be accessible to the public (*e.g.,* roadways and public buildings). These refinements are discussed more fully in the *Automobiles and Light-Duty Trucks, Miscellaneous Metal Parts and Products,* and *Plastic Parts and Products Risk Assessment Reports,* available in the respective ALDT, MMPP, and PPP Dockets.

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*).

[17] *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.*

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 categories emitted 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/sites/production/files/2013–08/documents/volume_1_reflibrary.pdf*).

For the ALDT source category, we identified emissions of lead. 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 (0.15 $\mu g/m^3$).[18] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk. For additional discussion of the multipathway screening results for this source category *see* section IV.A of this preamble and the *Automobiles and Light-Duty Trucks Risk Assessment Report* in the ALDT Docket.

For the MMPP source category, we identified emissions of arsenic, 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 use 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 polycyclic organic matter (POM). Based on the EPA estimates of toxicity and bioaccumulation potential, the pollutants above 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 (ingestion rates are decoupled into separate upper-bound ingestion rates for the fisher, farmer, and gardener scenarios). Since, the PB–HAP emissions did not exceed the Tier 1 multipathway screening value of 1, the Tier 2 multipathway screen was not conducted.

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.[19] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For additional discussion of the multipathway screening results for this source category *see* section IV.B of this preamble and the *Miscellaneous Metal Parts and Products Risk Assessment Report* in the MMPP Docket.

For the PPP source category, we did not identify emissions of any PB–HAP. Therefore, further evaluation of multipathway risk was not conducted for the PPP source category.

5. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effects, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for adverse environmental effects 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, polycyclic organic matter (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, were included due to their

[18] 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.

[19] 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.

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 *Automobiles and Light-Duty Trucks Risk Assessment Report,* the *Miscellaneous Metal Parts and Products Risk Assessment Report,* and the *Plastic Parts and Products Risk Assessment Report,* in the respective ALDT, MMPP and PPP Dockets.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the ALDT, MMPP, and PPP source categories emitted any of the environmental HAP. For the ALDT source category, we identified emissions of lead, HCl and HF. For the MMPP source category, we identified emissions of arsenic, cadmium, lead and HCl. For the PPP source category, we did not identify emissions of any environmental HAP.

Because the environmental HAP evaluated are emitted by at least one facility in the ALDT source category and the MMPP source category, we proceeded to the second step of the evaluation for each of these source categories.

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 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.

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 HCl and HF. 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 potential adverse environmental effects (as defined in section 112(a)(7) of the CAA) from emissions of HCl and HF, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in units of acres and squared kilometers; 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

Automobiles and Light-Duty Trucks Risk Assessment Report, the *Miscellaneous Metal Parts and Products Risk Assessment Report,* and the *Plastic Parts and Products Risk Assessment Report,* in the ALDT Docket, the MMPP Docket, and the PPP Docket, respectively.

6. How did 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 each of these three source categories, 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, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source categories 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 *Automobiles and Light-Duty Trucks Risk Assessment Report, Miscellaneous Metal Parts and Products Risk Assessment Report,* and *Plastic Parts and Products Risk Assessment Report,* available in the respective dockets for this action, provide 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 did 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 datasets, 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 *Automobiles and Light-Duty Trucks Risk Assessment Report, Miscellaneous Metal Parts and Products Risk Assessment Report,* and *Plastic Parts and Products Risk Assessment Report,* available in the respective dockets for this action. If a multipathway site-specific assessment was performed for any of these source categories, 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 Datasets

Although the development of the RTR emissions datasets 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.[20] 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.[21] 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,[22] 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 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 these source categories 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 emissions 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

The ALDT source category emits PB–HAP (lead) and environmental HAP (lead, HF and HCl); therefore, further evaluation of multipathway risk and an environmental risk screening was conducted. The MMPP source category emits PB–HAP (arsenic, cadmium, and lead) and environmental HAP (arsenic, cadmium, lead, HF, and HCl); therefore, an environmental risk screening was conducted for this source category. The PPP source category in this action does not emit any PB–HAP or environmental HAP; therefore, further evaluation of multipathway risk and an environmental risk screening was not conducted for this source category.

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.

[20] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[21] 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.

[22] 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.

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.[23]

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 the 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.

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.

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 analytical results and proposed decisions for the surface coating of automobiles and light-duty trucks source category?

1. What are the results of the risk assessment and analyses?

As described in section III of this preamble, for the ALDT source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Automobiles and Light-Duty Trucks Risk Assessment Report* in the ALDT Docket (Docket ID No. EPA–HQ–OAR–2019–0314).

a. Chronic Inhalation Risk Assessment Results

Table 2 of this preamble provides a summary of the results of the inhalation risk assessment for the source category.

TABLE 2—SURFACE COATING OF AUTOMOBILES AND LIGHT-DUTY TRUCKS SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	10	10	15,000	19,000	0.01	0.01	0.3	0.3	HQREL = 1.
Whole Facility	10	....	48,000	....	0.02	....	0.3		

[1] The target organ specific hazard index (TOSHI) is the sum of the chronic noncancer HQs for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

[23] 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.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 10-in-1 million (driven by naphthalene and ethyl benzene from miscellaneous industrial processes—other/not classified), the maximum chronic noncancer TOSHI value based on actual emissions could be up to 0.3 (driven by hexamethylene-1,6-diisocyanate from a painting topcoat process), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 1 (driven by formaldehyde). The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.01 excess cancer cases per year or 1 case in every 100 years.

b. Screening Level Acute Risk Assessment Results

Table 2 of this preamble shows the acute risk results for the ALDT source category. The screening analysis for acute impacts was based on an industry specific multiplier of 1.2, to estimate the peak emission rates from the average rates. For more detailed acute risk results, refer to the *Automobiles and Light-Duty Trucks Risk Assessment Report,* in the ALDT Docket.

c. Multipathway Risk Screening Results

The emissions data for the ALDT source category indicate that one PB–HAP is emitted by sources within this source category: Lead. In evaluating the potential for multipathway effects from emissions of lead, we compared modeled annual lead concentrations to the NAAQS for lead (0.15 µg/m3, arithmetic mean concentration over a 3-month period). The highest annual average lead concentration of 1.5×10^{-5} µg/m^3 is below the NAAQS for lead, indicating a low potential for multipathway impacts of concern due to lead even assuming a shorter averaging period is. Therefore, we do not expect any human health multipathway risks as a result of emissions from this source category.

d. Environmental Risk Screening Results

The emissions data for the ALDT source category indicate that three environmental HAP are emitted by sources within this source category: Lead, HCl and HF. Therefore, we conducted a screening-level evaluation of the potential adverse environmental effects associated with emissions of lead, HCl, and HF for the ALDT source category. In evaluating the potential for adverse environmental effects from emissions of lead, we compared modeled annual lead concentrations to the secondary NAAQS for lead (0.15 µg/m^3, arithmetic mean concentration over a 3-month period). The highest annual average lead concentration of 1.5×10^{-5} µg/m^3 is below the secondary NAAQS for lead, indicating a low potential for adverse environmental impacts due to lead even assuming a shorter averaging period is analyzed. For both HCl and HF, each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

e. Facility-Wide Risk Results

Fifteen facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 10-in-1 million, driven by naphthalene and ethyl benzene from miscellaneous industrial processes—other/not classified. The total estimated cancer incidence from the whole facility is 0.02 excess cancer cases per year, or one excess case in every 50 years. Approximately 48,000 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at 15 of the 43 facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 0.3, mainly driven by emissions of hexamethylene-1,6-diisocyanate from a painting topcoat process.

f. 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 risks 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 risks from the ALDT source category across different demographic groups within the populations living near facilities.[24]

The results of the demographic analysis are summarized in Table 3 of this preamble. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—SURFACE COATING OF AUTOMOBILES AND LIGHT-DUTY TRUCKS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of automobiles and light-duty trucks	Population with chronic noncancer HI above 1 due to surface coating of automobiles and light-duty trucks
Total Population	317,746,049	15,000	0
White and Minority by Percent			
White	62	60	0
Minority	38	40	0
Minority Detail by Percent			
African American	12	10	0
Native American	0.8	0.2	0
Hispanic or Latino	18	27	0

TABLE 3—SURFACE COATING OF AUTOMOBILES AND LIGHT-DUTY TRUCKS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of automobiles and light-duty trucks	Population with chronic noncancer HI above 1 due to surface coating of automobiles and light-duty trucks
Other and Multiracial	7	3	0
Income by Percent			
Below the Poverty Level	14	19	0
Above the Poverty Level	86	81	0
Education by Percent			
Over 25 Without High a School Diploma	14	14	0
Over 25 With a High School Diploma	86	86	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	3	0

The results of the ALDT source category demographic analysis indicate that emissions from the source category expose approximately 15,000 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer HI greater than 1. The percent of minorities is similar nationally (38 percent) and for the category population with cancer risk greater than or equal to 1-in-1 million (40 percent). However, the category population with cancer risk greater than or equal to 1-in-1 million has a greater percentage of Hispanic (27 percent) as compared to nationally (18 percent).

The methodology and the results of the demographic analysis are presented in a technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Automobile and Light-Duty Truck Surface Coating Source Category Operations,* March 2019 (hereafter referred to as the *Automobiles and Light-Duty Trucks Demographic Analysis Report*) in the ALDT Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the ALDT source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 10-in-1 million due to actual emissions or based on allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.01 cases per year for actual and allowable emissions), and we did not identify a potential for adverse chronic noncancer health effects. The acute noncancer risks are low at an HQ of 1 (based on the REL) for formaldehyde. Therefore, we find there is little potential concern of acute noncancer health impacts from actual emissions. In addition, the risk assessment indicates no significant potential for multipathway health effects.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose to find that the risks from the ALDT source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the ALDT source category are acceptable, risk estimates for approximately 15,000 individuals in the exposed population are above 1-in-1 million at the actual emissions level and 19,000 individuals at the allowable emissions level. Consequently, we further considered whether the MACT standards for the ALDT source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the ALDT source category, and the EPA reviewed various information sources regarding emission sources that are currently regulated by the ALDT NESHAP. Based on our review, we did not identify any cost-effective measures to further reduce HAP. Therefore, considering all of the available health information along with the absence of additional measures for reducing HAP, we are proposing that additional emissions controls for this source category are not necessary and that the current standards provide an ample margin of safety.

c. Environmental Effects

The emissions data for the ALDT source category indicate that three environmental HAP are emitted by sources within this source category: Lead, HCl, and HF. The screening-level evaluation of the potential for adverse environmental effects from emissions of lead indicated that the secondary

NAAQS for lead would not be exceeded by any facility. The screening-level evaluation of the potential for adverse environmental effects associated with emissions of HCl and HF from the ALDT source category indicated that each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. In addition, we are unaware of any adverse environmental effects caused by HAP emitted by this source category. Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the ALDT source category. The EPA reviewed various information sources regarding emission sources that are currently regulated by the ALDT NESHAP to support the technology review. The information sources included the following: The RBLC; state regulations; facility operating permits; regulatory actions, including technology reviews, promulgated for other surface coating NESHAP subsequent to the ALDT NESHAP; site visits; discussions with individual ALDT surface coating facilities; and industry information. The primary emission sources for the technology review included the following: The coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

Based on our review, we did not identify any add-on control technologies, process equipment, work practices or procedures that were not previously considered during development of the 2004 ALDT NESHAP, and we did not identify any new or improved add-on control technologies that would result in additional emission reductions. A brief summary of the EPA's findings in conducting the technology review of ALDT surface coating operations follows. For a detailed discussion of the EPA's findings, refer to the memorandum, *Technology Review for Surface Coating Operations in the Automobiles and Light-Duty Trucks Source Category,* in the ALDT Docket.

During 2004 MACT development for the ALDT NESHAP, numerical emission limits were determined for new and existing major sources within the four combinations of coating operations, for a total of eight HAP emissions limits. The emission limits were based on industry survey responses and the industry's use of low- or no-HAP coatings and thinners, high efficiency coatings spray equipment (including robotic spraying), and add-on capture and control technologies. Alternately, the NESHAP provides sources with the option of limiting HAP emissions with capture and add-on control to achieve an overall control efficiency of 95-percent. During development of that rulemaking, we identified the beyond-the-floor option to require the use of capture systems and add-on control devices for all ALDT surface coating operations. This option was rejected because we determined the additional emission reductions achieved using the beyond-the-floor option did not warrant the costs each affected source would incur or the incremental cost per ton of HAP reduced (67 FR 78622, December 24, 2002).

For this technology review, we used the EPA's NEI and the ECHO databases to identify facilities that are currently subject to the ALDT NESHAP. We also consulted Regional and state regulations and operating permits. California has existing surface coating rules for VOC from vehicle assembly plants within two air quality management districts (AQMD): Bay Area AQMD and South Coast AQMD. No state VOC rules for ALDT surface coating operations were identified that had VOC limits that would translate into lower HAP content limits. The VOC content limits in state rules (*e.g.,* BAAQMD Rule 8–13 and SCAQMD Rule 1115) are an order of magnitude higher than the HAP content limits in the ALDT NESHAP. Because the HAP are only a small fraction of the VOC in these coatings, complying with these state VOC standards would not limit HAP emissions to levels that are more stringent than the levels required.

Our search of the RBLC database for improvements in ALDT coating technologies provided results for 22 facilities with permit dates of 2000 or later. Facilities reported the use of VOC and HAP content limits, electrodeposition primers, regenerative thermal oxidizers (RTOs), catalytic oxidation, and thermal oxidation. All of these control technologies were in use by the ALDT surface coating industry during development of the ALDT NESHAP and already were considered in the development of the ALDT NESHAP. Therefore, we concluded that the results of the search did not result in any improvements in add-on control technology or other equipment.

We reviewed other surface coating NESHAP promulgated after the ALDT NESHAP to determine whether any requirements exceed the ALDT MACT level of control or included technologies that were not considered during the development of the original ALDT NESHAP. These NESHAP include Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (40 CFR part 63, subpart HHHHHH), and Nine Metal Fabrication and Finishing Area Source Categories (40 CFR part 63, subpart XXXXXX). We also reviewed the results of the technology reviews for the following NESHAP: Printing and Publishing (40 CFR part 63, subpart KK), Shipbuilding and Ship Repair (40 CFR part 63, subpart II), Wood Furniture Manufacturing (40 CFR part 63, subpart JJ), and Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG).

Technology reviews for these NESHAP identified permanent total enclosures (PTE) and/or RTOs as improvements in add-on control technology. The original ALDT NESHAP includes a compliance option involving the use of a PTE and an add-on control device. Because these measures were considered in the development of the original ALDT NESHAP and reflected in the MACT level of control, we concluded that these measures do not represent an improvement in control technology under CAA section 112(d)(6).

The control technology assessment conducted for the Paint Stripping and Miscellaneous Surface Coating NESHAP and Nine Metal Fabrication and Finishing NESHAP confined all coating operations to a spray booth fitted with high-efficiency filters, use of high-transfer efficiency spray guns, and training and certification of spray equipment operator to optimize transfer efficiency for facilities that spray apply coatings containing certain inorganic HAP. The technology controls for inorganic HAP adopted in subparts HHHHHH and XXXXXX, spray booths fitted with overspray filters and the use of high efficiency spray equipment, were already considered in the development of the original ALDT NESHAP, and, therefore, do not constitute a development for the purpose of the technology review.

The technology review conducted for the Wood Furniture NESHAP identified the use of more efficient spray guns as a technology review development and revised the requirements to prohibit the use of conventional spray guns. Air-assisted airless spraying was added as a more efficient coating application technology. The original ALDT NESHAP is based on the use of high-efficiency application technology, such as airless and electrostatic spray equipment. This equipment increases coating transfer efficiency, minimizes emissions by reducing the amount of coating sprayed and still achieves a given film thickness with exceptional finish. The format of the ALDT emission limits, in mass of HAP per mass of coating solids applied to the part, accounts for the transfer efficiency of the application equipment and is based on high-efficiency methods.

The technology review conducted for the Printing and Publishing NESHAP identified the use of a PTE in the form of coating spray booths and curing tunnels. These PTEs are commonly used in ALDT surface coating operations to maintain a clean environment for applying the coatings, and for capturing and removing coating overspray and solvent vapors from the coating area. Therefore, the use of a PTE, as identified in the Printing and Publishing NESHAP technology review, does not represent a development in control technology with respect to ALDT surface coating operations.

In conclusion, we found no improvements in add-on control technology or other equipment during review of the RBLC, the state rules, and subsequent NESHAP that were not already identified and considered during the ALDT NESHAP development.

Alternatives to conventional solvent-borne coatings were identified and considered during MACT development but were not considered to be suitable for all ALDT coating applications. These alternative coatings include higher solids coatings, waterborne coatings, low-energy electron beam ultraviolet (UV) cured coatings, and powder coating. Waterborne and higher solids coatings with lower HAP and VOC content were considered in the development of the proposed and final standards and are already reflected in the HAP emission limitations in the final rule. Industry trends and advances in coating formulation, as documented in the *ACA Industry Market Analysis,* showed that powder coated finishes would be difficult to repair and would likely require refinishing the entire car in case of damage. Further, the *ACA analysis* stated that no progress had been made in overcoming technical hurdles that would make UV-cured coatings applicable to main vehicle body parts (*e.g.,* shadowing of certain areas from UV rays, high energy demands, residual UV photo-initiators in the coating film). Therefore, the EPA did not identify any developments in coating technology, other process changes, or pollution prevention alternatives that would represent a development relative to the coating technologies on which the final rule is based.

Finally, no improvements in work practices or operational procedures were identified for the ALDT source category that were not previously identified and considered during MACT development. The current MACT standards require that, if a facility uses add-on controls to comply with the emission limitations, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, those coating operations. If a facility is not using add-on controls and is using either the compliant material option or the emission rate without add-on controls option, the facility does not need to comply with work practice standards. Under the emission rate option, HAP emitted from spills or from containers would be counted against the facility in the compliance calculations, so facilities must already minimize these losses to maintain compliance.

Based on these findings, we conclude that there have not been any developments in add-on control technology or other equipment not identified and considered during MACT development, nor any improvements in add-on controls, nor any significant changes in the cost (including cost effectiveness) of the add-on controls. Therefore, we are proposing no revisions to the ALDT NESHAP pursuant to CAA section 112(d)(6). For further discussion of the technology review results, refer to the *Automobiles and Light-Duty Trucks Technology Review Memo,* in the ALDT Docket.

4. What other actions are we proposing for the ALDT source category?

We are proposing to require electronic submittal of notifications, semiannual reports, and compliance reports (which include performance test reports) for ALDT surface coating facilities. In addition, we are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted source owners and operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We are proposing to require periodic emissions testing of add-on control devices. We also propose other changes, including updating references to equivalent test methods, making technical and editorial revisions, and incorporation by reference (IBR) of alternative test methods. Our analyses and proposed changes related to these issues are discussed in the sections below.

a. Electronic Reporting Requirements

The EPA is proposing that owners and operators of ALDT surface coating facilities submit electronic copies of initial notifications required in 40 CFR 63.9(b) and 63.3110(b), notifications of compliance status required in 40 CFR 63.9(h) and 63.3110(c), performance test reports required in 40 CFR 63.3120(b), and semiannual reports required in 40 CFR 63.3120(a), through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). For further information regarding the electronic data submission process, please refer to the memorandum titled *Electronic Reporting for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* in the ALDT Docket. 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 [25] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. No specific form is proposed at this time for the initial notifications required in 40 CFR 63.9(b) and notification of compliance status in 40 CFR 63.9(h). Until the EPA has completed electronic forms for these notifications, the notifications will be required to be submitted via CEDRI in PDF. After development of the final forms, we will notify sources about their availability via the CEDRI website and the CHIEF Listserv. For semiannual reports required in 40 CFR 63.3120(a)

[25] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed templates for these reports is included in the docket for this rulemaking.[26] The EPA specifically requests comment on the content, layout, and overall design of the templates.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing these potential extensions 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. The situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed in 40 CFR 63.9(b), notifications of compliance status required in 40 CFR 63.9(h), and semiannual reports required in 40 CFR 63.3120(a). 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 63.3120(g). Examples of such events are 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[27] to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy[28] developed in response to the White House's Digital Government Strategy.[29] For more information on the benefits of electronic reporting, see 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–OAR–2019–0314.

b. SSM Requirements

(1.) 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 provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. 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 CAA section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 2 to subpart IIII of 40 CFR part 63 (*Applicability of General Provisions to Subpart IIII,* hereafter referred to as the ''General Provisions table to subpart IIII''), as explained in more detail below in section IV.A.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. Further, we 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 these rule amendments, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods. Startups and shutdowns are part of normal operations for the ALDT source category. As currently specified in 40 CFR 63.3100(b), all coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by 40 CFR 63.3093 ''at all times except during periods of startup, shutdown, and malfunction.'' Therefore, we will be removing the exemption for periods of startup, and shutdown, as well as for malfunctions. Also, as currently specified in 40 CFR 63.3100(a), you must be in compliance ''at all times'' with the emission limitations in 40 CFR 63.3090 and 63.3091, and as specified in 40 CFR 63.3100(c), you must be in compliance with the work practice standards in 40 CFR 63.3094 ''at all times.'' During startup and shutdown periods, in order for a facility (using add-on controls to meet the standards) to meet the emission and operating standards, the control device for a coating operation needs to be turned on and operating at specified levels before the facility begins coating operations, and the control equipment needs to continue to be operated until after the facility ceases coating operations. In some cases, the facility needs to run thermal oxidizers on supplemental fuel before VOC levels are sufficient for the combustion to be (nearly) self-sustaining. Note that we are also proposing new related language in 40 CFR 63.3100(d) to require that the owner or operator operate and maintain the coating operation, including pollution control equipment, at all times to minimize emissions. *See* section IV.A.4.b.2 of this preamble for further discussion of these proposed revisions.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither

[26] See *Electronic Reporting Template for Surface Coating of Automobiles and Light-Duty Trucks Subpart IIII Semiannual Reports,* in docket ID NO. EPA–HQ–OAR–0314.

[27] EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[28] *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.*

[29] *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.*

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) (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 and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (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. As the Court has recognized, the phrase ''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.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). 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 *U.S. Sugar Corp,* 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. *Id.* at 608 (''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 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 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 Risk and Technology Review, the EPA established a work practice standard for unique types of malfunctions that result in releases from pressure relief devices or emergency flaring events because we had information to determine that such work practices reflected the level of control that applies to the best performing sources (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.

It is unlikely that a malfunction would result in a violation of the standards during ALDT surface coatings operations for facilities complying without the use of add-on controls (*i.e.,* using low-HAP coatings and thinning materials). Facilities using low-HAP coatings and thinning materials have demonstrated that the coatings and thinners used in the coating operations are less than or equal to the applicable emission limit calculated on a monthly basis.

A malfunction event is more likely for ALDT surface coating facilities that use add-on controls as a compliance option. For this option, in addition to demonstrating compliance with the numerical emission rate limits for coatings and thinners used (calculated on a monthly basis), facilities must also demonstrate that their emission capture systems and add-on control devices meet the operating limits established by the ALDT NESHAP. Control device operating limits are listed in Table 4 of the ALDT NESHAP and are specific to the device, and most are based on maintaining an average temperature over a 3-hour block period, which must not fall below the temperature limit established during the facility's initial performance test.

All facilities must also comply with work practice standards to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s), but it is unlikely that a malfunction would result in a violation of the work practice standards.

We currently have no information to suggest that it is feasible or necessary to establish any type of standard for malfunctions associated with the ALDT source category. We encourage commenters to provide any such information, if available.

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 will 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 will 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, CAA 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. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

(2.) Proposed Revisions to the General Provisions Applicability Table

40 CFR 63.3100(d) *General duty.* We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 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 duty regulatory text at 40 CFR 63.3100(d) 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 duty 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 duty. Therefore, the language the EPA is proposing for 40 CFR 63.3100(d) does not include that language from 40 CFR 63.6(e)(1)(i).

We are also proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 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 duty requirement being added at 40 CFR 63.3100(d).

SSM plan. We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart IIII, the current provisions requiring the SSM plan at 40 CFR 63.3100(f). 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.

Compliance with standards. We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 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* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise the standards in this rule to apply at all times.

We are also proposing to remove rule text in 40 CFR 63.3161(j) clarifying that, in calculating emissions to demonstrate compliance, deviation periods must include deviations during an SSM period. Since the EPA is removing the SSM exemption, this clarifying text is no longer needed.

40 CFR 63.3163 Performance testing. We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.3163 and 40 CFR 63.3164. 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 in 40 CFR 63.3164 will also not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language to 40 CFR 63.3164 clarifying that the owner or operator must make such records available to the Administrator upon request.

Monitoring. We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.8(c)(1) by changing the ''yes'' in column 3 to a ''no.'' The cross-references to the general duty and SSM plan requirements in 40 CFR 63.8(c)(1) 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)). Further, we have determined that 40 CFR 63.8(c)(1)(ii) is redundant to the current monitoring requirement in 40 CFR 63.3168(a)(4) (*i.e.,* ''have available necessary parts for routine repairs of the monitoring equipment,'' except 40 CFR 63.8(c)(1)(ii) specifies ''have readily available.''). We are proposing to revise 40 CFR 63.3168(a)(4) to specify ''readily available.''

40 CFR 63.3512 Recordkeeping. We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 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. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each malfunction.'' A similar record is already required in 40 CFR 63.3130(g), which requires a record of ''the date, time, and duration of each deviation,'' which the EPA is retaining. The regulatory text in 40 CFR 63.3130(g) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.3130(g) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' For this reason, the EPA is proposing to add to 40 CFR 63.3130(g) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.10(b)(2)(iv)–(v) by changing the ''yes'' in column 3 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 in 40 CFR 63.10(b)(2)(iv) is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.3130(g)(4). When applicable, the provision in 40 CFR 63.10(b)(2)(v) requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.10(b)(2)(vi) by changing the ''yes'' in column 3 to a ''no.'' The provision requires sources to maintain records during continuous monitoring system (CMS) malfunctions. Section 63.3130(g) covers records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control. Additional recordkeeping requirements for continuous parameter monitoring systems (CPMS) are also specified in 40 CFR 63.3168.

We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

We are proposing to remove the requirement in 40 CFR 63.3130(g) that deviation records specify whether deviations from a standard occurred during a period of SSM. This revision is being proposed due to the proposed removal of the SSM exemption and because, as discussed above in this section, we are proposing that deviation records must specify the cause of each deviation, which could include a malfunction period as a cause. We are also proposing to remove the requirement to report the SSM records in 40 CFR 63.6(e)(3)(iii) through (v) by deleting 40 CFR 63.3130(h).

40 CFR 63.3120 Reporting. We are proposing to revise the General Provisions table to subpart IIII (Table 2) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.3120(a)(5) through (a)(9). 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 semi-annual compliance report already required under this rule. Subpart IIII of 40 CFR part 63 currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from the standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' to ''date, time, and duration'' (*see* proposed revisions to 40 CFR 63.3130(a)(6)(vii), (viii), and (xiii); 40 CFR 63.3130(a)(7)(i); 40 CFR 63.3130(a)(8)(v), (vi), and (vii); and 40 CFR 63.3130(a)(i)) to use terminology consistent with the recordkeeping section. Further, we are proposing that the report must also contain the number of deviations from the standard, and a list of the affected source or equipment. For deviation reports addressing deviations from an applicable emission limit in 40 CFR 63.3090, 63.3091, or 63.3092, or an operating limit in Table 1 to 40 CFR part 63, subpart IIII, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. For deviation reports addressing deviations from work practice standards (40 CFR 63.3120(a)(6)(xiii)), we are retaining the current requirement (including reporting actions taken to correct the deviation), except that we are revising the rule language to reference the new general duty requirement in 40 CFR 63.3100(d), we are clarifying that the description of the deviation must include a list of the affected sources or equipment and the cause of the deviation, we are clarifying that ''time period'' includes the ''time and duration,'' and we are requiring that the report include the number of deviations from the work practice standards in the reporting period.

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). 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 40 CFR 63.3120(c) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross-reference to 40 CFR 63.10(d)(5)(ii) 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.

Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdowns, 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 taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

We are proposing to remove the requirements in 40 CFR 63.3120(a)(6)(viii) that deviation reports must specify whether deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63.3120(a)(6)(x) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.A.4.b.1 of this preamble.

c. Technical Amendments to the ALDT NESHAP

We propose to amend 40 CFR 63.3166(b) to add the option of conducting EPA Method 18 of appendix A–6 to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon. Facilities using add-on controls as a compliance option can use either EPA Method 25 or EPA Method 25A to measure control device destruction efficiency. Unlike EPA Method 25, EPA Method 25A does not exclude methane from the measurement of organic emissions. Because exhaust streams from coating operations may contain methane from natural gas combustion, we are proposing to allow facilities the option to measure methane using EPA Method 18 and to subtract the methane from the emissions as part of their compliance calculations.

We propose to revise the format of references to test methods in 40 CFR part 60. The current reference in 40 CFR 63.3166(a) and (b) to EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of part 60. Appendix A of 40 CFR part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

We propose to amend 40 CFR 63.3151(a)(1)(i) and (a)(4), and 40 CFR 63.3171(e)(3), which describe how to determine the mass fraction of organic HAP in each material used, to remove references to Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The reference to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) is intended to specify which compounds must be included in calculating total organic HAP content of a coating material if they are present at 0.1-percent or greater by mass. We are proposing to remove this reference because 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We are proposing to replace these references to OSHA-defined carcinogens and 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 5 to 40 CFR part 63, subpart IIII) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1-percent or greater by mass.

We propose to include organic HAP in proposed Table 5 to 40 CFR part 63, subpart IIII if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014), as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[30] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

We propose to revise the monitoring provisions for thermal and catalytic oxidizers to clarify that a thermocouple is part of the gas temperature monitoring device referred to in 40 CFR 63.3168(c)(3).

We propose to add a new paragraph 40 CFR 63.3130(p) and to revise 40 CFR 63.3131(a) to allow that any records required to be maintained by 40 CFR part 63, subpart IIII this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. We also propose to add clarification that 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.

d. Ongoing Emissions Compliance Demonstrations Requirement

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the ALDT NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require on-going periodic performance testing for these emission capture systems and add-on controls. We are proposing periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing and ongoing parametric monitoring to ensure ongoing compliance with the standards.

Although ongoing monitoring of operating parameters is required by the NESHAP, as the control device ages over time, the destruction efficiency of

[30] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

the control device can be compromised due to various factors. The EPA published several documents that identify potential control device operational problems that could decrease control device efficiency.[31] These factors are discussed in more detail in the memorandum titled *Proposed Periodic Testing Requirement* dated February 1, 2019, included in the ALDT Docket.

The Institute of Clean Air Companies (ICAC), an industry trade group currently representing 50 emission control device equipment manufacturers, corroborated the fact that control equipment degrades over time in their comments on proposed revisions to the NESHAP General Provisions (72 FR 69, January 3, 2007). ICAC stated that ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology remains effective.[32] ICAC identified both thermal and catalytic oxidizers as effective add-on control devices for VOC reduction and destruction. Thermal oxidizers, in which ''. . . organic compounds are converted into carbon dioxide and water . . .'' allow ''. . . for the destruction of VOCs and HAP up to levels greater than 99-percent . . . '' once ''. . . [t]he oxidation reaction . . .'' begins, typically ''. . . in the 1,450 degrees Fahrenheit range.'' That temperature may need to be elevated, depending on the organic compound to be destroyed. Along with that destruction, ''. . . extreme heat, the corrosive nature of chemical-laden air, exposure to weather, and the wear and tear of non-stop use . . .'' affect thermal oxidizers such that ''. . . left unchecked, the corrosive nature of the gases treated will create equipment downtime, loss of operational efficiency, and eventually failure of the thermal oxidizer.'' While catalytic oxidizers operate at lower operating temperatures—typically 440 to 750 degrees Fahrenheit—than thermal oxidizers, catalytic oxidizers also provide VOC reduction and destruction. In general, the catalyst ''. . . needs to be checked periodically to verify the activity of the catalyst . . .'' because that ''. . . activity or overall ability of the catalyst to convert target emissions to other by-products will naturally diminish over time.'' ICAC also mentions chemical poisoning (deactivation of the catalyst by certain compounds) or masking of the catalyst bed, which may occur due to changes in manufacturing processes, as means of catalyst degradation. Finally, ICAC identifies electrical and mechanical component maintenance as important, for if such components are not operating properly, ''. . . the combustion temperature in the . . . oxidizer could drop below the required levels and hazardous air pollutant (HAP) destruction may not be achieved . . .'' ICAC closes by noting ''. . . it costs more money to operate an oxidizer at peak performance, and if not maintained, performance will deteriorate yielding less destruction of HAP.''

State websites also provide on-line CAA violations and enforcement actions which include performance issues associated with control devices. A recent search resulted in identification of sources in Ohio and Massachusetts that did not achieve compliance even though they maintained the thermal oxidizer operating temperatures established during previous performance tests, which further corroborates with the ICAC comments and conclusions regarding control device degradation.

Based on the need for vigilance in maintaining equipment to stem degradation, we are proposing periodic testing of add-on control devices once every 5 years, in addition to the one-time initial emissions and capture efficiency testing and ongoing temperature measurement to ensure ongoing compliance with the standards.

In this action, we are proposing to require periodic performance testing of add-on control devices on a regular frequency (*e.g.,* every 5 years) to ensure the equipment continues to operate properly for facilities using the emission rate with add-on controls compliance option. We estimate that 18 ALDT surface coating existing sources are already required to perform such testing every 5 years synchronized with 40 CFR part 70 air operating permit renewals and for five facilities this would be a new requirement. This proposed periodic testing requirement includes an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control option at 40 CFR 63.3167(b) and following the catalyst maintenance procedures in 40 CFR 63.3167(b)(6). This exception is due to the catalyst maintenance procedures that already require annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test.

The proposed periodic performance testing requirement allows an exception from periodic testing for facilities using instruments to continuously measure emissions. Such continuous emissions monitoring systems (CEMS) would show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic oxidizer testing. Moreover, installation and operation of a CEMS with a timesharing component, such that values from more than one oxidizer exhaust could be tabulated in a recurring frequency, could prove less expensive (estimated to have an annual cost below $15,000) than ongoing oxidizer testing.

This proposed requirement does not require periodic testing or CEMS monitoring of facilities using the compliant materials option or the emission-rate without add-on controls compliance option because these two compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement requires facilities complying with the standards using emission capture systems and add-on controls and which are not already on a 5-year testing schedule conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would conduct periodic testing before they renew their operating permits, but no longer than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule and not be required to move up the date of the next test to the 3-year date specified above. This proposed requirement would require periodic air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device, or measurement of the control device outlet concentration of organic HAP. The emissions would be measured as total gaseous organic mass emissions as carbon using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently

[31] *See Control Techniques for Volatile Organic Compound Emissions from Stationary Sources, EPA/453/R–92–018, December 1992, Control Technologies for Emissions from Stationary Sources, EPA/625/6–91/014, June 1991, and Survey of Control for Low Concentration Organic Vapor Gas Streams,* EPA–456/R–95–003, May 1995. These documents can be found in the Automobiles and Light-Duty Trucks, Miscellaneous Metal Parts, and Plastic Parts and Products Dockets for this action.

[32] *See* Docket Item No. EPA–HQ–OAR–2004–0094–0173, available at *https://www.regulations.gov.* A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the Automobiles and Light-Duty Trucks, Miscellaneous Metal Parts, and Plastic Parts and Products Dockets for this action.

required for the initial compliance demonstration.

We estimate that the cost associated with this proposed requirement, which includes a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A, would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Estimated Costs/Impacts 40 CFR Part 63 Subparts IIII, MMMM and PPPP Monitoring Review Revisions,* in the ALDT Docket. We have estimated that five facilities subject to the ALDT NESHAP and using the add-on control option for compliance are not currently required to conduct periodic testing as a condition of their permit renewal. Periodic performance tests ensure that any control systems used to comply with the NESHAP in the future would be properly maintained over time, thereby reducing the potential for acute emissions episodes and non-compliance.

e. IBR of Alternative Test Methods Under 1 CFR Part 51

The EPA is proposing new and updated test methods for the ALDT NESHAP that include IBR. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following voluntary consensus standards (VCS) into 40 CFR 63.14:

- ASTM Method D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.3151(b), 63.3941(b) and (c), 63.3951(c), 63.4551(c);
- ASTM D2111–10 (2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.3951(c), 63.4551(c);
- ASTM Method D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.3151(a)(2), 63.3961(j), 63.4541(a), 63.4561(j);
- ASTM Method D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.3161(f)(1), 63.3941(b);
- ASTM D5066–91 (Reapproved 2017), Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis, proposed to be IBR approved for 40 CFR 63.3161(g);
- ASTM Method D5965–02 (2013), Standard Test Methods for Specific Gravity of Coating Powders, proposed to be ICR approved for 40 CFR 63.3151(b), 63.3951(c);
- ASTM Method D6093–97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.3161(f)(1), 63.3941(b);

ASTM D6266–00a (Reapproved 2017), Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), proposed to be IBR approved for 40 CFR 63.3165(e); and

EPA–450/3–88–018, Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations, proposed to be IBR approved for 40 CFR 63.3161(f), 63.3165(e).

Older versions of ASTM methods D2697, D5965, and D6093 were incorporated by reference when the ALDT NESHAP was originally promulgated (69 FR 22602, April 26, 2004). We are proposing to replace the older versions of these methods and ASTM Method D1475 with updated versions, which requires IBR revisions. The updated version of the method replaces the older version in the same paragraph of the rule text. We are also proposing the addition of ASTM Method D2369 to the ALDT NESHAP for the first time by incorporating this method by reference in this rulemaking. Refer to section VIII.J of this preamble for further discussion of these VCS.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources must comply with all of the amendments, with the exception of the proposed electronic format for submitting semiannual compliance reports, no later than 181 days after the effective date of the final rule. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart IIII 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 one change that would impact ongoing compliance requirements for 40 CFR part 63, subpart IIII. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically. We are proposing that the semiannual compliance report be submitted electronically using a new template, which is available for review and comment as part of this action. 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 existing affected sources be in compliance with all of this regulation's revised requirements within 181 days of the regulation's effective date.

We solicit comment on these 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.

B. What are the analytical results and proposed decisions for the MMPP source category?

1. What are the results of the risk assessment and analyses?

As described above in section III of this preamble, for the MMPP source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Miscellaneous Metal Parts and Products Risk Assessment Report* in the MMPP Docket (Docket ID No. EPA–HQ–OAR–2019–0312).

a. Chronic Inhalation Risk Assessment Results

Table 4 below provides a summary of the results of the inhalation risk assessment for the source category.

TABLE 4—SURFACE COATING OF MISCELLANEOUS METAL PARTS AND PRODUCTS SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 Million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source category	20	30	18,000	24,000	0.008	0.01	0.8	1	HQ_{REL} = 4
Whole facility	100		370,000		0.04		1		

[1] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 4 above, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 20-in-1 million (driven by naphthalene and ethyl benzene from coating operations), the maximum chronic noncancer TOSHI value based on actual emissions could be up to 0.8 (driven by antimony from coating operations), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 4 (driven by glycol ethers). The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.008 excess cancer cases per year or 1 case in every 125 years.

b. Screening Level Acute Risk Assessment Results

Table 4 of this preamble also shows the acute risk results for the MMPP source category. The screening analysis for acute impacts was based on an industry-specific multiplier of 1.2, to estimate the peak emission rates from the average emission rates. For more detailed acute risk results refer to the *Miscellaneous Metal Parts and Products Risk Assessment Report,* in the MMPP Docket.

c. Multipathway Risk Screening Results

The emissions data for the MMPP source category indicate that three PB–HAP are emitted by sources within this source category: Arsenic, cadmium, and lead. Of the 368 facilities in the source category, two facilities reported emissions of carcinogenic PB–HAP (arsenic) and two facilities reported emissions of non-carcinogenic PB–HAP (cadmium). The PB–HAP emissions from these facilities did not exceed the Tier 1 multipathway screening value of 1 for cancer or noncancer.

In evaluating the potential for multipathway effects from emissions of lead, we compared modeled annual lead concentrations to the NAAQS for lead (0.15 μg/m³, arithmetic mean concentration over a 3-month period). The highest annual average lead concentration of 0.059 μg/m³ is below the NAAQS level for lead, indicating a low potential for multipathway impacts of concern due to lead even assuming a shorter averaging period is analyzed.

d. Environmental Risk Screening Results

The emissions data for the MMPP source category indicate that four environmental HAP are emitted by sources within this source category: Arsenic, cadmium, lead and HCl. Therefore, we conducted a screening-level evaluation of the potential adverse environmental effects associated with emissions of arsenic, cadmium, lead, and HCl for the MMPP source category. In the Tier 1 screening analysis for PB–HAP (other than lead which was evaluated differently), arsenic and cadmium had no exceedances of any of the ecological benchmarks evaluated.

In evaluating the potential for adverse environmental effects from emissions of lead, we compared modeled annual lead concentrations to the secondary NAAQS for lead (0.15 μg/m³, arithmetic mean concentration over a 3-month period). The highest annual average lead concentration of 0.059 μg/m³ is below the secondary NAAQS for lead, indicating a low potential for adverse environmental impacts due to lead even assuming a shorter averaging period is analyzed. For HCl, each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

e. Facility-Wide Risk Results

One hundred and one facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 100-in-1 million, driven by nickel emissions from welding. The total estimated cancer incidence from the whole facility is 0.01 excess cancer cases per year, or one excess case in every 100 years. Approximately 370,000 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the 368 facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 1, driven by emissions of cobalt from a gel coating operation.

f. 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 risks 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 risks from the MMPP source category across different demographic groups within the populations living near facilities.

The results of the demographic analysis are summarized in Table 5 of this preamble. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

TABLE 5—SURFACE COATING OF MISCELLANEOUS METAL PARTS AND PRODUCTS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of miscellaneous metal parts and products	Population with chronic noncancer HI above 1 due to surface coating of miscellaneous metal parts and products
Total Population	317,746,049	18,000	0
White and Minority by Percent			
White	62	75	0
Minority	38	25	0
Minority Detail by Percent			
African American	12	12	0
Native American	0.8	0.6	0
Hispanic or Latino	18	9	0
Other and Multiracial	7	3	0
Income by Percent			
Below the Poverty Level	14	20	0
Above the Poverty Level	86	80	0
Education by Percent			
Over 25 Without High a School Diploma	14	18	0
Over 25 With a High School Diploma	86	82	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	3	0

The results of the MMPP source category demographic analysis indicate that emissions from the source category expose approximately 18,000 people to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''White,'' ''Below the Poverty Level,'' and ''Over 25 and without a high school diploma.''

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 Surface Coating of Miscellaneous Metal Parts and Products Source Category,* May 2019 (hereafter referred to as the *Miscellaneous Metal Parts and Products Demographic Analysis Report*), available in the MMPP Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the MMPP source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 20-in-1 million due to actual emissions and up to 30-in-1 million due to allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.008 cases per year for actual emissions and 0.01 cases per year for allowable emissions), and we did not identify potential for adverse chronic noncancer health effects.

The acute screening analysis results in a maximum acute noncancer HQ of 4 at one facility based on use of the acute REL for ethylene glycol monomethyl ether as a surrogate for unspeciated glycol ethers. Since there is not a specified acute dose-response value for unspeciated glycol ethers, we applied the most protective dose-response value from the other glycol ether compounds, the acute REL for ethylene glycol monomethyl ether, to estimate risk. Given that ethylene glycol monomethyl ether is more toxic than other glycol ethers, the use of this surrogate is a health-protective choice in the EPA's risk assessment.

For acute screening analyses, to better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, we examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is in acknowledgement that there are generally more data gaps and uncertainties in acute reference values than there are in chronic reference values. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures; however, the level of exposure that would cause health effects is not specifically known. As the exposure concentration increases above the acute REL, the potential for effects increases. Therefore, when an REL is exceeded and an AEGL–1 or ERPG–1 level is available (*i.e.,* levels at which mild, reversible effects are anticipated in the general population for a single exposure), we typically use them as an additional comparative measure, as they provide an upper bound for exposure levels above which exposed individuals could experience effects. However, for glycol ethers, there are no AEGL or ERPG values.

Additional uncertainties in the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA include several factors. 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 include the conservative (health-protective) assumptions that peak emissions from each emission point in 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 exposure. 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. Thus, as discussed in the document titled *Residual Risk Assessment for the Surface Coating of Miscellaneous Metal Parts and Products Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* in the docket for this action, by assuming the co-occurrence of independent factors for the acute screening assessment, the results are intentionally biased high and are, thus, health-protective. We conclude that adverse effects from acute exposure to emissions of glycol ethers from this source category are not anticipated.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose that the risks from the MMPP source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the MMPP source category are acceptable, risk estimates for approximately 18,000 individuals in the exposed population are above 1-in-1 million at the actual emissions level and 24,000 individuals in the exposed population are above 1-in-1 million at the allowable emissions level. Consequently, we further considered whether the MACT standards for the MMPP source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the MMPP source category, and we reviewed various information sources regarding emission sources that are currently regulated by the MMPP NESHAP.

Based on our review (described in section IV.B.3 of this preamble), we identified and evaluated the use of add-on control technologies for the rubber-to-metal bonding and high- performance subcategories.

For the rubber-to-metal bonding subcategory, we evaluated the option of lowering the existing source limit to an emission limit of 10 lb HAP/gallon (gal) solids. Two facilities may need to install thermal oxidizers, if alternative low-HAP coatings or other compliance options are not available. The thermal oxidizers would require a total capital investment of $2 million (combined) for the two facilities, and total annual costs of $410,000 (combined). Estimated emission reductions from the two facilities would be 43 tpy of HAP, and the estimated cost effectiveness would $9,500 per ton of HAP reduced.

For the high-performance subcategory, we evaluated lowering both the existing and new source limits to the general use subcategory existing source limit of 2.6 lb HAP/gal solids. One facility in the high-performance coating subcategory may need to install a thermal oxidizer if alternative low-HAP coatings or other compliance options are not available. The cost of installing a thermal oxidizer at this one facility would require a total capital investment of $2.3 million, and total annual costs of $620,000. The estimated emission reduction at this one facility would be 53 tpy of HAP, and the estimated cost effectiveness would be $11,700 per ton of HAP reduced.

We have determined that the added costs and cost effectiveness for these two coating subcategories ($9,500 per ton of HAP reduced for the rubber-to-metal coating subcategory and $11,700 per ton for the high performance subcategory) are not justified. We think these costs are unreasonable particularly because the risks are already low, and the risks would not be reduced in a meaningful manner by the control of these subcategories. We are proposing that additional emissions controls for this source category are not necessary to provide an ample margin of safety.

c. Environmental Effects

The emissions data for the MMPP source category indicate that four environmental HAP are emitted by sources within this source category: Arsenic, cadmium, lead, and HCl. In the Tier 1 screening analysis for PB–HAP (other than lead which was evaluated differently), arsenic and cadmium had no exceedances of any of the ecological benchmarks evaluated. For lead, we did not estimate any exceedances of the secondary lead NAAQS. The screening-level evaluation of the potential for adverse environmental effects associated with emissions of HCl from the MMPP source category indicated that each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. In addition, we are unaware of any adverse environmental effects caused by HAP emitted by this source category.

Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the MMPP source category. The EPA reviewed various information sources regarding emission sources that are currently regulated by the MMPP NESHAP to support the technology review. The information sources include the following: The RBLC; publicly available state air permit databases and facility operating permits compliance reports; regulatory actions, including technology reviews promulgated for other surface coating NESHAP subsequent to the promulgation of the MMPP NESHAP; state regulations; site visits; and industry information.

Based on our review, we identified and evaluated the use of add-on control technologies for two coating subcategories that had not been previously considered during development of the MMPP NESHAP. This analysis is described in detail in the following paragraphs. Aside from this, we did not identify any new or improved process equipment, work practices, or procedures that would further reduce emissions. For a detailed discussion of the EPA's findings, refer to the *Miscellaneous Metal Parts and Products Technology Review Memo,* in the MMPP Docket.

During the development of the 2004 MMPP NESHAP, numerical emission limits were determined for new and existing major sources within five coating subcategories for a total of 10 HAP emissions limits. The MACT emission limits were based on different data sources, depending on the coating subcategory. In the general use coating subcategory and the high- performance coating subcategory, the MACT emission limits were based on the most stringent state VOC limits and HAP-to-VOC ratios to convert the VOC limits to HAP limits. For the general use coating subcategory, the HAP-to-VOC ratio was developed from industry survey data. For the high-performance coating subcategory, the HAP-to-VOC ratio was developed from industry information. For rubber-to-metal coating, the MACT emission limits were based on survey data on the HAP content of the coatings. For magnet wire coating, the MACT emission limits were based on survey data and also accounted for the fact that magnet wire coating uses an oven to cure the coatings that is fueled by coating solvent vapors, reducing overall emissions. For the EPFP coating subcategory, the MACT emission limits were based on data received in public comments on the proposed NESHAP.

With the exception of the emission limits for the magnet wire coating subcategory, none of the emission limits for new or existing sources in the other subcategories accounted for the use of add-on controls, and the documentation of the MACT analysis did not identify facilities that were using add-on controls.

The EPA investigated the use of emissions capture systems and add-on controls but found that the costs would be prohibitive for the incremental emissions reductions achieved. The EPA estimated that it would be technically feasible for capture systems and add-on controls could reduce emissions by at least 95 percent, but the cost for facilities in this source category could be as much as $1 million. The EPA concluded that without information on the benefits that would be achieved by further reducing emissions beyond the floor, the additional emissions reductions did not warrant the cost of add-on controls.[33]

A search of the RBLC database for the MMPP surface coating category provided 42 entries representing 23 facilities with permit dates of 2000 or later. Entries in the RBLC documented facilities subject to VOC content and HAP content limits. Emission control strategies identified in the RBLC included using electrodeposition coatings, using high efficiency and robotic spray guns, and using add-on controls, including catalytic oxidizers, RTOs, and adsorbers. The RBLC review did not identify any facilities subject to HAP limits more stringent than those in 40 CFR part 63, subpart MMMM.

We reviewed other surface coating NESHAP promulgated subsequent to the MMPP NESHAP to determine whether any requirements exceed the MMPP MACT level of control or include technologies that were not considered during the development of the original MMPP NESHAP. These NESHAP include Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (40 CFR part 63, subpart HHHHHH), and Nine Metal Fabrication and Finishing Area Source Categories (40 CFR part 63, subpart XXXXXX). We also reviewed the results of the technology reviews for other surface coating NESHAP promulgated after the MMPP NESHAP. These technology reviews include the NESHAP for Printing and Publishing (40 CFR part 63, subpart KK), Shipbuilding and Ship Repair (40 CFR part 63, subpart II), Wood Furniture Manufacturing (40 CFR part 63, subpart JJ), and Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG). The review of these more recently promulgated NESHAP and the technology reviews of other NESHAP did not identify any control technologies that were not already considered during the development of 40 CFR part 63, subpart MMMM, with the exception of some applications of add-on controls, which are discussed in more detail below in this section.

Using the EPA's NEI and the ECHO databases, we identified 368 major source facilities that are currently subject to the MMPP NESHAP. The EPA also collected operating permits for over 100 of these facilities. Based on these permits, we identified a number of facilities that were in the rubber-to-metal coating and high-performance coating subcategories that were using add-on controls to reduce air emissions. We identified six facilities in the high-performance coating subcategory and four of these facilities use a thermal oxidizer to reduce emissions. We identified 15 facilities in the rubber to metal coating subcategory and nine of these use a thermal oxidizer to reduce emissions. Based on these findings, we identified the use of a thermal oxidizer as a potential development for these two subcategories because the MACT emission limits were based on only the HAP content of the coatings and not on the use of an add-on control, such as a thermal oxidizer.

We further evaluated the add-on controls as a technology development by collecting semi-annual compliance reports or inspection reports for all six facilities in the high-performance subcategory and the 15 facilities in the rubber to metal coating subcategory to confirm that the facilities were subject to these subcategory emission limits and to determine the actual emission rate these facilities were achieving. For several facilities, we determined that the facilities were using the add-on controls for complying with limits on VOC emissions, but were not accounting for the add-on controls in demonstrating compliance with the HAP limits in 40 CFR part 63, subpart MMMM.

The current existing source emission limit for the rubber-to-metal subcategory is 37.7 lb HAP/gal solids, and the new source limit is 6.8 lb HAP/gal solids. The EPA evaluated the option of lowering the existing source limit to an emission limit of 10 lb HAP/gal solids. We chose this level because several smaller facilities could meet this limit without having to install controls, based

[33] 67 FR 52792–52793, August 13, 2002.

on their semi-annual compliance reports.

Eight of the 15 facilities in the rubber-to-metal subcategory have emission rates below 10 lb HAP/gal solids through use of a thermal oxidizer. One facility does not have a thermal oxidizer but can meet the 10 lb HAP/gal solids limit through the emissions averaging between the general use and rubber-to-metal subcategories allowed in 40 CFR 63.3890(c)(2) of the current NESHAP. Four rubber-to-metal facilities do not have a thermal oxidizer but their current emission rate is less than 10 lb/gal solids.

For the remaining two facilities, installing thermal oxidizers, if alternative low-HAP coatings or other compliance options are not available, would require a total capital investment of $2 million (combined) for the two facilities, and total annual costs of $410,000 (combined). Estimated emission reductions from the two facilities would be 43 tpy of HAP, and the estimated cost effectiveness would be $9,500 per ton of HAP reduced. The estimated emission reductions are based on the reported HAP emissions for these two facilities in the NEI and their semi-annual compliance reports and assumes a 95-percent emission reduction from thermal oxidation. These costs and emission reductions for the rubber-to-metal subcategory are documented in detail in the *Miscellaneous Metal Parts and Products Technology Review Memo,* in the MMPP Docket.

The current existing and new source emission limits for the high-performance subcategory are both 27.5 lb HAP/gal solids. The EPA evaluated the option of lowering both the existing and new source limits to the general use subcategory existing source limit of 2.6 lb HAP/gal solids. Five of the six facilities in the high-performance subcategory could comply with the general use subcategory limit of 2.6 lb HAP/gal solids for their high-performance coatings operations.

One facility in the high-performance coating subcategory may need to install a thermal oxidizer if alternative low-HAP coatings or other compliance options are not available. The cost of installing a thermal oxidizer at this one facility would require a total capital investment of $2.3 million, and total annual costs of $620,000. The estimated emission reduction this one facility would be 53 tpy of HAP, and the estimated cost effectiveness would be $11,700 per ton of HAP reduced. The estimated emission reduction is based on the reported HAP emissions for this facility's semi-annual compliance report and assumes a 95-percent emission reduction from thermal oxidation. These costs and emission reductions for the high performance subcategory are documented in detail in the *Miscellaneous Metal Parts and Products Technology Review Memo,* in the MMPP Docket.

However, the EPA has determined that the added costs and cost effectiveness for these two coating subcategories ($9,500 per ton of HAP reduced for the rubber-to-metal coating subcategory and $11,700 per ton for the high-performance subcategory) are not justified. Therefore, we are proposing no revisions to the MMPP NESHAP pursuant to CAA section 112(d)(6). For further discussion of the technology review results, refer to the *Miscellaneous Metal Parts and Products Technology Review Memo,* in the MMPP Docket.

4. What other actions are we proposing for the Surface Coating of MMPP source category?

We are proposing to require electronic submittal of notifications (initial and compliance status), semiannual reports, and performance test reports for MMPP surface coating facilities. In addition, we are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are 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 periodic emissions testing of add-on control devices. We also are proposing to add optional EPA Method 18, to IBR an alternative test method, and to make various technical and editorial changes. Our analyses and proposed changes related to these issues are discussed in the sections below.

a. Electronic Reporting Requirements

The EPA is proposing that owners and operators of MMPP surface coating facilities submit electronic copies of initial notifications required in 40 CFR 63.9(b) and 63.3910(b), notifications of compliance status required in 40 CFR 63.9(h) and 63.3910(c), performance test reports required in 40 CFR 63.3920(b), and semiannual reports required in 40 CFR 63.3920(a) through the EPA's CDX, using the CEDRI. A description of the EPA's CDX and the EPA's proposed rationale and details on the addition of these electronic reporting requirements for the MMPP source category is the same as for the ALDT source category, as discussed in section IV.A.4.a of this preamble. No specific form is proposed at this time for the initial notifications required in 40 CFR 63.9(b) and notification of compliance status in 40 CFR 63.9(h). Until the EPA has completed electronic forms for these notifications, the notifications will be required to be submitted via CEDRI in PDF. After development of the final forms, we will notify sources about their availability via the CEDRI website and the CHIEF Listserv. For semiannual reports required in 40 CFR 63.3920(a), the proposed rule requires that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template for this report is included in the docket for this rulemaking.[34] The EPA specifically requests comment on the content, layout, and overall design of the template.

Regarding submittal of performance test reports via the EPA's ERT, as discussed in section IV.A.4.a of this preamble for the ALDT NESHAP, the proposal to submit performance test data electronically to the EPA applies only if the EPA has developed an electronic reporting form for the test method as listed on the EPA's ERT website. For the MMPP NESHAP, all of the EPA test methods listed under 40 CFR part 63, subpart MMMM, are currently supported by the ERT, except for EPA Method 18 (an optional test method proposed in this action), which appears in the proposed text for 40 CFR 63.3966. As mentioned above in section IV.A.4.a of this preamble, the rule proposes that should an owner or operator choose to use EPA Method 18, then its results would be submitted in PDF using the attachment module of the ERT.

Also, as discussed in section IV.A.4.a of this preamble for the ALDT NESHAP, we are proposing to provide facilities with the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility. In proposed 40 CFR 63.3920(g), we address the situation for facilities subject to the MMPP NESHAP where an extension may be warranted due to outages of the EPA's CDX or CEDRI, which may prevent access to the system and submittal of the required reports. In proposed 40 CFR 63.3920(h), we address the situation for facilities subject to the MMPP NESHAP 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

[34] See *Electronic Reporting Template for Surface Coating of Miscellaneous Metal Parts and Products Subpart MMMM Semiannual Reports,* in docket ID NO. EPA–HQ–OAR–0312.

by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents compliance with the requirement to submit a report electronically as required by this rule. Examples of such events are 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 to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy developed in response to the White House's Digital Government Strategy. For more information on the benefits of electronic reporting, see the memorandum titled *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–2019–0312.

b. SSM Requirements

(1.) Proposed Elimination of the SSM Exemption

The EPA is proposing to eliminate the SSM exemption in the MMPP NESHAP. The EPA's proposed rationale for the elimination of the SSM exemption for the MMPP source category is the same as for the ALDT source category, which is discussed in section IV.A.4.b.1 of this preamble. We are also proposing several revisions to Table 2 to Subpart MMMM of 40 CFR part 63 (*Applicability of General Provisions to Subpart MMMM of Part 63,* hereafter referred to as the ''General Provisions table to subpart MMMM'') as is explained in more detail below in section IV.B.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We are also 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 the specific proposed deletions and revisions and also whether additional provisions should be revised to achieve the stated goal.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the same reasons explained in section IV.A.4.b.1 of this preamble for the ALDT source category, has not proposed alternate standards for those periods in the MMPP NESHAP. Startups and shutdowns are part of normal operations for the MMPP source category. As currently specified in 40 CFR 63.3892(b), any coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable operating limits in Table 1 to 40 CFR part 63, subpart MMMM ''at all times,'' except for solvent recovery systems for which you conduct liquid-liquid material balances according to 40 CFR 63.3961(j). (Solvent recovery systems for which you conduct a liquid-liquid material balance require a monthly calculation of the solvent recovery device's collection and recovery efficiency for volatile organic matter.)

Also, as currently specified in 40 CFR 63.3900(a)(2), any coating operation(s) for which you use the emission rate with add-on controls option must be in compliance ''at all times'' with the applicable emission limit in 40 CFR 63.3890. During startup and shutdown periods, in order for a facility (using add-on controls to meet the standards) to meet the emission and operating standards, the control device for a coating operation needs to be turned on and operating at specified levels before the facility begins coating operations, and the control equipment needs to continue to be operated until after the facility ceases coating operations. In some cases, the facility needs to run thermal oxidizers on supplemental fuel before VOC levels are sufficient for the combustion to be (nearly) self-sustaining. Note that we are also proposing new related language in 40 CFR 63.3900(b) to require that the owner or operator operate and maintain the coating operation, including pollution control equipment, at all times to minimize emissions. *See* section IV.A.4.b.2 of this preamble for further discussion of this proposed revision.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible, as discussed previously in section IV.A.4.b.1 of this preamble for the ALDT source category.

It is unlikely that a malfunction would result in a violation of the standards during MMPP surface coatings operations for facilities using the compliant material option or the emission rate without add-on controls option. Facilities using these options have demonstrated that the organic HAP contents of the coating materials do not exceed the emission limits in 40 CFR 63.3890(a) or (b), either on a coating-by-coating basis or by using averaging among coatings.

A malfunction event is more likely for MMPP coating facilities that use the emission rate with add-on controls option. For this option, facilities must demonstrate that the average emission rate does not exceed the emission limits in 40 CFR 63.3890(a) or (b), and the facility is complying with the control device operating limits listed in Table 1 to 40 CFR part 63, subpart MMMM of the MMPP NESHAP. The operating limits are specific to the type of control device and established by the facility during its initial performance test.

In the unlikely 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. Refer to section IV.A.4.b.1 of this preamble for further discussion of the EPA's actions in response to a source failing to comply with the applicable CAA section 112(d) standards as a result of a malfunction event for the ALDT source category, which applies to this source category.

(2.) Proposed Revisions to the General Provisions Applicability Table

40 CFR 63.3900(b) General duty. We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 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 duty regulatory text at 40 CFR 63.3900(b) 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 duty 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 duty. Therefore, the language the EPA is proposing for 40 CFR 63.3900(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 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 duty requirement being added at 40 CFR 63.3900(b).

SSM plan. We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart SSSS, the current provisions requiring the SSM plan in 40 CFR 63.5180(f) and requiring reporting related to the SSM plan in 40 CFR 63.5180(f)(1). 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.

Compliance with standards. We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 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* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

40 CFR 63.3964 Performance testing. We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.3964(a)(1). 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. Also, the proposed performance testing provisions will not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language to 40 CFR 63.3964(a)(1) clarifying that the owner or operator must make such records available to the Administrator upon request.

Monitoring. We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.8(c)(1) by changing the ''yes'' in column 3 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)). Further, we are proposing to revise 40 CFR 63.3968(a) to add a requirement to maintain the monitoring equipment at all times in accordance with 40 CFR 63.3900(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment, consistent with the requirements in 40 CFR 63.8(c)(1)(ii). The reference to 40 CFR 63.8(c)(1)(ii) is no longer needed since it is redundant to the requirement in 40 CFR 63.3968(a).

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.8(c)(6) by changing the ''yes'' in column 3 to a ''no.'' The reference to 40 CFR 63.8(c)(6) is no longer needed since it is redundant to the requirement in 40 CFR 63.5170 that specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.8(c)(8) by changing the ''yes'' in column 3 to a ''no.'' The reference to 40 CFR 63.8(c)(8) is no longer needed since it is redundant to the requirements in 40 CFR 63.3920(a) that requires reporting of CPMS out-of-control periods.

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.8(d)–(e) by changing the ''yes'' in column 3 to a ''no.'' The requirements for quality control program and performance evaluation of CMS are not required under 40 CFR part 63, subpart MMMM.

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.8(g) by changing the ''yes'' in column 3 to a ''no.'' The reference to 40 CFR 63.8(g) is no longer needed since it is redundant to the requirement in 40 CFR 63.3967 and 63.3968 that specify monitoring data reduction.

40 CFR 63.5190 Recordkeeping. We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 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. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each malfunction.'' A similar record is already required in 40 CFR 63.3930(j), which requires a record of ''the date, time, and duration of each deviation,'' which the EPA is retaining. The regulatory text in 40 CFR 63.3930(j) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.3930(j) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.3930(j) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA proposes to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 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. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.3930(j)(4).

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.10(b)(2)(x)–(xiii) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

40 CFR 63.3920 Reporting. We are proposing to revise the General Provisions table to subpart MMMM (Table 2) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.3920(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 semi-annual compliance report already required under this rule. Subpart MMMM of 40 CFR part 63 currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from a standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' or ''date and time'' to ''date, time, and duration'' (*see* proposed revisions to 40 CFR 63.3920(a)(7)). Further, we are proposing that the report must also contain the number of deviations from the standard and a list of the affected sources or equipment. For deviation reports addressing deviations from an applicable emission limit in 40 CFR 63.3890 or operating limit in Table 1 to 40 CFR part 63, subpart MMMM, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions.

(3.) Other SSM Changes

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). 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 40 CFR 63.3920(c) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross-reference to 40 CFR 63.10(d)(5) 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.

We are proposing to remove the requirements in 40 CFR 63.3920(a)(7) that deviation reports must specify whether a deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63. 3920(a)(7) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.A.4.b.1 of this preamble for the ALDT source category, which also applies to this source category.

c. Technical Amendments to the MMPP NESHAP

We propose to amend 40 CFR 63.3966(b) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon. Facilities using the emission rate with add-on control compliance option can use either EPA Method 25 or EPA Method 25A to measure control device destruction efficiency. Unlike EPA Method 25, Method 25A does not exclude methane from the measurement of organic emissions. Because exhaust streams from coating operations may contain methane from natural gas combustion, we are proposing to allow facilities the option to measure methane using EPA Method 18 and to subtract the methane from the emissions as part of their compliance calculations. We also propose to revise the format of references to test methods in 40 CFR part 60. The current references in 40 CFR 63.5160(d)(1) to EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of 40 CFR part 60. Appendix A of 40 CFR part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

We propose to amend 40 CFR 63.3941(a)(1)(i) and (a)(4), which describe how to demonstrate compliance with the emission limitations using the compliant material option, and the definition of ''non-HAP coating'' in 40 CFR 63.3981 to remove references to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The reference to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) is intended to specify which compounds must be included in calculating total organic HAP content of a coating material if they are present at 0.1percent or greater by mass. We propose to remove this reference because 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We propose to replace these references to OSHA-defined carcinogens at 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 5 to 40 CFR part 63, subpart MMMM) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1-percent or greater by mass.

We propose to include organic HAP in proposed Table 5 to 40 CFR part 63, subpart MMMM if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014), as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[35] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

Current 40 CFR 63.3931 specifies how records must be maintained. We propose to add clarification to this provision at 40 CFR 63.3931(a) that specifies the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We also propose to add text to the same provision clarifying that 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.

d. Ongoing Emissions Compliance Demonstrations

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the MMPP NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require on-going periodic performance testing for these emission capture systems and add-on controls. In this action, we are proposing to require periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing, and ongoing temperature measurement, to ensure ongoing compliance with the standards.

As described more fully in section IV.A.4.d of this preamble for the ALDT source category, the EPA documented potential operational problems associated with control devices in several publications;[36] the ICAC, in their comments on a separate rulemaking on the proposed revisions related to the NESHAP General Provisions (72 FR 69, January 3, 2007), commented that ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology, including both thermal and catalytic oxidizers, remains effective;[37] and state websites list CAA enforcement information that further corroborates the potential problems identified by the EPA and ICAC comments and conclusions.

Given the need for vigilance in maintaining equipment to stem degradation, the EPA is proposing to require periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing and ongoing temperature measurement, to ensure ongoing compliance with the MMPP NESHAP.

In this action, the EPA is proposing to require periodic performance testing of add-on control devices on a regular frequency (*e.g.,* every 5 years) to ensure the equipment continues to operate properly for facilities using the emission rate with add-on controls compliance option. We note that the majority of state operating permits for existing MMPP surface coating sources already require such testing every 5 years synchronized with 40 CFR part 70 air operating permit renewals. This proposed periodic testing requirement includes an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control option at 40 CFR 63.3967(b) and following the catalyst maintenance procedures in 40 CFR 63.3967(b)(4). This exception is due to the catalyst maintenance procedures that already require annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test.

The proposed periodic performance testing requirement allows an exception from periodic testing for facilities using instruments to continuously measure emissions. Such CEMS would show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic oxidizer testing. Moreover, installation and operation of a CEMS with a timesharing component, such that values from more than one oxidizer exhaust could be tabulated in a recurring frequency, could prove less expensive (estimated to have an annual cost below $15,000) than ongoing oxidizer testing.

[35] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[36] See *Control Techniques for Volatile Organic Compound Emissions from Stationary Sources,* EPA/453/R–92–018, December 1992, *Control Technologies for Emissions from Stationary Sources,* EPA/625/6–91/014, June 1991, and *Survey of Control for Low Concentration Organic Vapor Gas Streams,* EPA–456/R–95–003, May 1995. These documents can be found in the ALDT, MMPP, and PPP Dockets for this action.

[37] See Docket Item No. EPA–HQ–OAR–2004–0094–0173, available at *https://www.regulations.gov/.* A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the ALDT, MMPP, and PPP Dockets for this action.

This proposed requirement would not require periodic testing or CEMS monitoring of facilities using the ''as purchased'' or ''as applied'' compliant coatings options because these compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement would require that facilities complying with the standards using emission capture systems and add-on controls and which are not already on a 5-year testing schedule to conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would conduct the periodic testing before they renew their operating permits, but no longer than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule and not be required to move up the date of the next test to the 3-year date specified above. This proposed requirement would require periodic air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device, or measurement of the control device outlet concentration of organic HAP. The emissions would be measured as total gaseous organic mass emissions as carbon using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently required for the initial compliance demonstration.

We estimate that the cost to perform a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Draft Costs/Impacts of the 40 CFR part 63 Subparts IIII, MMMM, and PPPP Monitoring Review Revisions,* in the MMPP Docket. We have reviewed the operating permits for facilities subject to the several other surface coating NESHAP, and we found that affected sources currently using emission capture systems and add-on controls are often, but not always, required to conduct periodic control device performance tests as a condition of their 40 CFR part 70 operating permits. We estimate that seven MMPP surface coating facilities currently are not required to conduct periodic testing of their control devices as a condition of their permit renewal. Periodic performance tests ensure that all control systems used to comply with the NESHAP would be properly maintained over time, thereby reducing the potential for acute emissions episodes and non-compliance.

We are requesting comment on adding periodic testing of add-on control devices to the MMPP NESHAP and on the suggested 5-year schedule for the periodic testing.

e. IBR of Alternative Test Methods Under 1 CFR Part 51

The EPA is proposing new and updated test methods for the MMPP NESHAP that include IBR. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to add the following optional EPA methods and incorporate by reference the VCS described in the amendments to 40 CFR 63.14:

- EPA Method 18 of appendix A to 40 CFR part 60, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography, proposed to be IBR approved for 40 CFR 63.3966(b)(4);
- ASTM Method D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.3941(b)(4), 63.3941(c), and 63.3951(c);
- ASTM Method D2111–10 (2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.3951(c);
- ASTM Method D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.3961(j)(3);
- ASTM Method D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.3941(b)(1);
- ASTM Method D5965–02 (2013), Standard Test Methods for Specific Gravity of Coating Powders, proposed to be IBR approved for 40 CFR 3951(c); and
- ASTM Method D6093–97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.3941(b)(1).

Older versions of ASTM methods D1475, D2697, D5965, and D6093 were incorporated by reference when the MMPP NESHAP was originally promulgated (69 FR 130, January 2, 2004). We are proposing to replace the older versions of these methods with updated versions, which requires IBR revisions. The updated version of the method replaces the older version in the same paragraph of the rule text. We are also proposing the addition of EPA Method 18 and incorporating by reference ASTM methods D2111 and D2369 to the MMPP NESHAP for the first time in this rulemaking. Refer to section VIII.J of this preamble for further discussion of these VCS.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources must comply with all of the amendments, with the exception of the proposed electronic format for submitting semiannual compliance reports, no later than 181 days after the effective date of the final rule. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart MMMM 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 MMMM. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically. We are proposing that the semiannual compliance report be submitted electronically using a new template, which is available for review and comment as part of this action. 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 existing affected sources be in compliance with all of this regulation's revised requirements within 181 days of the regulation's effective date.

We solicit comment on these 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.

C. What are the analytical results and proposed decisions for the surface coating of plastic parts and products source category?

1. What are the results of the risk assessment and analyses?

As described above in section III of this preamble, for the PPP source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Surface Coating of Plastic Parts and Products Risk Assessment Report,* in the PPP Docket (Docket ID No. EPA–HQ–OAR–2019–0313).

a. Chronic Inhalation Risk Assessment Results

Table 6 of this preamble provides a summary of the results of the inhalation risk assessment for the source category.

TABLE 6—SURFACE COATING OF PLASTIC PARTS AND PRODUCTS SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	10	10	600	700	0.001	0.001	1	1	HQ_{REL} = 4.
Whole Facility	70	....	29,000	....	0.006	....	1		

[1] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.

[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 6 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 10-in-1 million (driven by ethyl benzene, naphthalene, and formaldehyde from coating operations), the maximum chronic noncancer TOSHI value based on actual emissions could be up to 1 (driven by hexamethylene-1,6-diisocyanate from coating operations), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 4 (driven by glycol ethers). The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.001 excess cancer cases per year or 1 case in every 1,000 years.

b. Screening Level Acute Risk Assessment Results

Table 6 of this preamble also shows the acute risk results for the PPP source category. The screening analysis for acute impacts was based on an industry-specific multiplier of 1.2, to estimate the peak emission rates from the average emission rates. For more detailed acute risk results refer to the *Surface Coating of Plastic Parts and Products Risk Assessment Report,* in the PPP Docket.

c. Multipathway Risk Screening Results

There are no PB–HAP emitted by facilities in the PPP source category. Therefore, we do not expect any human health multipathway risks as a result of emissions from this source category.

d. Environmental Risk Screening Results

The emissions data for the PPP source category indicate that no environmental HAP are emitted by sources within this source category. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

e. Facility-Wide Risk Results

Twenty-two facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 70-in-1 million, driven by nickel and formaldehyde from a co-located boiler. The total estimated cancer incidence from the whole facility is 0.006 excess cancer cases per year, or one excess case in every 200 years. Approximately 29,000 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the 125 facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 1, driven by emissions of nickel and formaldehyde from a co-located boiler.

f. 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 risks 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 risks from the PPP source category across different demographic groups within the populations living near facilities.[38]

[38] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living above the poverty level, and linguistically isolated people.

The results of the demographic analysis are summarized in Table 7 of this preamble. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

TABLE 7—SURFACE COATING OF PLASTIC PARTS AND PRODUCTS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of plastic parts and products	Population with chronic noncancer HI above 1 due to surface coating of plastic parts and products
Total Population	317,746,049	500	0
White and Minority by Percent			
White	62	92	0
Minority	38	8	0
Minority Detail by Percent			
African American	12	4	0
Native American	0.8	0.1	0
Hispanic or Latino	18	3	0
Other and Multiracial	7	1	0
Income by Percent			
Below the Poverty Level	14	19	0
Above the Poverty Level	86	81	0
Education by Percent			
Over 25 Without High a School Diploma	14	14	0
Over 25 With a High School Diploma	86	86	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	0	0

The results of the PPP source category demographic analysis indicate that emissions from the source category expose approximately 500 people to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''White,'' and ''Below the Poverty Level.''

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 Surface Coating of Plastic Parts and Products Source Category Operations,* April 2019 (hereafter referred to as the *Plastic Parts and Products Demographic Analysis Report*), available in the PPP Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the PPP source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 10-in-1 million due to actual emissions and allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.001 cases per year for actual and allowable emissions), and we did not identify any potential for adverse chronic noncancer health effects.

The acute screening analysis results in a maximum acute noncancer HQ of 4 at one facility based on use of the acute REL for ethylene glycol monomethyl ether as a surrogate for unspeciated glycol ethers. Since there is not a specified acute dose-response value for unspeciated glycol ethers, we applied the most protective dose-response value from the other glycol ether compounds, the acute REL for ethylene glycol monomethyl ether, to estimate risk. Given that ethylene glycol monomethyl ether is more toxic than other glycol ethers, the use of this surrogate is a health-protective choice in the EPA's risk assessment.

For acute screening analyses, to better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, we examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is in acknowledgement that there are generally more data gaps and uncertainties in acute reference values than there are in chronic reference values. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures; however, the level of exposure that would cause health effects is not specifically known. As the exposure concentration increases above the acute REL, the potential for effects increases. Therefore, when an REL is exceeded and an AEGL–1 or ERPG–1 level is available (*i.e.,* levels at which mild, reversible effects are anticipated in the general population for a single exposure), we typically use them as an additional comparative measure, as they provide an upper bound for exposure levels above which exposed individuals could experience effects. However, for glycol ethers, there are no AEGL or ERPG values.

Additional uncertainties in the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA include several factors. 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 include the conservative (health-protective) assumptions that peak emissions from each emission point in 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 exposure. 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. Thus, as discussed in the document titled *Residual Risk Assessment for the Surface Coating of Plastic Parts and Products Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* in the PPP docket for this action, by assuming the co-occurrence of independent factors for the acute screening assessment, the results are intentionally biased high and are, thus, health-protective. We conclude that adverse effects from acute exposure to emissions of glycol ethers from this source category are not anticipated.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose that the risks from the PPP source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the PPP source category are acceptable, risk estimates for approximately 500 individuals in the exposed population are above 1-in-1 million at the actual emissions level and 700 individuals in the exposed population are above 1-in-1 million at the allowable emissions level. Consequently, we further considered whether the MACT standards for the PPP source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the PPP source category, and we reviewed various information sources regarding emission sources that are currently regulated by the PPP NESHAP. Based on our review, we did not identify any cost-effective measures to further reduce HAP. Therefore, considering all of the available health information along with the absence of additional measures for reducing HAP, we are proposing that additional emissions controls for this source category are not necessary and that the current standards provide an ample margin of safety.

c. Environmental Effects

The emissions data for the PPP source category indicate that no environmental HAP are emitted by sources within this source category. In addition, we are unaware of any adverse environmental effects caused by HAP emitted by this source category. Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the PPP source category. The EPA reviewed various information sources regarding emission sources that are currently regulated by the PPP NESHAP to support the technology review. The information sources included the following: the RBLC; publicly available state air permit databases; regulatory actions, including technology reviews promulgated for other surface coating NESHAP subsequent to the PPP NESHAP; state regulations; facility operating permits; site visits; and industry information.

Based on our review, we did not identify any add-on control technologies, process equipment, work practices, or procedures that had not been previously considered during development of the PPP NESHAP, and we did not identify any new or improved add-on control technologies that would result in additional emission reductions. A brief summary of the EPA's findings in conducting the technology review of plastic part surface coating operations follows. For a detailed discussion of the EPA's findings, refer to the *Plastic Parts and Products Technology Review Memo,* in the PPP Docket.

During the development of the 2004 PPP NESHAP, numerical emission limits were determined for new and existing major sources within four coating subcategories for a total of eight HAP emissions limits. The emission limits were based on industry survey responses and the industry's use of low- or no-HAP coatings and thinners and add-on capture and control technologies.

Using the EPA's NEI and the ECHO databases, we identified 125 major source facilities that are currently subject to the PPP NESHAP. A search of the RBLC database for improvements in plastic parts and product coating technologies provided 20 facilities with permit dates of 2000 or later. The results of the RBLC search included facilities subject to VOC and HAP content limits, and using high volume/low pressure spray guns, robotic electrostatic application, thermal oxidizers, catalytic oxidizers, and adsorbers. All of these control technologies were in use by the plastic parts and product coating industry during development of the PPP NESHAP and were already considered in the development of the PPP NESHAP.

Therefore, we concluded that the results of the RBLC search are consistent with current PPP NESHAP requirements and did not identify any improvements in add-on control technology or processes and work practices that are not already reflected in the rule.

We also collected permit information from about 45 major source surface coating facilities subject to the PPP NESHAP. (Many of these facilities were also subject to 40 CFR part 63, subparts IIII or MMMM.) The review of these permits did not identify a facility subject to HAP limits more stringent than those in the PPP NESHAP and did not identify any control technologies or work practices that were not already considered in the development of the NESHAP.

We reviewed other surface coating NESHAP promulgated subsequent to the PPP NESHAP to determine whether any requirements exceed the PPP MACT level of control or include technologies that were not considered during the development of the original PPP NESHAP. These NESHAP include Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (40 CFR part 63, subpart HHHHHH), and Nine Metal Fabrication and Finishing Area Source Categories (40 CFR part 63, subpart XXXXXX). We also reviewed the results of the technology reviews for other surface coating NESHAP promulgated after the PPP NESHAP. These technology reviews include the NESHAP for Printing and Publishing (40 CFR part 63, subpart KK), Shipbuilding and Ship Repair (40 CFR part 63, subpart II), Wood Furniture Manufacturing (40 CFR part 63, subpart JJ), and Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG). The review of these more recently promulgated NESHAP and the technology reviews of other NESHAP did not identify any control technologies that were not already considered during the development of the 2004 PPP NESHAP.

The developments considered in these other technology reviews included the use of emission capture systems and thermal oxidizers to reduce emissions. Because the PPP NESHAP already includes a compliance option involving the use of a PTE and an add-on control device, and because these measures were considered in the development of the PPP NESHAP, we concluded that these measures do not represent a development in control technology under CAA section 112(d)(6). We also identified and considered alternatives to conventional solvent borne coatings during MACT development (*e.g.,* waterborne coatings, low-HAP/high-solids coatings, low energy radiation cured coating) and the presence of facilities using these coatings is reflected in the current MACT standards. We found no other improvements in add-on control technology or other equipment during review of the RBLC, the state operating permits, and subsequent NESHAP that were not already identified and considered during development of the PPP NESHAP.

Finally, we identified no developments in work practices or procedures for the PPP source category that were not previously identified and considered during MACT development.

Based on these findings, we conclude that there have not been any developments in add-on control technology or other equipment not identified and considered during MACT development, nor any improvements in add-on controls, nor any significant changes in the cost (including cost effectiveness) of the add-on controls. Therefore, we are proposing no revisions to the PPP NESHAP pursuant to CAA section 112(d)(6). For further discussion of the technology review results, refer to the *Plastic Parts and Products Technology Review Memo,* in the PPP Docket.

4. What other actions are we proposing for the surface coating of plastic parts and products source category?

We are proposing to require electronic submittal of notifications (initial and compliance status), semiannual reports, and performance test reports for PPP surface coating facilities. In addition, we are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are 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 periodic emissions testing of add-on control devices. We also are proposing to add optional EPA Method 18, to IBR an alternative test method, and to make various technical and editorial changes. Our analyses and proposed changes related to these issues are discussed in the sections below.

a. Electronic Reporting Requirements

The EPA is proposing that owners and operators of PPP surface coating facilities submit electronic copies of initial notifications required in 40 CFR 63.9(b) and 63.4510(b), notifications of compliance status required in 40 CFR 63.9(h) and 63.4510(c), performance test reports required in 40 CFR 63.4520(b), and semiannual reports required in 40 CFR 63.4520(a) through the EPA's CDX, using the CEDRI. A description of the EPA's CDX and the EPA's proposed rationale and details on the addition of these electronic reporting requirements for the PPP source category is the same as for the ALDT source category, as discussed in section IV.A.4.a of this preamble. No specific form is proposed at this time for the initial notifications required in 40 CFR 63.9(b) and notifications of compliance status in 40 CFR 63.9(h). Until the EPA has completed electronic forms for these notifications, the notifications will be required to be submitted via CEDRI in PDF. After development of the final forms, we will notify sources about their availability via the CEDRI website and the CHIEF Listserv. For semiannual reports required in 40 CFR 63.4520(a), the proposed rule requires that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template for this report is included in the docket for this rulemaking.[39] The EPA specifically requests comment on the content, layout, and overall design of the template.

Regarding submittal of performance test reports via the EPA's ERT, as discussed in section IV.A.4.a of this preamble for the ALDT NESHAP, the proposal to submit performance test data electronically to the EPA applies only if the EPA has developed an electronic reporting form for the test method as listed on the EPA's ERT website. For the PPP NESHAP, all of the EPA test methods listed under 40 CFR part 63, subpart PPPP, are currently supported by the ERT, except for EPA Method 18 (an optional test method proposed in this action), which appears in the proposed text for 40 CFR 63.4566. As mentioned above in section IV.A.4.a of this preamble, the rule proposes that should an owner or operator choose to use EPA Method 18, then its results would be submitted in PDF using the attachment module of the ERT.

Also, as discussed in section IV.A.4.a of this preamble for the ALDT NESHAP, we are proposing to provide facilities with the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility. In proposed 40 CFR 63.4520(g), we address the situation for facilities subject to the PPP NESHAP where an

[39] See *Electronic Reporting Template for Surface Coating of Plastic Parts and Products Subpart PPPP Semiannual Reports,* in Docket ID NO. EPA–HQ–OAR–2019–0313.

extension may be warranted due to outages of the EPA's CDX or CEDRI, which may prevent access to the system and submittal of the required reports. In proposed 40 CFR 63.4520(h), we address the situation for facilities subject to the PPP NESHAP 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 compliance with the requirement to submit a report electronically as required by this rule. Examples of such events are acts of nature, acts of war and 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 to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy developed in response to the White House's Digital Government Strategy. For more information on the benefits of electronic reporting, *see* the memorandum titled *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–2019–0313.

b. SSM Requirements

(1.) Proposed Elimination of the SSM Exemption

The EPA is proposing to eliminate the SSM exemption in the PPP NESHAP. The EPA's proposed rationale for the elimination of the SSM exemption for the PPP source category is the same as for the ALDT source category, which is discussed in section IV.A.4.b.1 of this preamble. We are also proposing several revisions to Table 2 to subpart PPPP of 40 CFR part 63 (Applicability of General Provisions to Subpart PPPP of Part 63, hereafter referred to as the ''General Provisions table to subpart PPPP'') as is explained in more detail below in section IV.C.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. Further, we 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 the specific proposed deletions and revisions and also whether additional provisions should be revised to achieve the stated goal.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the same reasons explained in section IV.A.4.b.1 of this preamble for the ALDT source category, has not proposed alternate standards for those periods in the PPP NESHAP. Startups and shutdowns are part of normal operations for the PPP source category. As currently specified in 40 CFR 63.4500(a), any coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable operating limits in Table 1 to 40 CFR part 63, subpart PPPP ''at all times,'' except for solvent recovery systems for which you conduct liquid-liquid material balances according to 40 CFR 63.4561(j). (Solvent recovery systems for which you conduct a liquid-liquid material balance require a monthly calculation of the solvent recovery device's collection and recovery efficiency for volatile organic matter.)

Also, as currently specified in 40 CFR 63.4500(a)(2), any coating operation(s) for which you use the emission rate with add-on controls option must be in compliance ''at all times'' with the applicable emission limit in 40 CFR 63.4490. During startup and shutdown periods, in order for a facility (using add-on controls to meet the standards) to meet the emission and operating standards, the control device for a coating operation needs to be turned on and operating at specified levels before the facility begins coating operations, and the control equipment needs to continue to be operated until after the facility ceases coating operations. In some cases, the facility needs to run thermal oxidizers on supplemental fuel before VOC levels are sufficient for the combustion to be (nearly) self-sustaining. Note that we are also proposing new related language in 40 CFR 63.4500(b) to require that the owner or operator operate and maintain the coating operation, including pollution control equipment, at all times to minimize emissions. *See* section IV.A.4.b.2 of this preamble for further discussion of this proposed revision.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible, as discussed previously in section IV.A.4.b.1 of this preamble for the ALDT source category.

It is unlikely that a malfunction would result in a violation of the standards during PPP surface coatings operations for facilities using the compliant material option or the emission rate without add-on controls option. Facilities using these options have demonstrated that the organic HAP contents of the coating materials do not exceed the emission limits in 40 CFR 63.4490(a) or (b), either on a coating-by-coating basis or by using averaging among coatings.

A malfunction event is more likely for PPP coating facilities that use the emission rate with add-on controls option. For this option, facilities must demonstrate that the average emission rate does not exceed the emission limits in 40 CFR 63.4490(a) or (b), and the facility is complying with the control device operating limits listed in Table 1 to 40 CFR part 63, subpart PPPP of the PPP NESHAP. The operating limits are specific to the type of control device and established by the facility during its initial performance test.

In the unlikely 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. Refer to section IV.A.4.b.1 of this preamble for further discussion of the EPA's actions in response to a source failing to comply with the applicable CAA section 112(d) standards as a result of a malfunction event for the ALDT source category, which applies to this source category.

(2.) Proposed Revisions to the General Provisions Applicability Table

40 CFR 63.4500(b) General duty. We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 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 duty regulatory text at 40 CFR 63.4500(b) 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 duty 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 duty. Therefore, the language the EPA is proposing for 40 CFR 63.4500(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 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 duty requirement being added at 40 CFR 63.4500(b).

SSM plan. We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart PPPP, the current provisions requiring the SSM plan in 40 CFR 63.4500(c) and requiring reporting related to the SSM plan in 40 CFR 63.4520(c). 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.

Compliance with standards. We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 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* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

40 CFR 63.4564 Performance testing. We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.4564(a)(1). 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. Also, the proposed performance testing provisions will not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language clarifying that the owner or operator must make such records available to the Administrator upon request.

Monitoring. We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.8(a)(4) by changing the ''yes'' in column 3 to a ''no.'' Section 63.8(a)(4) describes additional monitoring requirements for control devices. Subpart PPPP of 40 CFR part 63 does not have monitoring requirements for flares.

We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.8(c)(1) by changing the ''yes'' in column 3 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)). Further, we are proposing to revise 40 CFR 63.4568(a) to add a requirement to maintain the monitoring equipment at all times in accordance with 40 CFR 63.4500(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment, consistent with the requirements in 40 CFR 63.8(c)(1)(ii). The reference to 40 CFR 63.8(c)(1)(ii) is no longer needed since it is redundant to the requirement in 40 CFR 63.4568(a).

40 CFR 63.4530 Recordkeeping. We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 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. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each malfunction.'' A similar record is already required in 40 CFR 63.4530(h), which requires a record of ''the date, time, and duration of each deviation,'' which the EPA is retaining. The regulatory text in 40 CFR 63.4530(h) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.4530(h) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.4530(h) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA proposes to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 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. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.4530(h)(4).

We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.10(b)(2)(x)–(xiii) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

40 *CFR 63.4520 Reporting.* We are proposing to revise the General Provisions table to subpart PPPP (Table 2) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.4520(a)(7). 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 semi-annual compliance report already required under this rule. Subpart PPPP of 40 CFR part 63 currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from a standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' or ''date and time'' to ''date, time, and duration'' (*see* proposed revisions to 40 CFR 63.4520(a)(7)(vi), 63.4520(a)(7)(viii), and 63.4520(a)(7)(xiii)). Further, we are proposing that the report must also contain the number of deviations from the standard and a list of the affected sources or equipment. For deviation reports addressing deviations from an applicable emission limit in 40 CFR 63.4490 or operating limit in Table 1 to 40 CFR part 63, subpart PPPP, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions.

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). 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 40 CFR 63.4520(c) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross-reference to 40 CFR 63.10(d)(5) 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.

We are proposing to remove the requirements in 40 CFR 63.4520(a)(7)(viii) that deviation reports must specify whether a deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63.4520(a)(7)(viii) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.A.4.b.1 of this preamble for the ALDT source category, which also applies to this source category.

c. Technical Amendments to the Plastic Parts and Products NESHAP

We propose to amend 40 CFR 63.4566(b)(4) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon. Facilities using the emission rate with add-on control compliance option can use either EPA Method 25 or EPA Method 25A to measure control device destruction efficiency. Unlike EPA Method 25, EPA Method 25A does not exclude methane from the measurement of organic emissions. Because exhaust streams from coating operations may contain methane from natural gas combustion, we are proposing to allow facilities the option to measure methane using EPA Method 18 and to subtract the methane from the emissions as part of their compliance calculations. We also propose to revise the format of references to test methods in 40 CFR part 60. The current references in 40 CFR 63.4566(a) to EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of 40 CFR part 60. Appendix A of 40 CFR part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

We propose to amend 40 CFR 63.4541(a)(1)(i) and 63.4541(a)(4), which describe how to demonstrate compliance with the emission limitations using the compliant material option, and the definition of ''non-HAP coating'' in 40 CFR 63.4581, to remove references to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The reference to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) is intended to specify which compounds must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass. We propose to remove this reference because 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We propose to replace these references to OSHA-defined carcinogens at 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 5 to 40 CFR part 63, subpart PPPP) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1-percent or greater by mass.

We propose to include organic HAP in proposed Table 5 to 40 CFR part 63, subpart PPPP if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014), as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[40] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

Current 40 CFR 63.4530 specifies records that must be maintained. We propose to add clarification to this provision at 40 CFR 63.4530(a) that specifies the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We also propose to add text to the same provision clarifying that 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.

We propose to clarify and harmonize the general requirement in 40 CFR 63.4500(b) with the reporting requirement in 40 CFR 63.4520(a)(5), 63.4520(a)(6), and 63.4520(a)(7), and the recordkeeping requirement in 40 CFR 63.4530(h)(4).

d. Ongoing Emissions Compliance Demonstrations

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the PPP NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require on-going periodic performance testing for these emission capture systems and add-on controls. In this action, we are proposing to require periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing, and ongoing temperature measurement, to ensure ongoing compliance with the standards.

As described more fully in section IV.A.4.d of this preamble for the ALDT source category, the EPA documented potential operational problems associated with control devices in several publications;[41] the ICAC, in their comments on a separate rulemaking on the proposed revisions related to the NESHAP General Provisions (72 FR 69, January 3, 2007), commented that ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology, including both thermal and catalytic oxidizers, remains effective;[42] and state websites list CAA enforcement information that further corroborates the potential problems identified by the EPA and ICAC comments and conclusions.

Given the need for vigilance in maintaining equipment to stem degradation, the EPA is proposing to require periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing and ongoing temperature measurement, to ensure ongoing compliance with the PPP NESHAP.

In this action, the EPA is requiring periodic performance testing of add-on control devices on a regular frequency (*e.g.,* every 5 years) to ensure the equipment continues to operate properly for facilities using the emission rate with add-on controls compliance option. We note that about half of the state operating permits for existing plastic parts coating sources already require such testing every 5 years synchronized with 40 CFR part 70 air operating permit renewals. This proposed periodic testing requirement includes an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control option at 40 CFR 63.4567(b) and following the catalyst maintenance procedures in 40 CFR 63.4567(b)(4). This exception is due to the catalyst maintenance procedures that already require annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test.

The proposed periodic performance testing requirement allows an exception from periodic testing for facilities using instruments to continuously measure emissions. Such CEMS would show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic oxidizer testing. Moreover, installation and operation of a CEMS with a timesharing component, such that values from more than one oxidizer exhaust could be tabulated in a recurring frequency, could prove less expensive (estimated to have an annual cost below $15,000) than ongoing oxidizer testing.

This proposed requirement would not require periodic testing or CEMS monitoring of facilities using the compliant material or the emission rate without add-on controls options because these compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement would require that facilities complying with the standards using emission capture systems and

[40] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[41] *See Control Techniques for Volatile Organic Compound Emissions from Stationary Sources,* EPA/453/R–92–018, December 1992, *Control Technologies for Emissions from Stationary Sources,* EPA/625/6–91/014, June 1991, and *Survey of Control for Low Concentration Organic Vapor Gas Streams,* EPA–456/R–95–003, May 1995. These documents can be found in the Automobiles and Light-Duty Trucks, Miscellaneous Metal Parts, and Plastic Parts and Products Dockets for this action.

[42] *See* Docket Item No. EPA–HQ–OAR–2004–0094–0173, available at *www.regulations.gov.* A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the Automobiles and Light-Duty Trucks, Miscellaneous Metal Parts, and Plastic Parts and Products Dockets for this action.

add-on controls and which are not already on a 5-year testing schedule to conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would conduct the periodic testing before they renew their operating permits, but no longer than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule and not be required to move up the date of the next test to the 3-year date specified above. This proposed requirement would require periodic air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device. The emissions would be measured as total gaseous organic mass emissions as carbon using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently required for the initial compliance demonstration.

We estimate that the cost to perform a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Draft Costs/Impacts of the 40 CFR part 63 Subparts IIII, MMMM and PPPP Monitoring Review Revisions,* in the ALDT, MMPP, and PPP Dockets. We have reviewed the operating permits for facilities subject to the several other surface coating NESHAP, and we found that affected sources currently using emission capture systems and add-on controls are often, but not always, required to conduct periodic control device performance tests as a condition of their 40 CFR part 70 operating permits. We estimate that three PPP surface coating facilities currently are not required to conduct periodic testing of their control devices as a condition of their permit renewal. Periodic performance tests ensure that all control systems used to comply with the NESHAP would be properly maintained over time, thereby reducing the potential for acute emissions episodes and non-compliance.

We are requesting comment on adding periodic testing of add-on control devices to the PPP NESHAP and on the suggested 5-year schedule for the periodic testing.

e. IBR of Alternative Test Methods Under 1 CFR Part 51

The EPA is proposing new and updated test methods for the PPP NESHAP that include IBR. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to add the following optional EPA method and incorporate by reference the VCS described in the amendments to 40 CFR 63.14:

- EPA Method 18 of appendix A to 40 CFR part 60, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography, proposed for 40 CFR 63.4566(b)(4);
- ASTM Method D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.4551(c);
- ASTM Method D2111–10 (2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.4551(c); and
- ASTM Method D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.4541(a)(2) and 634561(j)(3).

An older version of ASTM Method D1475 was incorporated by reference when the PPP NESHAP was originally promulgated (69 FR 20968, April 19, 2004). We are proposing to replace the older version of this method with an updated version, which requires IBR revisions. The updated version of the method replaces the older version in the same paragraph of the rule text. We are also proposing the addition of EPA Method 18 and incorporating by reference ASTM Methods D2111 and D2369 to the PPP NESHAP for the first time in this rulemaking. Refer to section VIII.J of this preamble for further discussion of these VCS.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources must comply with all of the amendments, with the exception of the proposed electronic format for submitting semiannual compliance reports, no later than 181 days after the effective date of the final rule. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart PPPP 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 PPPP. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically. We are proposing that the semiannual compliance report be submitted electronically using a new template, which is available for review and comment as part of this action. 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 existing affected sources be in compliance with all of this regulation's revised requirements within 181 days of the regulation's effective date.

We solicit comment on these 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.

D. Proposed Corrections to Earlier Subparts

We are proposing the following corrections to three subparts that were amended in a final rule notice published in the **Federal Register** on March 15, 2019 (84 FR 9590). The proposed corrections are to the NESHAP for Surface Coating of Large Appliances (40 CFR part 63, subpart NNNN); the NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles (40 CFR part 63, subpart OOOO); and the NESHAP for Surface Coating of Metal Furniture (40 CFR part 63, subpart RRRR). Note that these proposed corrections are not published in the amendatory rule text in the **Federal Register** (*see* 84 FR 9590) and are discussed below.

We are proposing to correct 40 CFR 63.4168 of subpart NNNN. The original instructions to 40 CFR 63.4168 in the final rule were, ''Section 63.4168 is amended by revising paragraphs (a)(4) and (5) and (c)(2) and (3) to read as follows . . .'' (84 FR 9618). The instructions should have said, ''Section 63.4168 is amended by revising paragraphs (a)(4) and (5) and (c)(2) and *the introductory text of* (c)(3) to read as follows . . .'' As a result, the subparagraphs 40 CFR 63.4168(c)(3)(i) through (iii), which were not intended to be affected by this action, were deleted in the CFR. We are proposing to insert these paragraphs back into the CFR. Please submit any comments on this proposed correction to the docket for the Surface Coating of Large Appliances (Docket ID No. EPA–HQ–OAR–2017–0670).

We are proposing to correct 40 CFR 63.4371 of subpart OOOO. The instructions in the final rule were to revise the definition of ''Deviation,'' but the amendatory text contained revised definitions of ''Deviation'' and ''No organic HAP.'' The current definition of ''No organic HAP'' in the CFR contains a reference that is no longer accurate. The instruction to revise the definition of ''No organic HAP'' was inadvertently deleted; and, the new definition was not inserted. We are proposing to insert this new definition as indicated in the amendatory language in the final rule (84 FR 9631, March 15, 2019). Please submit any comments on this proposed correction to the docket for the Printing, Coating, and Dyeing of Fabrics and Other Textiles (Docket ID No. EPA–HQ–OAR–2017–0668).

We are proposing to correct 40 CFR 63.4965 of subpart RRRR. The original instructions to 40 CFR 63.4965 in the final rule were, ''Section 63.4965 is amended by revising paragraphs (a)(1) through (4) and paragraph (b) to read as follows . . .'' (84 FR 9641). The instructions should have said, ''Section 63.4965 is amended by revising paragraphs (a)(1) through (4) and *the introductory text of* paragraph (b) to read as follows . . .'' As a result, the subparagraphs 40 CFR 63.4965(b)(1) through (3), which were not intended to be affected by this action, were deleted in the CFR. We are proposing to insert these paragraphs back into the CFR. Please submit any comments on this proposed correction to the docket for the Surface Coating of Metal Furniture (Docket ID No. EPA–HQ–OAR–2017–0669).

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

Currently, we estimate 43 major source facilities are subject to the ALDT NESHAP and operating in the United States. The affected source under the NESHAP is the collection of all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply coating to a substrate (coating application) and to dry or cure the coating after application. A single coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup bottles, touchup markers, marking pens, or pinstriping equipment is not a coating operation for the purposes of this subpart. The application of temporary materials such as protective oils and ''travel waxes'' that are designed to be removed from the vehicle before it is delivered to a retail purchaser is not a coating operation for the purposes of 40 CFR part 63, subpart IIII.

Currently, we estimate 368 major source facilities are subject to the MMPP NESHAP and operating in the United States. The affected source under the NESHAP is the collection of all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply cleaning materials to a substrate to prepare it for coating application (surface preparation) or to remove dried coating; to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a given quantity of coating or cleaning material is applied to a given part and all subsequent points in the affected source where organic HAP are emitted from the specific quantity of coating or cleaning material on the specific part. There may be multiple coating operations in an affected source. Coating application with handheld, non-refillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of 40 CFR part 63, subpart MMMM.

Currently, we estimate 125 major source facilities are subject to the PPP NESHAP and operating in the United States. The affected source under the NESHAP is the collection of coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply cleaning materials to a substrate to prepare it for coating application (surface preparation) or to remove dried coating; to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a given quantity of coating or cleaning material is applied to a given part and all subsequent points in the affected source where organic HAP are emitted from the specific quantity of coating or cleaning material on the specific part. There may be multiple coating operations in an affected source. Coating application with handheld, non-refillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of 40 CFR part 63, subpart PPPP.

B. What are the air quality impacts?

At the current level of control, estimated emissions of volatile organic HAP from the 43 facilities in the ALDT source category are approximately 1,700 tpy. Current estimated emissions of volatile organic HAP from the 368 facilities in the MMPP source category are approximately 2,700 tpy. Current estimated emissions of volatile organic HAP from the 125 facilities in the PPP source category are approximately 760 tpy.

The proposed amendments require that all major sources in the ALDT, MMPP, and PPP source categories comply with the relevant emission standards at all times, including periods of SSM. We were unable to quantify the emissions that occur during periods of SSM or the specific emissions reductions that would occur as a result of this action. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The proposed amendments would have no effect on the energy needs of the affected facilities in any of the three source categories and would, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

We estimate that each facility in these three source categories will experience costs as a result of these proposed amendments that are estimated as part of the reporting and recordkeeping costs. Each facility will experience costs to read and understand the rule amendments. Costs associated with elimination of the SSM exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Costs associated with the requirement to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports. The recordkeeping and reporting costs are presented in section V.III.C of this preamble.

We are also proposing a requirement for performance testing no less frequently than every 5 years for sources in each source category using the add-on controls compliance options. We estimate that five major source facilities subject to the ALDT NESHAP would incur costs to conduct periodic testing because they are currently using the emission rate with add-on controls compliance option. This total does not include facilities in the source category that have add-on controls and are currently required to perform periodic performance testing as a condition of their state operating permit. The cost for a facility to conduct a destruction or removal efficiency performance test using EPA Method 25 or 25A is estimated to be about $19,000, and the total cost for all five facilities subject to the ALDT NESHAP in a single year would be $95,000. Similarly, we estimate that seven major source facilities subject to the MMPP NESHAP would incur costs to conduct periodic testing because they are currently using the emission rate with add-on controls compliance option, at a total cost in a single year of $133,000. Finally, we estimate that three major source facilities subject to the PPP NESHAP, at a cost in a single year of $57,000. For further information on the potential costs, *see* the memorandum titled *Draft Costs/Impacts of the 40 CFR Part 63 Subparts IIII, MMMM, and PPPP Monitoring Review Revisions,* June 2019, in the ALDT, MMPP, and PPP Dockets.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. For the current proposals, the EPA estimated the cost of becoming familiar with the rule and re-evaluating previously developed SSM record systems and performing periodic emissions testing at certain facilities with add-on controls that are not already required to perform testing. To assess the maximum potential impact, the largest cost expected to be experienced in any one year is compared to the total sales for the ultimate owner of the affected facilities to estimate the total burden for each facility.

For the proposed revisions to the ALDT NESHAP, the total cost is estimated to be approximately $110,000 for the 43 affected entities in the first year of the rule, and an additional $120,000 in testing and reporting costs for five facilities in the third year of the rule and every 5 years thereafter. The 43 affected facilities are owned by 14 different parent companies, and the total costs associated with the proposed requirements range from 0.000002 to 0.0056 percent of annual sales revenue per ultimate owner. 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.

For the proposed revisions to the MMPP NESHAP, the total cost is estimated to be approximately $960,000 for the 368 affected entities in the first year of the rule, and an additional $170,000 in testing and reporting costs for seven facilities in the third year of the rule and every 5 years thereafter. The 368 affected facilities are owned by 265 different parent companies, and the total costs associated with the proposed requirements range from 0.000002 to 0.25 percent of annual sales revenue per ultimate owner. 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.

For the proposed revisions to the PPP NESHAP, the total cost is estimated to be approximately $330,000 for the 125 affected entities in the first year of the rule, and an additional $74,000 in testing and reporting costs for three facilities in the third year of the rule and every 5 years thereafter. The 125 affected facilities are owned by 94 different parent companies, and the total costs associated with the proposed requirements range from 0.000008 to 0.22 percent of annual sales revenue per ultimate owner. 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.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. One of the facilities potentially affected by the proposed revisions to the ALDT NESHAP is a small entity. However, the annualized costs associated with the proposed requirement is 0.0056 percent of annual sales revenue for the owner of that facility. Of the facilities potentially affected by the proposed revisions to the MMPP NESHAP, 110 are small entities. However, the annualized costs associated with the proposed requirements for the 103 ultimate owners of these 110 affected small entities range from 0.001 to 0.25 percent of annual sales revenues per ultimate owner. Of the facilities potentially affected by the proposed revisions to the PPP NESHAP, 35 are small entities. However, the annualized costs associated with the proposed requirements for the 35 ultimate owners of these 35 affected small entities range from 0.0009 to 0.22 percent of annual sales revenues per ultimate owner. Therefore, there are no significant economic impacts on a substantial number of small entities from these proposed amendments.

E. What are the benefits?

As stated above in section V.B. of this preamble, we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption, although this proposed change has the potential to reduce emissions of volatile organic HAP.

Because these proposed amendments are not considered economically significant, as defined by Executive Order 12866, we did not monetize the benefits of reducing these emissions. This does not mean that there are no benefits associated with the potential reduction in volatile organic HAP from this rule.

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/surface-coating-automobiles-and-light-duty-trucks-national-emission,* for the ALDT NESHAP; *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-miscellaneous-metal-parts-and-products-national* for the MMPP NESHAP; and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-plastic-parts-and-products-national-emission* for the PPP NESHAP. The data files include detailed information for each HAP emissions release point for the facilities in these source categories.

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, you must 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 the ALDT, MMPP, or PPP Docket, as applicable (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 RTR website at *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-automobiles-and-light-duty-trucks-national-emission,* for the ALDT NESHAP; *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-miscellaneous-metal-parts-and-products-national* for the MMPP NESHAP; and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-plastic-parts-and-products-national-emission* for the PPP NESHAP.

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 Regulations 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 proposal have been submitted for approval to OMB under the PRA, as discussed for each source category covered by this proposal in sections VIII.C.1 through 3.

1. Surface Coating of Automobiles and Light-Duty Trucks

The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2045.07. You can find a copy of the ICR in the ALDT Docket (Docket ID No. EPA–HQ–OAR–2019–0314), and it is briefly summarized here.

As part of the RTR for the ALDT NESHAP, the EPA is not proposing to revise the emission limit requirements. The EPA is proposing to revise the SSM provisions of the rule and proposing the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart IIII.

Respondents/affected entities: Facilities performing surface coating of automobiles and light-duty trucks.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart IIII).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 43 respondents per year would be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 129 and in year 3 is 15. Year 2 would have no responses.

Total estimated burden: The average annual burden to the ALDT surface coating facilities over the 3 years if the amendments are finalized is estimated to be 410 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 19 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the ALDT surface coating facilities is $47,000 in labor costs and in the first 3 years after the amendments are final. The average annual capital and operation and maintenance (O&M) costs is $32,000. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $910.

2. Surface Coating of Miscellaneous Metal Parts and Products

The ICR document that the EPA prepared has been assigned EPA ICR number 2056.07. You can find a copy of the ICR in the MMPP Docket (Docket ID No. EPA–HQ–OAR–2019–0312), and it is briefly summarized here.

As part of the RTR for the MMPP NESHAP, the EPA is not proposing to revise the emission limit requirements. The EPA is proposing to revise the SSM provisions of the rule and proposing the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart MMMM.

Respondents/affected entities: Facilities performing surface coating of miscellaneous metal parts and products.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MMMM).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 368 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 1,104 and in year 3 is 14. Year 2 would have no responses.

Total estimated burden: The average annual burden to the MMPP surface coating facilities over the 3 years if the amendments are finalized is estimated to be 2,934 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 27 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the MMPP surface coating facilities is $334,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and O&M cost is $44,000. The average annual Agency cost over the first 3 years after the amendments are final is estimated to be $1,300.

3. Surface Coating of Plastic Parts and Products

The ICR document that the EPA prepared has been assigned EPA ICR number 2044.07. You can find a copy of the ICR in the PPP Docket (Docket ID No. EPA–HQ–OAR–2019–0313), and it is briefly summarized here.

As part of the RTR for the PPP NESHAP, the EPA is not proposing to revise the emission limit requirements. The EPA is proposing to revise the SSM provisions of the rule and proposing the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart PPPP.

Respondents/affected entities: Facilities performing surface coating of plastic parts and products.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart PPPP).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 125 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 375 and in year 3 is 9. Year 2 would have no responses.

Total estimated burden: The average annual burden to the PPP surface coating facilities over the 3 years if the amendments are finalized is estimated to be 1,007 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 18 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the PPP surface coating facilities is $115,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and O&M cost is $19,000. The average annual Agency cost over the first 3 years after the amendments are final is estimated to be $870.

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 December 2, 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. The economic impact associated with the proposed requirements in this action for the affected small entities is described in section V.D. above.

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 any of the industries that would be affected by this action (ALDT surface coating, MMPP surface coating, and PPP surface coating). 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 C, IV.A.1 and 2, IV.B.1 and 2, and IV.C.1 and 2 of this preamble and are further documented in the *Automobiles and Light-Duty Trucks Risk Assessment Report,* in the ALDT Docket, *Miscellaneous Metal Parts and Products Risk Assessment Report,* in the MMPP Docket and the *Plastic Parts and Products Risk Assessment Report,* in the PPP Docket.

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) and 1 CFR Part 51

This rulemaking involves technical standards. We are proposing to amend the ALDT NESHAP, the MMPP NESHAP, and the PPP NESHAP in this action to provide owners and operators with the option of using two new methods. We are proposing to add EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography'' to measure and subtract methane emissions from measured total gaseous organic mass emissions as carbon. We are also proposing to amend each of these NESHAP to incorporate by reference ASTM Method D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' into these three NESHAP as an alternative to EPA Method 24 for the determination of the volatile matter content in surface coatings. ASTM Method D2369–10 (2015) is a test method that allows for more accurate results for multi-component chemical resistant coatings.

We are proposing to amend the MMPP NESHAP and the PPP NESHAP to incorporate by reference ASTM Method D2111–10 (2015), ''Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures,'' as an alternative to ASTM Method D1475–13. ASTM Method D2111–10 (2015) is a test method that allows measurement of specific gravity at different temperatures that are chosen by the analyst.

We are proposing to amend all three NESHAP to update ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' by incorporating by reference ASTM Method D1475–13. This test method covers the measurement of the density of paints, inks, varnishes, lacquers, and components thereof, other than pigments, when in fluid form.

We are proposing to amend the ALDT NESHAP and the MMPP NESHAP to update ASTM Method D2697–86 (1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' by incorporating by reference ASTM Method D2697–03 (2014), which is the updated version of the previously approved method, and to update ASTM Method D6093–97 (2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer,'' by incorporating by reference ASTM Method D6093–97 (2016), which is the updated version of the previously approved method. ASTM Method D2697–03 (2014) is a test method that can be used to determine the volume of nonvolatile matter in clear and pigmented coatings and ASTM Method D6093–97 (2016) is a test method that can be used to determine the percent volume of nonvolatile matter in clear and pigmented coatings.

We are proposing to amend the ALDT NESHAP to update ASTM D5066–91, ''Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis,'' by incorporating by reference ASTM D5066–91 (Reapproved 2017). This test method covers procedures for determination of the transfer efficiency (using a weight method) under production conditions for in-plant spray application of automotive paints as outlined in Section 18 of EPA 450/3–88–018.

We are proposing to amend the ALDT NESHAP and the MMPP NESHAP to update ASTM Method D5965, ''Standard Test Methods for Specific Gravity of Coating Powders,'' by incorporating by reference ASTM Method D5965–02 (2013). These test methods cover three procedures for determining the specific gravity (see definition) of coating powders, *i.e.,* Test Method A—For Testing Coating Powders, Excluding Metallics; Test Method B—For Tests Requiring Greater Precision than Test Method A, Including Metallics, Using Helium Pycnometry; and Test Method C—For Theoretical Calculation Based on Raw Material.

We are proposing to amend the ALDT NESHAP to update ASTM D6266–00a, ''Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement),'' by incorporating by reference ASTM D6266–00a (Reapproved 2017). This test method describes the determination of the amount of VOC released from applied waterborne automotive coatings that is available for delivery to a VOC control device. The determination is accomplished by measuring the weight loss of a freshly coated test panel subject to evaporation or drying and by analysis of the VOC or water content in the coating.

The ASTM standards are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *http://www.astm.org/.*

The EPA is proposing to amend the ALDT NESHAP to incorporate by reference EPA–450/3–88–018 ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations'' for use in §§ 63.3161(f), 63.3165(e). This protocol determines the daily VOC emission rate (pounds of VOC per gallon of coating solids deposited) for a complete automobile and light-duty truck topcoat operation and is available in the ALDT Docket. The protocol is designed for uses in cases where topcoat emission limit is stated in units of pounds of VOC per gallon of solids deposited, compliance is demonstrated each day, and entire topcoat operation is treated as a single entity. The protocol uses the number of square feet coated on each vehicle in each booth with each coating as the basis for the daily weighting of individual transfer efficiency and bake oven exhaust control values. The method is intended to apply to primary coatings for new ALDT bodies, body parts for new ALDT, and other parts that are coated along with these bodies or body parts. It can also be downloaded from EPA's website at the National Service Center for Environmental Publications, just access the following website at *https://nepis.epa.gov* and search either the title or document number. The EPA is not proposing ASTM Method D1963–85 (1996), ''Standard Test Method for Specific Gravity of Drying Oils, Varnishes, Resins, and Related Materials at 25/25 C,'' as an alternative for the determination of the specific gravity because ASTM has withdrawn the method without replacement. The EPA is also not proposing California Air Resources Board Method 310, ''Determination of Volatile Organic

Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products,'' as an alternative to EPA Method 24 because the EPA has approved the method only for consumer products and aerosol coatings, which do not apply to the rulemakings or source categories addressed in this action.

ASTM D5087–02 was previously approved for incorporation by reference into § 63.3165(e).

Although we identified another 14 VCS for ALDT, MMPP, and PPP as being possible alternatives for methods included in these rules, we are not proposing to add these VCS in these rulemakings. See the memoranda titled *Voluntary Consensus Standard Results for Surface Coating of Automobiles and Light-duty Trucks,* June 2019, *Voluntary Consensus Standard Results for Surface Coating of Miscellaneous Metal Parts and Products,* June 2019, and *Voluntary Consensus Standard Results for Surface Coating of Plastic Parts and Products,* June 2019, in the ALDT Docket, MMPP Docket, and the PPP Docket, respectively, for the reasons for these determinations.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

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.1 and 2, sections IV.B.1 and 2, and IV.C.1 and 2 of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Automobiles and Light-Duty Trucks Source Category Operations,* March 2019, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Miscellaneous Metal Parts and Products Source Category Operations,* May 2019, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Plastic Parts and Products Source Category Operations,* April 2019, available in the ALDT Docket, MMPP Docket, and the PPP Docket, respectively.

As discussed in sections IV.A.1, IV.B.1, and IV.C.1 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 this analysis, we evaluated the distribution of HAP-related cancer risks and noncancer hazards from the ALDT, MMPP, and PPP source categories across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks.

The results of the ALDT source category demographic analysis indicate that approximately 15,000 people are exposed to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The overall percent of the population that is minorities is similar nationally (38 percent) and for the category population with cancer risk greater than or equal to 1-in-1 million (40 percent). However, the category population with cancer risk greater than or equal to 1-in-1 million has a greater percent Hispanic population (27 percent) as compared to the national percent Hispanic population (18 percent).

The proximity results (irrespective of risk) indicate that the overall percentage of the population that is minority is higher (48 percent) within 5 km of ALDT facilities than the nationwide percentage (38 percent). This is driven by a higher percentage of ''African American'' (27 percent) within 5 km of facilities in this category than the nationwide percentage (12 percent).

The results of the MMPP source category demographic analysis indicate that approximately 18,000 people are exposed to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''White,'' ''Below the Poverty Level,'' and ''Over 25 and Without a High School Diploma.''

The proximity results (irrespective of risk) indicate that the overall percentage of the population that is minority is higher (45 percent) within 5 km of MMPP facilities than the nationwide percentage (38 percent). This is driven by a higher percentage of ''African American'' (18 percent) within 5 km of facilities in this category than the nationwide percentage (12 percent).

The results of the PPP source category demographic analysis indicate that approximately 500 people are exposed to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''White'' and ''Below the Poverty Level.''

The proximity results (irrespective of risk) indicate that the population percentages for all demographic categories located within 5 km of PPP facilities are very similar to their respective nationwide percentages.

We do not expect this proposal to achieve significant reductions in HAP emissions. The EPA anticipates 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) because it does not significantly affect the level of protection provided to human health or the environment. The documentation for this decision is contained in section IV of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Automobiles and Light-Duty Trucks Category Operations,* June 2019, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Miscellaneous Metal Parts and Products Source Category Operations,* June 2019, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Plastic Parts and Products Source Category Operations,* June 2019, which are available in the ALDT Docket, MMPP Docket, and the PPP Docket, respectively.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Appendix A, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Surface coating of automobiles and light-duty trucks, Surface coating of miscellaneous metal parts and products, Surface coating of plastic parts and products.

Dated: August 16, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend part 63 of title 40, chapter I, of the Code of Federal Regulations 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 A—General Provisions

■ 2. Section 63.14 is amended by:

■ a. Revising paragraphs (h)(12), (13), (21), (26), (29), (30), (66), (76), (78), (79), and (81);

■ b. Redesignating paragraphs (n)(1) through (24) as paragraphs (n)(2) through (25); and

■ c. Adding new paragraph (n)(1).

The revisions and addition read as follows:

§ 63.14 Incorporations by reference

* * * * *

(h) * * *

(12) ASTM D1475–98 (Reapproved 2003), ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' IBR approved for § 63.4141(b) and (c).

(13) ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, approved November 1, 2013, IBR approved for §§ 63.3151(b), 63.3941(b) and (c), 63.3951(c), 63.4141(b) and (c), 63.4551(c), 63.4741(b) and (c), 63.4751(c), and 63.4941(b) and (c).

* * * * *

(21) ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, approved June 1, 2015, IBR approved for §§ 63.3951(c), 63.4141(b) and (c), 63.4551(c), and 63.4741(a).

* * * * *

(26) ASTM D2369–10 (Reapproved 2015)^{e}, Standard Test Method for Volatile Content of Coatings, approved June 1, 2015, IBR approved for §§ 63.3151(a), 63.3961(j), 63.4141(a) and (b), 63.4161(h), 63.4321(e), 63.4341(e), 63.4351(d), 63.4541(a), 63.4561(j), 63.4741(a), 63.4941(a) and (b), and 63.4961(j).

* * * * *

(29) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.3521(b), 63.4141(b), 63.4741(b), 63.4941(b), and 63.5160(c).

(30) ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2014, IBR approved for §§ 63.3161(f), 63.3941(b), 63.4141(b), 63.4741(a) and (b), and 63.4941(b).

* * * * *

(66) ASTM D5066–91 (Reapproved 2017), Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis, IBR approved for § 63.3161(g).

* * * * *

(76) ASTM D5965–02 (2013), Standard Test Methods for Specific Gravity of Coating Powders, IBR approved for §§ 63.3151(b) and 63.3951(c).

* * * * *

(78) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3521 and 63.5160(c).

(79) ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, Approved December 1, 2016, IBR approved for §§ 63.3161(f), 63.3941(b), 63.4141(b), 63.4741(a) and (b), and 63.4941(b).

* * * * *

(81) ASTM D6266–00a (Reapproved 2017), Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), IBR approved for § 63.3165(e).

* * * * *

(n) * * *

(1) EPA–450/3–88–018, Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations, IBR approved for §§ 63.3161(f) and 63.3165(e)

* * * * *

Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

■ 3. Section 63.3092 is amended by revising paragraph (a)(2) to read as follows:

§ 63.3092 How must I control emissions from my electrodeposition primer system if I want to comply with the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive emission limit?

* * * * *

(a) * * *

(2) 0.10 percent by weight of any organic HAP in Table 5 of this subpart.

* * * * *

■ 4. Section 63.3093 is amended by revising paragraph (b) to read as follows:

§ 63.3093 What operating limits must I meet?

* * * * *

(b) Except as provided in paragraph (d) of this section, for any controlled coating operation(s), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and add-on control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during performance tests according to the requirements in § 63.3167. You must meet the operating limits at all times after you establish them.

* * * * *

■ 5. Section 63.3100 is amended by revising paragraphs (b), (d), and (f) to read as follows:

§ 63.3100 What are my general requirements for complying with this subpart?

* * * * *

(b) Before [date 181 days after date of publication of final rule in the **Federal Register**], the coating operations must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3093 at all times except during periods of startup, shutdown, and malfunction. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the coating operations must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3093 at all times.

* * * * *

(d) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must always operate and maintain your affected source including all air pollution control and monitoring equipment you use for purposes of complying with this subpart according to the provisions in § 63.6(e)(1)(i). On and after [date 181 days after date of publication of final rule in the **Federal Register**], at all times, the owner or operator 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 the owner or operator 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 that 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 affected source.

* * * * *

(f) Before [date 181 days after date of publication of final rule in the **Federal Register**], if your affected source uses emission capture systems and add-on control devices, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The SSMP must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control devices. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the SSMP is not required.

■ 6. Section 63.3120 is amended by:

■ a. Revising paragraphs (a)(4), (a)(5) introductory text, (a)(5)(iv), (a)(6) introductory text, (a)(6)(iii), (a)(6)(vi) through (viii), (a)(6)(x), and (a)(6)(xiii) and (xiv);

■ b. Adding paragraphs (a)(5)(v) and (a)(6)(xv);

■ c. Revising paragraphs (a)(7) introductory text and (a)(7)(i) and (iii);

■ d. Adding paragraph (a)(7)(iv);

■ e. Revising paragraphs (a)(8) introductory text, (a)(8)(ii), (a)(8)(v) through (vii), (a)(8)(ix), (a)(8)(xii), (a)(9) introductory text, (a)(9)(i) and (ii), and (c) introductory text; and

■ f. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

§ 63.3120 What reports must I submit?

(a) * * *

(4) *No deviations.* If there were no deviations from the emission limits, operating limits, or work practices in §§ 63.3090, 63.3091, 63.3092, 63.3093, and 63.3094 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the applicable emission limitations during the reporting period. If you used control devices to comply with the emission limits, and there were no periods during which the CPMS were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: Adhesive, sealer, and deadener.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if there was a deviation from the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], if there was a deviation from the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

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(iv) The reason for the deviation (including unknown cause, if applicable).

(v) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d), and a description of the method used to estimate the emissions.

(6) *Deviations:* Combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive, or combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c). Before [date 181 days after date of publication of final rule in the **Federal Register**], if there was a deviation from the applicable emission limits in § 63.3090(a) or (b) or § 63.3091(a) or (b) or the applicable operating limit(s) in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (xiv) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], if there was a deviation from the applicable emission limits in § 63.3090(a) or (b) or § 63.3091(a) or (b) or the applicable operating limit(s) in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (xv) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices used to control emissions from these operations started and stopped.

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(vi) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and descriptions of corrective actions taken.

(vii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time period that each CPMS was out of control, including the information in § 63.8(c)(8). On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each instance that the CPMS was out of control, as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before [date 181 days after date of publication of final rule in the **Federal Register**], The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration of each deviation from an operating limit in Table 1 to this subpart; and the date, time, and duration of each bypass of an add-on control device.

* * * * *

(x) Before [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

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(xiii) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from the work practice standards a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(6)(xiii)(A) and (B) of this section.

(A) A description of the deviation, the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3100(d).

(B) A list of the affected sources or equipment for which a deviation occurred, the cause of the deviation (including unknown cause, if applicable), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(xiv) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from an emission limitation in § 63.3090(a) or (b) or § 63.3091(a) or (b) or operating limit in Table 1 of this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(xv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limitation in § 63.3090(a) or (b), or § 63.3091(a) or (b), or operating limit in Table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3090(a) or (b) or § 63.3091(a) or (b), and a description of the method used to estimate the emissions.

(7) *Deviations: Separate electrodeposition primer organic HAP content limit.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if you used the separate electrodeposition primer organic HAP content limits in § 63.3092(a), and there was a deviation from these limits, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (iii) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], if you used the separate electrodeposition primer organic HAP content limits in § 63.3092(a), and there was a deviation from these limits, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (iv) of this section.

(i) Identification of each material used that deviated from the emission limit, and the date, time, and duration each was used.

* * * * *

(iii) A statement of the cause of each deviation (including unknown case, if applicable).

(iv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3092(a), and a description of the method used to estimate the emissions.

(8) *Deviations: Separate electrodeposition primer bake oven capture and control limitations.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if you used the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b), and there was a deviation from the limitations in § 63.3092(b) or the applicable operating limit in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], if you used the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b), and there was a deviation from the limitations in § 63.3092(b) or the applicable operating limit in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xiv) of this section.

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(ii) The date and time that each malfunction of the capture systems or control devices used to control emissions from the electrodeposition primer bake oven started and stopped.

* * * * *

(v) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and descriptions of corrective actions taken.

(vi) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8). On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each instance that the CPMS was out of control, as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(vii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration of each deviation from an operating limit in Table 1 to this subpart; and the date, time, and duration of each bypass of an add-on control device.

* * * * *

(ix) Before [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xii) A statement of the cause of each deviation (including unknown cause, if applicable).

(9) *Deviations: Work practice plans.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if there was a deviation from an applicable work practice plan developed in accordance with § 63.3094(b) or (c), the semiannual compliance report must contain the information in paragraphs (a)(9)(i) through (iii) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], if there were deviations from an applicable work practice plan developed in accordance with § 63.3094(b) or (c), the semiannual compliance report must contain the number of deviations, and, for each deviation, the information in paragraphs (a)(9)(i) through (iii) of this section.

(i) Before [date 181 days after date of publication of final rule in the **Federal Register**], the time period during which each deviation occurred. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration of the deviation.

(ii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the nature of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the nature of the deviation, including a list of the affected sources or equipment for which the deviation occurred, and the cause of the deviation (including unknown cause, if applicable).

* * * * *

(c) *Startup, shutdown, and malfunction reports.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if you used add-on control devices and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must submit the results of the performance test required in paragraph (b) of this section following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For 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, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*)). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For 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, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (c)(1) of this section is confidential business information (CBI), you must submit a complete file 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, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(e) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.3110(c) to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*)). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed 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.

(f) On and after [date 181 days after date of publication of final rule in the **Federal Register**], or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must use the appropriate electronic template on the CEDRI Web for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). 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. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed 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.

(g) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. 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 caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a 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. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. 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.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX and 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 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. 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). If you intend to assert a claim of force majeure, 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 caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a 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. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. 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.

■ 7. Section 63.3130 is amended by revising paragraphs (g) and (h) and adding paragraph (p) to read as follows:

§ 63.3130 What records must I keep?

* * * * *

(g) Before [date 181 days after date of publication of final rule in the **Federal Register**], a record of the date, time, and duration of each deviation, and for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limitation, operating limit, or work practice plan reported under § 63.3120(a)(5) through (9), a record of the information specified in paragraphs (g)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, and for each deviation, the information as reported under § 63.3120(a)(5) through (9).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.3120(a)(5) through (9).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3090 (a) through (d) or 63.3091(a) through (d) or any applicable operating limit in Table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.3120(a)(5) through (9).

(4) A record of actions taken to minimize emissions in accordance with § 63.3100(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(h) Before [date 181 days after date of publication of final rule in the **Federal Register**], the records required by § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the provisions of this paragraph no longer apply.

* * * * *

(p) On and after [date 181 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 63.3131 is amended by revising paragraph (a) to read as follows:

§ 63.3131 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after [date 181 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.

* * * * *

■ 9. Section 63.3151 is amended by revising paragraphs (a)(1)(i), (a)(2) and (4), and (b) to read as follows.

§ 63.3151 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(2) *EPA Method 24 (appendix A–7 to 40 CFR part 60).* For coatings, you may use EPA Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using EPA Method 24, you may use ASTM D2369–10 (2015)[e] (incorporated by reference, *see* § 63.14).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 of this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence, unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

(b) *Determine the density of each material used.* Determine the density of each material used during the compliance period from test results using ASTM D1475–13 (incorporated by reference, *see* § 63.14) or for powder coatings, test method A or test method B of ASTM D5965–02 (2013) (incorporated by reference, *see* § 63.14), or information from the supplier or manufacturer of the material. If there is disagreement between ASTM D1475–13 test results or ASTM D5965–02 (2013), test method A or test method B test results and the supplier's or manufacturer's information, the test results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

■ 10. Section 63.3160 is amended by revising the section heading and paragraph (b)(1) to read as follows:

§ 63.3160 By what date must I conduct initial performance tests and other initial compliance demonstrations?

* * * * *

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3083. You must conduct an initial performance test of each capture system and add-on control device according to the procedures in §§ 63.3164 through 63.3166 and establish the operating limits required by § 63.3093 no later than the compliance date specified in § 63.3083.

* * * * *

■ 11. Section 63.3161 is amended by revising paragraphs (a), (f)(1), (g), and (k)(3) to read as follows:

§ 63.3161 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(a) or § 63.3091(a) and the applicable operating limits and work practice standards in §§ 63.3093 and 63.3094.

* * * * *

(f) * * *

(1) *ASTM Method D2697–03 (2014) or ASTM Method D6093–97 (2016).* You may use ASTM D2697–03 (Reapproved 2014) (incorporated by reference, *see* § 63.14), or ASTM D6093–97 (Reapproved 2016) (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

* * * * *

(g) *Determine the transfer efficiency for each coating.* You must determine the transfer efficiency for each primer-surfacer and topcoat coating, and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using ASTM D5066–91 (Reapproved 2017) (incorporated by reference, *see* § 63.14), or the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018. You may conduct transfer efficiency testing on representative coatings and for representative spray booths as described in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018. You may assume 100 percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40 percent transfer efficiency for air atomized spray and 55 percent transfer efficiency for electrostatic spray and high volume, low pressure spray. For blackout, chip resistant edge primer, interior color, in-line repair, lower body anti-chip coatings, or underbody anti-chip coatings, you may assume 40 percent transfer efficiency for air atomized spray, 55 percent transfer efficiency for electrostatic spray and high volume-low pressure spray, and 80 percent transfer efficiency for airless spray.

* * * * *

(k) * * *

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using EPA Method 24 of 40 CFR part 60, appendix A–7, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of EPA Method 24 of 40 CFR part 60, appendix A–7, or an approved alternative method, the test method results will govern unless after

consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

■ 12. Section 63.3163 is amended by revising the section heading and paragraph (c) introductory text, adding paragraph (c)(3), and revising paragraphs (f) and (h) to read as follows:

§ 63.3163 How do I conduct periodic performance tests and demonstrate continuous compliance with the emission limitations?

* * * * *

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3093 that applies to you, as specified in Table 1 to this subpart, and you must conduct performance tests as specified in paragraph (c)(3) of this section.

* * * * *

(3) Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3161(k) for controlled coating operations, you must conduct periodic performance tests and establish the operating limits required by § 63.3093 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publications of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after [date 2 years before date of publications of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.3167(b) and following the catalyst maintenance procedures in § 63.3167(b)(6), you are not required to conduct periodic control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(f) If there were no deviations from the emission limitations, submit a statement as part of the semiannual compliance report that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3090(a) or § 63.3091(a), § 63.3090(b) or § 63.3091(b), or § 63.3092(a) or § 63.3092(b), you achieved the operating limits required by § 63.3093, and you achieved the work practice standards required by § 63.3094 during each compliance period.

* * * * *

(h) Before [date 181 days after date of publication of final rule in the **Federal Register**], consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e). On and after [date 181 days after date of publication of final rule in the **Federal Register**], the provisions of this paragraph no longer apply.

* * * * *

■ 13. Section 63.3164 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.3164 What are the general requirements for performance tests?

(a) You must conduct each applicable performance test required by §§ 63.3160, 63.3163, and 63.3171 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Before [date 181 days after date of publication of final rule in the **Federal Register**], operations during periods of startup, shutdown, or malfunction, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 14. Section 63.3165 is amended by revising the introductory text and paragraphs (e) introductory text, the definition of ''$Wvoc_{c,i}$'' in Equation 6 of paragraph (e)(2), the definition of ''$Wvoc_{c,i}$'' in Equation 7 of paragraph (e)(3), and the definition of ''$W_{s,i}$'' in Equation 8 of paragraph (e)(4) to read as follows:

§ 63.3165 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3160 and § 63.3163. For purposes of this subpart, a spray booth air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the spray booth air seal and the spray booth is into the spray booth. For purposes of this subpart, a bake oven air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the bake oven air seal and the bake oven is into the bake oven. You may use lightweight strips of fabric or paper, or smoke tubes to make such demonstrations as part of showing that your capture system is a PTE or conducting a capture efficiency test using a temporary total enclosure. You cannot count air flowing from a spray booth air seal into a spray booth as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that spray booth air seal as a natural draft opening. You cannot count air flowing from a bake oven air seal into a bake oven as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that bake oven air seal as a natural draft opening.

* * * * *

(e) *Panel testing to determine the capture efficiency of flash-off or bake oven emissions.* You may conduct panel testing to determine the capture efficiency of flash-off or bake oven emissions using ASTM D5087–02 (incorporated by reference, *see* § 63.14), ASTM D6266–00a (Reapproved 2017) (incorporated by reference, *see* § 63.14), or the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 . You may conduct panel testing on representative coatings as described in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018. The results of these panel testing procedures are in units of mass of VOC per volume of coating solids deposited and must be converted to a percent value for use in this subpart. If you panel test representative coatings, then you may convert the panel test result for each representative coating either to a unique percent capture efficiency for each coating grouped with that representative coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section; or to a composite percent capture efficiency for the group of coatings by using composite values for the group of coatings for the volume of coating solids deposited per volume of coating used and for the mass of VOC per volume of coating, and average values for the group of coatings for volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency for that coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density, and mass fraction VOC in Equations 4 through 6 of this section. Panel test results expressed in units of mass of VOC per volume of coating solids deposited must be converted to percent capture efficiency using Equation 4 of this section. An alternative for using panel test results expressed in units of mass of VOC per mass of coating solids deposited is presented in paragraph (e)(3) of this section.

* * * * *

(2) * * *

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings, including coating, i, kg VOC per kg coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in Section 9 of ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

(3) * * *

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings, including coating, i, kg VOC per kg coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in Section 9 of ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

(4) * * *

$W_{s,\,i}$ = Mass fraction of coating solids for coating, i, or average mass fraction of coating solids for the group of coatings including coating, i, kg coating solids per kg coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

* * * * *

■ 15. Section 63.3166 is amended by revising the introductory text and paragraphs (a)(1) through (4) and (b) introductory text, and adding paragraph (b)(4) to read as follows:

§ 63.3166 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by §§ 63.3160, 63.3163, or 63.3171. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) * * *

(1) Use EPA Method 1 or 1A of appendix A–1 to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use EPA Method 2, 2A, 2C, 2D, or 2F of appendix A–1, or 2G of appendix A–2 to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use EPA Method 3, 3A, or 3B of appendix A–2 to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. The ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]'' (incorporated by reference, *see* § 63.14), may be used as an alternative to EPA Method 3B.

(4) Use EPA Method 4 of appendix A–3 to 40 CFR part 60 to determine stack gas moisture.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60, as specified in paragraphs (b)(1) through (4) of this section. You must use the same method for both the inlet and outlet measurements.

* * * * *

(4) You may use EPA Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 16. Section 63.3167 is amended by revising the section heading, introductory text, and paragraph (f)(1) to read as follows:

§ 63.3167 How do I establish the add-on control device operating limits during performance tests?

During the performance tests required by §§ 63.3160, 63.3163, and 63.3171 (and described in §§ 63.3164 and 63.3166), you must establish the operating limits required by § 63.3093 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3093.

* * * * *

(f) * * *

(1) During the capture efficiency determination required by §§ 63.3160 and 63.3163 and described in §§ 63.3164 and 63.3165, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

* * * * *

■ 17. Section 63.3168 is amended by revising paragraphs (a)(4) through (7) and (c)(3) introductory text to read as follows:

§ 63.3168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) You must maintain the CPMS at all times in accordance with § 63.3100(d) and have readily available necessary parts for routine repairs of the monitoring equipment.

(5) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating in accordance with § 63.3100(d).

(6) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits. On and after [date 181 days after date of publication of final rule in the **Federal Register**], startups and shutdowns are normal operation for this source category. Emissions from these activities are to be included when determining if the standards specified in §§ 63.3090, 63.3091, 63.3092, 63.4292, and 63.4293 are being attained. You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Before [date 181 days after date of publication of final rule in the **Federal Register**], any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after [date 181 days after date of publication of final rule in the **Federal Register**], except for periods of required quality assurance or control activities, any period during which the CPMS fails to operate and record data continuously as required by paragraph (a)(1) of this section, or generates data that cannot be included in calculating averages as specified in paragraph (a)(7) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a)(1) through (6) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 18. Section 63.3171 is amended by revising paragraphs (a) and (e)(3) to read as follows:

§ 63.3171 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b); and you must meet the applicable operating limits and work practice standards in §§ 63.3093 and 63.3094.

* * * * *

(e) * * *

(3) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (e)(1) and (2) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass, and at 1.0 percent by mass or more for other compounds. If there is a disagreement between such information and results of a test conducted according to paragraph (e)(1) or (2) of this section, then the test method results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

■ 19. Section 63.3176 is amended by revising the definition of ''*Deviation*'' to read as follows:

§ 63.3176 What definitions apply to this subpart?

* * * * *

Deviation means:

(1) Before [date 181 days after date of publication of final rule in the **Federal Register**], any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard;

(ii) 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

(iii) Fails to meet any emission limit or 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; and

(2) On and after [date 181 days after date of publication of final rule in the **Federal Register**], any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(ii) 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.

* * * * *

■ 20. Table 2 to subpart IIII of part 63 is revised to read as follows:

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart IIII is also specified in § 63.3081.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart IIII.
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3176.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Preconstruction Review Applicability.	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3083 specifies the compliance dates.
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Section 63.3083 specifies the compliance dates.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3100(d) for general duty requirement.
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes	
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	SSMP	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart IIII does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	
63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3164 and 63.3166.

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.7(a)(2) except (a)(2)(i)–(viii)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.3160 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)–(4)	Performance Tests Required By the Administrator, Force Majeure.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(e)(1)	Conduct of performance tests	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3164.
§ 63.7(e)(2)–(4)	Conduct of performance tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.3168.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart IIII does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	Section 63.3168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.3168.
§ 63.8(c)(4)	CMS	No	Section 63.3168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply with the standards.
§ 63.89(c)(5)	COMS	No	Subpart IIII does not have opacity or visible emission standards.

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply with the standards.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting.	No	Section 63.3120 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart IIII does not require the use of continuous emissions monitoring systems (CEMS).
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart IIII does not require the use of CEMS.
§ 63.8(g)	Data Reduction	No	Sections 63.3167 and 63.3168 specify monitoring data reduction.
§ 63.9(a)	Notification Requirements	Yes.	
§ 63.9(b)(1)–(2)	Initial Notifications	Yes.	
§ 63.9(b)(4)(i), (b)(4)(v), (b)(5)	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.9(c)	Request for Extension of Compliance.	Yes.	
§ 63.9(d)	Special Compliance Requirement Notification.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart IIII does not have opacity or visible emission standards.
§ 63.9(g)	Additional Notifications When Using CMS.	No	Subpart IIII does not require the use of CEMS.
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	Section 63.3110 specifies the dates for submitting the notification of compliance status.
§ 63.9(h)(5)–(6)	Clarifications	Yes.	
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.3130 and 63.3131.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* 63.3130(g).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3130(g)(4) for a record of actions taken to minimize emissions during a deviation from the standard.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3130(g) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.10(b)(2)(vii)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart IIII does not require the use of CEMS.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.3130(g) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)		Yes.	
§ 63.10(c)(15)	Records Regarding the SSM Plan	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3120.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3120(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart IIII does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* 63.3120(a)(6).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart IIII does not require the use of CEMS.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3120(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart IIII does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart IIII does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 21. Table 5 to subpart IIII of part 63 is added to read as follows:

TABLE 5 TO SUBPART IIII OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7

TABLE 5 TO SUBPART IIII OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8

TABLE 5 TO SUBPART IIII OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

■ 22. Section 63.3900 is amended by revising paragraphs (a)(2)(i) and (ii), (b), and (c) to read as follows:

§ 63.3900 What are my general requirements for complying with this subpart?

(a) * * *

(2) * * *

(i) Before [date 181 days after publication of final rule in the **Federal Register**], the coating operation(s) must be in compliance with the applicable emission limit in § 63.3890 at all times except during periods of startup, shutdown, and malfunction. On or after [date 181 days after publication of final rule in the **Federal Register**] you must be in compliance with the applicable emission limits in § 63. 3890 and the operating limits in Table 1 of this subpart at all times.

(ii) Before [date 181 days after publication of final rule in the **Federal Register**], the coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3892 at all times except during periods of startup, shutdown, and malfunction, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j). On or after [date 181 days after publication of final rule in the **Federal Register**] the coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3892 at all times, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

* * * * *

(b) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after [date 181 days after date of publication of final rule in the **Federal Register**], at all times, the owner or operator 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 the owner or operator 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 that 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 affected source.

(c) Before [date 181 days after date of publication of final rule in the **Federal Register**], if your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the SSMP is not required.

■ 23. Section 63.3920 is amended by:
■ a. Revising paragraphs (a)(5) introductory text and (a)(5)(i) and (iv);
■ b. Adding paragraph (a)(5)(v);
■ c. Revising paragraphs (a)(6) introductory text and (a)(6)(iii);
■ d. Adding paragraph (a)(6)(iv);
■ e. Revising paragraphs (a)(7) introductory text, (a)(7)(iii), (a)(7)(vi) through (viii), (a)(7) (x), and (a)(7)(xiii) and (xiv);
■ f. Adding paragraph (a)(7)(xv);
■ g. Revising paragraph (c) introductory text; and
■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

§ 63.3920 What reports must I submit?

(a) * * *

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable organic HAP content requirements in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating used that deviated from the applicable emission limit, and each thinner and/or other additive, and cleaning material used that contained organic HAP, and the dates, time and duration each was used.

* * * * *

(iv) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation (including unknown cause, if applicable).

(v) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3890, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3900(b).

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

* * * * *

(iii) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation (including unknown cause, if applicable).

(iv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations and, for each deviation, the date, time, duration, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3890, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3900(b).

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.3890 or the applicable operating limit(s) in Table 1 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xii), (a)(7)(xiv), and (a)(7)(xv) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.3893(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xiii) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(vi) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of instances that the CPMS was inoperative, and for each instance, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3900(b).

(vii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8). On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of instances that the CPMS was out of control as specified in § 63.8(c)(7) and, for each instance, the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations from an operating limit in Table 1 to this subpart and, for each deviation, the date, time, and duration of each deviation; and the date, time, and duration of any bypass of the add-on control device.

* * * * *

(x) Before [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 1 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiii) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(7)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3900(b).

(B) The description required in paragraph (a)(7)(xiii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable).

(xiv) Before [date 181 days after date of publication of final rule in the **Federal Register**], statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from an emission limit in § 63.3890 or an operating limit in Table 1 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable) and the actions you took to minimize emissions in accordance with § 63.3900(b).

(xv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limit in § 63.3890 or operating limit in Table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3890 or operating limit in Table 1 to this subpart, and a description of the method used to estimate the emissions.

* * * * *

(c) *Startup, shutdown, malfunction reports.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must submit the results of the performance test required in §§ 63.3940 and 63.3950 following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For 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, you must submit the results of the performance test to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov//*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the XML schema listed on the EPA's ERT website.

(2) For 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, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (d)(1) of this section is CBI, you must submit a complete file 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, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (d)(1) of this section.

(e) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.3910(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed 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.

(f) On and after [date 181 days after date of publication of final rule in the **Federal Register**], or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become 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. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed 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.

(g) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. 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 caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a 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. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. 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.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX and 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 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. 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). If you intend to assert a claim of force majeure, 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 caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a 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. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. 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.

■ 24. Section 63.3930 is amended by revising paragraphs (j), (k) introductory text, and (k)(1) and (2) to read as follows:

§ 63.3930 What records must I keep?

* * * * *

(j) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must keep records of the date, time, and duration of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limitation reported under § 63.3920(a)(5) through (7), a record of the information specified in paragraphs (j)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.3920(a)(5) through (7).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.3920(a)(5) through (7).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3890 or any applicable operating limit in Table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.3920(a)(5) through (7).

(4) A record of actions taken to minimize emissions in accordance with § 63.3900(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(k) If you use the emission rate with add-on controls option, you must also keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a record of whether the deviation occurred during a period of startup, shutdown, or malfunction is not required.

(2) 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. On and after [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 are not required.

* * * * *

■ 25. Section 63.3931 is amended by revising paragraph (a) to read as follows:

§ 63.3931 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after [date 181 days after date of publication of final rule in the **Federal Register**], any records required to be maintained by this subpart that are in reports that were 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.

* * * * *

■ 26. Section 63.3941 is amended by revising paragraphs (a)(1)(i), (a)(4), (b)(1), the definition of ''Davg'' in Equation 1 of paragraph (b)(4), and paragraph (c) to read as follows:

§ 63.3941 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 5 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may rely on manufacturer's data that expressly states the organic HAP or volatile matter mass fraction emitted. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

(b) * * *

(1) *ASTM Method D2697–03 (2014) or D6093–97 (2016).* You may use ASTM D2697–03 (Reapproved 2014) (incorporated by reference, *see* § 63.14), or D6093–97 (Reapproved 2016) (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

* * * * *

(4) * * *

D_{avg} = Average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM D1475–13 (incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM D1475–13 test results and other information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM

D1475–13 (incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or specific gravity data for pure chemicals. If there is disagreement between ASTM D1475–13 test results and the supplier's or manufacturer's information, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 27. Section 63.3951 is amended by revising paragraph (c) to read as follows:

§ 63.3951 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(c) *Determine the density of each material.* Determine the density of each liquid coating, thinner and/or other additive, and cleaning material used during each month from test results using ASTM D1475–13 or ASTM D2111–10 (Reapproved 2015) (both incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If you are including powder coatings in the compliance determination, determine the density of powder coatings, using ASTM D5965–02 (2013) (incorporated by reference, *see* § 63.14), or information from the supplier. If there is disagreement between ASTM D1475–13 or ASTM D2111–10 (2015) test results and other such information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct. If you purchase materials or monitor consumption by weight instead of volume, you do not need to determine material density. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 1A, 1B, 1C, and 2 of this section.

* * * * *

■ 28. Section 63.3960 is amended by revising paragraphs (a)(1) and (4), (b)(1), and (c) introductory text to read as follows:

§ 63.3960 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3883. For magnet wire coating operations, you may, with approval, conduct a performance test of one representative magnet wire coating machine for each group of identical or very similar magnet wire coating machines.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3892 no later than 180 days after the applicable compliance date specified in § 63.3883.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3892 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publications of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after [date 2 years before date of publications of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.3967(b) and following the catalyst maintenance procedures in § 63.3967(b)(4), you are not required to conduct periodic testing control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3892 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section for your affected source on the date you complete the performance tests. For magnet wire coating operations, you must begin complying with the operating limits for all identical or very similar magnet wire coating machines on the date you complete the performance test of a representative magnet wire coating machine. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3961(j).

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for magnet wire coating operations and solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct according to the schedule in paragraphs (b)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892. For magnet wire coating operations, you may, with approval, conduct a performance test of a single magnet wire coating machine that represents identical or very similar magnet wire coating machines. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the compliance date specified in § 63.3883.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3892 no later than 180 days after the applicable compliance date specified in § 63.3883.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3892 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publications of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after [date 2 years before date of publications of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.3967(b) and following the catalyst maintenance procedures in § 63.3967(b)(4), you are not required to conduct periodic testing control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(c) You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system or control device. Any such previous tests must meet the conditions described in paragraphs (c)(1) through (3) of this section. You are still required to conduct a periodic performance test according to the applicable requirements of paragraphs (a)(1)(ii) and (b)(2)(ii) of this section.

* * * * *

■ 29. Section 63.3961 is amended by revising paragraph (j)(3) to read as follows:

§ 63.3961 How do I demonstrate initial compliance?

* * * * *

(j) * * *

(3) Determine the mass fraction of volatile organic matter for each coating, thinner and/or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)e, (incorporated by reference, *see* § 63.14), or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)e, or an approved alternative method, the test method results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 30. Section 63.3963 is amended by revising paragraph (f) and adding paragraph (i) to read as follows:

§ 63.3963 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) As part of each semiannual compliance report required in § 63.3920, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limits in § 63.3890, the operating limits in § 63.3892, and the work practice standards in § 63.3893, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893 during each compliance period.

* * * * *

(i) On and after [date 181 days after date of publication of final rule in the **Federal Register**], deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3900(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.3900(b).

* * * * *

■ 31. Section 63.3964 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.3964 What are the general requirements for performance tests?

(a) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.3960 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.3960 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or periods of nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 32. Section 63.3965 is amended by revising the introductory text to read as follows:

§ 63.3965 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of each performance test required by § 63.3960.

* * * * *

■ 33. Section 63.3966 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 63.3966 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3960. For each performance test, you must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour. If the source is a magnet wire coating machine, you may use the procedures in section 3.0 of appendix A to this subpart as an alternative.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60.

(1) Use EPA Method 25 of appendix A–7 to 40 CFR part 60 if the add-on

control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use EPA Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use EPA Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is not an oxidizer.

(4) You may use EPA Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 34. Section 63.3967 is amended by revising paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1) and (2), and (e)(1) through (4) to read as follows:

§ 63.3967 How do I establish the emission capture system and add-on control device operating limits during the performance test?

* * * * *

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) You must monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

* * * * *

(d) * * *

(1) During performance tests, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) * * *

(1) During performance tests, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During performance tests, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) For each performance test, use the data collected during the performance test to calculate and record the average pressure drop. This is the minimum operating limit for the dilute stream across the concentrator.

* * * * *

■ 35. Section 63.3968 is amended by revising paragraphs (a)(4), (5), and (7) and (c)(3) introductory text to read as follows:

§ 63.3968 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment. On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must maintain the CPMS at all times in accordance with § 63.3900(b) and keep necessary parts readily available for routine repairs of the monitoring equipment.

(5) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3900(b).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Before [date 181 days after date of publication of final rule in the **Federal Register**], any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements. On and after [date 181 days after date of publication of final rule in the **Federal Register**], except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (v) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 36. Section 63.3981 is amended by revising the definitions of ''*Deviation*'' and ''*Non-HAP coating*'' to read as follows:

§ 63.3981 What definitions apply to this subpart?

* * * * *

Deviation means:

(1) Before [date 181 days after date of publication in the **Federal Register**], any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to, any emission limit or operating limit or work practice standard;

(ii) 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

(iii) Fails to meet any emission limit, or 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; and

(2) On and after [date 181 days after date of publication of final rule in the **Federal Register**], any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(ii) 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.

* * * * *

Non-HAP coating means, for the purposes of this subpart, a coating that contains no more than 0.1 percent by mass of any individual organic HAP that is listed in Table 5 to this subpart and no more than 1.0 percent by mass for any other individual HAP.

* * * * *

■ 37. Table 2 to Subpart MMMM of part 63 is revised to read as follows:

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart MMMM is also specified in § 63.3881.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart MMMM.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3981.
§ 63.1(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3883 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	Section 63.3883 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3900(b) for general duty requirement.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.6(f)(1)	Compliance Except During Start-up, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance..	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart MMMM does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3964, 63.3965, and 63.3966.
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. Section 63.3960 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)–(4)	Performance Tests Required By the Administrator, Force Majeure.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(e)(1)	Conduct of Performance Tests	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* §§ 63.3964
§ 63.7(e)(2)–(4)	Conduct of Performance Tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.3968.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart MMMM does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.8(c)(1)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	Section 63.3968 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.3968.
§ 63.8(c)(4)	CMS	No	§ 63.3968 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart MMMM does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3968 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	§ 63.3920 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3967 and 63.3968 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/ Opacity Test.	No	Subpart MMMM does not have opacity or visible emissions standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.3910 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.3930 and 63.3931.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3930(j).

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes	§ 63.10(b)(2)(iii)
§ 63.10(b)(2) (iv)–(v)	Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3930(j) for a record of actions taken to minimize emissions duration a deviation from the standard.
§ 63.10(b)(2) (vi)	Recordkeeping for CMS Malfunctions.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3930(j) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2) (xii)	Records	Yes.	
§ 63.10(b)(2) (xiii)		No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2) (xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c) (1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c) (7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.3930(j) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the Startup, Shutdown, and Malfunction Plan.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3920.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3920(b) and (d).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart MMMM does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.3920 (a)(7) and (c).
§ 63.10(e) (1)–(2)	Additional CMS Reports	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.10(e) (3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3920 (b) specifies the contents of periodic compliance reports.
§ 63.10(e) (4)	COMS Data Reports	No	Subpart MMMMM does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/ Flares.	No	Subpart MMMM does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 38. Table 5 to Subpart MMMM of part 63 is added to read as follows:

TABLE 5 TO SUBPART MMMM OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9

TABLE 5 TO SUBPART MMMM OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

■ 39. Section 63.4168 is amended by adding paragraphs (c)(3)(i) through (vii) to read as follows:

§ 63.4168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

* * * * *

(c) * * *

(3) * * *

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor's reading.

(vi) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, either conduct calibration and validation checks or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

* * * * *

Subpart OOOO—National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

■ 40. Section 63.4371 is amended by revising the definition for ''*No organic HAP*'' to read as follows:

§ 63.4371 What definitions apply to this subpart?

* * * * *

No organic HAP means no organic HAP in Table 5 to this subpart is present at 0.1 percent by mass or more and no organic HAP not listed in Table 5 to this subpart is present at 1.0 percent by mass or more. The organic HAP content of a regulated material is determined according to § 63.4321(e)(1).

* * * * *

Subpart PPPP—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products

■ 41. Section 63.4492 is amended by revising paragraph (b) to read as follows:

§ 63.4492 What operating limits must I meet?

* * * * *

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4561(j), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance tests required in § 63.4560 according to the requirements in § 63.4567. You must meet the operating limits established during the most recent performance tests required in § 63.4560 at all times after you establish them.

* * * * *

■ 42. Section 63.4500 is amended by revising paragraphs (a)(2)(i) and (ii), (b), and (c) to read as follows:

§ 63.4500 What are my general requirements for complying with this subpart?

(a) * * *

(2) * * *

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.4490 at all times.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4492 at all times, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j).

* * * * *

(b) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after [date 181 days after date of publication of final rule in the **Federal Register**], at all times, the owner or operator 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 the owner or operator 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 that 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 affected source.

(c) Before [date 181 days after date of publication of final rule in the **Federal Register**], if your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the SSMP is not required.

■ 43. Section 63.4520 is amended by:

■ a. Revising paragraphs (a)(5) introductory text and (a)(5)(i) and (iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraph (a)(6) introductory text and (a)(6)(iii);

■ d. Adding paragraph (a)(6)(iv);

■ e. Revising paragraph (a)(7) introductory text, (a)(7)(iii), (a)(7)(vi) through (viii), (a)(7)(x), and (a)(7)(xiii) and (xiv);

■ f. Adding paragraph (a)(7)(xv);

■ g. Revising paragraph (c) introductory text; and

■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

§ 63.4520 What reports must I submit?

(a) * * *

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable organic HAP content requirements in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating used that deviated from the applicable emission limit, and each thinner and/or other additive, and cleaning material used that contained organic HAP, and the date, time, and duration each was used.

* * * * *

(iv) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation (including unknown cause, if applicable).

(v) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.4500(b).

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

* * * * *

(iii) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation (including unknown cause, if applicable).

(iv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations, date, time, duration, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.4500(b).

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.4490 or the applicable operating limit(s) in Table 1 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xii), (a)(7)(xiv), and (a)(7)(xv) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.4493(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xiii) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(vi) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of instances that the CPMS was inoperative, and for each instance, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative;

the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.4500(b).

(vii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8). On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of instances that the CPMS was out of control as specified in § 63.8(c)(7) and, for each instance, the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations from an operating limit in Table 1 to this subpart and, for each deviation, the date, time, and duration of each deviation; the date, time, and duration of any bypass of the add-on control device.

* * * * *

(x) Before [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 1 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiii) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(7)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.4500(b).

(B) The description required in paragraph (a)(7)(xiii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable.

(xiv) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from an emission limit in § 63.4490 or an operating limit in Table 1 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable) and the actions you took to minimize emissions in accordance with § 63.4500(b).

(xv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limit in § 63.4490 or operating limit in Table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4490 or operating limit in Table 1 to this subpart, and a description of the method used to estimate the emissions.

* * * * *

(c) *Startup, shutdown, malfunction reports.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must submit the results of the performance tests required in § 63.4560 following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For 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, you must submit the results of the performance test to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the XML schema listed on the EPA's ERT website.

(2) For 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, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (d)(1) of this section is CBI, you must submit a complete file 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, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (d)(1) of this section.

(e) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.4510(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed 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.

(f) On and after [date 181 days after date of publication of final rule in the **Federal Register**], or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*)). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become 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. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed 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.

(g) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. 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 caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a 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. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. 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.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX and 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 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. 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). If you intend to assert a claim of force majeure, 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 caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a 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. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. 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.

■ 44. Section 63.4530 is amended by revising paragraphs (h), (i) introductory text, and (i)(1) and (2) to read as follows:

§ 63.4530 What records must I keep?

* * * * *

(h) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must keep records of the date, time, and duration of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limitation reported under § 63.4520(a)(5) through (7), a record of the information specified in paragraphs (h)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.4520(a)(5) through (7).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.4520(a)(5) through (7).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4490 or any applicable operating limit in Table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.4520(a)(5) through (7).

(4) A record of actions taken to minimize emissions in accordance with § 63.4500(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(i) If you use the emission rate with add-on controls option, you must also keep the records specified in paragraphs (i)(1) through (8) of this section.

(1) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a record of whether the deviation occurred during a period of startup, shutdown, or malfunction is not required.

(2) 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. On and after [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 are not required.

* * * * *

■ 45. Section 63.4531 is amended by revising paragraph (a) to read as follows:

§ 63.4531 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after [date 181 days after date of publication of final rule in the **Federal Register**], any records required to be maintained by this subpart that are in reports that were 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.

* * * * *

■ 46. Section 63.4541 is amended by revising paragraphs (a)(1)(i) and (a)(2) and (4) to read as follows:

§ 63.4541 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 5 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(2) *EPA Method 24 (appendix A–7 to 40 CFR part 60).* For coatings, you may use EPA Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using EPA Method 24, you may use ASTM D2369–10 (Reapproved 2015)^{e} (incorporated by reference, *see* § 63.14). For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may use the alternative method contained in appendix A to this subpart, rather than EPA Method 24. You may use the volatile fraction that is emitted, as measured by the alternative method in appendix A to this subpart, as a substitute for the mass fraction of organic HAP.

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may rely on manufacturer's data that expressly states the organic HAP or volatile matter mass fraction emitted. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 47. Section 63.4551 is amended by revising paragraph (c) to read as follows:

§ 63.4551 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(c) *Determine the density of each material.* Determine the density of each liquid coating, thinner and/or other additive, and cleaning material used during each month from test results using ASTM D1475–13 or ASTM D2111–10 (Reapproved 2015) (both incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM D1475–13 or ASTM D2111–10 (2015) and other such information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct. If you purchase materials or monitor consumption by weight instead of volume, you do not need to determine material density. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 1A, 1B, 1C, and 2 of this section.

* * * * *

■ 48. Section 63.4560 is amended by revising the section heading and paragraphs (a)(1) and (4), (b)(1), and (c) introductory text to read as follows:

§ 63.4560 By what date must I conduct performance tests and initial compliance demonstrations?

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.4483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.4492 no later than 180 days after the applicable compliance date specified in § 63.4483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.4492 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publications of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after [date 2 years before date of publications of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.4567(b) and following the catalyst maintenance procedures in § 63.4567(b)(4), you are not required to conduct periodic control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section for your affected source on the date you complete the performance tests. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.4561(j).

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct according to the schedule in paragraphs (b)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the compliance date specified in § 63.4483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.4492 no later than 180 days after the applicable compliance date specified in § 63.4483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.4492 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publications of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after [date 2 years before date of publications of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.4567(b) and following the catalyst maintenance procedures in § 63.4567(b)(4), you are not required to conduct periodic control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(c) You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system or control device. Any such previous tests must meet the conditions described in paragraphs (c)(1) through (3) of this section. You are still required to conduct a periodic performance test according to the applicable requirements of paragraphs (a)(1)(ii) and (b)(2)(ii) of this section.

* * * * *

■ 49. Section 63.4561 is amended by revising paragraphs (j)(3) and (n) to read as follows:

§ 63.4561 How do I demonstrate initial compliance?

* * * * *

(j) * * *

(3) Determine the mass fraction of volatile organic matter for each coating, thinner and/or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)^e (incorporated by reference, *see* § 63.14), or an EPA approved alternative method. Alternatively, you may determine the volatile organic matter mass fraction using information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)^e, or an approved alternative method, the test method results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

(n) *Compliance demonstration.* The organic HAP emission rate for the initial compliance period, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit for each subcategory in § 63.4490 or the predominant activity or facility-specific emission limit allowed in § 63.4490(c). You must keep all records as required by §§ 63.4530 and 63.4531. As part of the notification of compliance status required by § 63.4510, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4490, and for control devices other than solvent recovery system using a liquid-liquid material balance, you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493.

■ 50. Section 63.4563 is amended by revising paragraph (f) and adding paragraph (g) to read as follows:

§ 63.4563 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) As part of each semiannual compliance report required in § 63.4520, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limits in § 63.4490, the operating limits in § 63.34492, and the work practice standards in § 63.4493, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4490, and you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493 during each compliance period.

(g) On and after [date 181 days after date of publication of final rule in the **Federal Register**], deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.4500(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.4500(b).

* * * * *

■ 51. Section 63.4564 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.4564 What are the general requirements for performance tests?

(a) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.4560 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.4560 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) Representative coating operation operating conditions. You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 52. Section 63.4565 is amended by revising the introductory text to read as follows:

§ 63.4565 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of each performance test required by § 63.4560.

* * * * *

■ 53. Section 63.4566 is amended by revising the introductory text and paragraphs (a)(1) through (4) and (b) to read as follows:

§ 63.4566 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.4560. For each performance test, you must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) * * *

(1) Use EPA Method 1 or 1A of appendix A–1 to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use EPA Method 2, 2A, 2C, 2D, or 2F of appendix A–1 to 40 CFR part 60, or 2G of appendix A–2 to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use EPA Method 3, 3A, or 3B of appendix A–2 to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use EPA Method 4 of appendix A–3 to 40 CFR part 60, to determine stack gas moisture.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60.

(1) Use EPA Method 25 of appendix A–7 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use EPA Method 25A of appendix A–7 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use EPA Method 25A of appendix A–7 if the add-on control device is not an oxidizer.

(4) You may use EPA Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 54. Section 63.4567 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (c)(1), (d)(1) and (2), and (e)(1) through (4) to read as follows:

§ 63.4567 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During performance tests required by § 63.4560 and described in §§ 63.4564, 63.4565, and 63.4566, you must establish the operating limits required by § 63.4492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4492.

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) You must monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance

tests, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

* * * * *

(c) * * *

(1) During performance tests, you must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

* * * * *

(d) * * *

(1) During performance tests, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) * * *

(1) During performance tests, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During each performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) For each performance test, use the data collected during the performance test to calculate and record the average pressure drop. This is the minimum operating limit for the dilute stream across the concentrator.

* * * * *

■ 55. Section 63.4568 is amended by revising paragraphs (a)(4), (5), and (7) and (c)(3) introductory text to read as follows:

§ 63.4568 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment. On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must maintain the CPMS at all times in accordance with § 63.4500(b) and keep necessary parts readily available for routine repairs of the monitoring equipment.

(5) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.4500(b).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Before [date 181 days after date of publication of final rule in the **Federal Register**], any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements. On and after [date 181 days after date of publication of final rule in the **Federal Register**], except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (v) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 56. Section 63.4581 is amended by revising the definitions of ''*Deviation*'' and ''*Non-HAP coating*'' to read as follows:

§ 63.4581 What definitions apply to this subpart?

* * * * *

Deviation means:

(1) Before [date 181 days after date of publication of final rule in the **Federal Register**], any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to, any emission limit or operating limit or work practice standard;

(ii) 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

(iii) Fails to meet any emission limit, or 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; and

(2) On and after [date 181 days after date of publication of final rule in the **Federal Register**], any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(ii) 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.

* * * * *

Non-HAP coating means, for the purposes of this subpart, a coating that contains no more than 0.1 percent by mass of any individual organic HAP that is listed in Table 5 to this subpart and no more than 1.0 percent by mass for any other individual HAP.

* * * * *

■ 57. Table 2 to Subpart PPPP of part 63 is revised to read as follows:

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart PPPP is also specified in § 63.4481.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart PPPP.
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.4581.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)\(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4483 specifies the compliance dates.
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Section 63.4483 specifies the compliance dates.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance	Yes before [date 181 days after date of publication of final rule in the **Federal Register**] No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.4500(b) for general duty requirement.
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	Startup, Shutdown, and Malfunction Plan (SSMP).	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart PPPP does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14), (16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4564, 63.4565, and 63.4566.

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.7(a)(2), except (a)(2)(i)–(viii)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.4560 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)–(4)	Performance Tests Required By the Administrator, Force Majeure.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(e)(1)	Conduct of Performance Tests	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.4500 and § 63.4564(a).
§ 63.7(e)(2)–(4)	Conduct of Performance Tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use Alternative Test Method.	Yes	Applies to all test methods except those of used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.4568.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart PPPP does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	Section 63.4568 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.4568.
§ 63.8(c)(4)	CMS	No	Section 63.4568 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart PPPP does not have opacity or visible emission standards.

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4568 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	Section 63.4520 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.8(g)	Data Reduction	No	Sections 63.4567 and 63.4568 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirments	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart PPPP does not have opacity or visible emission standards.
§ 63.9(g)	Additional Notifications When Using CMS.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.9(h)(1)–(3), (5)–(6)	Notification of Compliance Status	Yes	Section 63.4510 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.4530 and 63.4531.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.4530(h).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.4530(h)(4) for a record of actions taken to minimize emissions during a deviation from the standard.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.4530(h) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2)(vii)–(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1),(5)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.4530(h) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the Startup, Shutdown, and Malfunction Plan.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4520.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.4520(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart PPPP does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	*See* § 63.4520(a)(7).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.4520(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart PPPP does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart PPPP does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 58. Table 5 to Subpart PPPP of part 63 is added to read as follows:

TABLE 5 TO SUBPART PPPP OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6

TABLE 5 TO SUBPART PPPP OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4

TABLE 5 TO SUBPART PPPP OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Vinylidene chloride	75–35–4

Subpart RRRR—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture

■ 59. Section 63.4965 is amended by adding paragraphs (b)(1) through (3) to read as follows:

§ 63.4965 How do I determine the add-on control device emission destruction or removal efficiency?

* * * * *

(b) * * *

(1) Use EPA Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use EPA Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use EPA Method 25A if the add-on control device is not an oxidizer.

* * * * *

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Part IV

Federal Reserve System

12 CFR Parts 217, 225, 238, et al.

Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 217, 225, 238, 242, and 252

[Regulations Q, Y, LL, PP, and YY; Docket No. R–1658]

RIN 7100–AF 45

Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations

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

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a final rule that establishes risk-based categories for determining prudential standards for large U.S. banking organizations and foreign banking organizations, consistent with section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), and with the Home Owners' Loan Act. The final rule amends certain prudential standards, including standards relating to liquidity, risk management, stress testing, and single-counterparty credit limits, to reflect the risk profile of banking organizations under each category; applies prudential standards to certain large savings and loan holding companies using the same categories; makes corresponding changes to reporting forms; and makes additional modifications to the Board's company-run stress test and supervisory stress test rules, consistent with section 401 of EGRRCPA. Separately, the Office of the Comptroller of the Currency (OCC), the Board, and the Federal Deposit Insurance Corporation (FDIC) are adopting a final rule that revises the criteria for determining the applicability of regulatory capital and standardized liquidity requirements for large U.S. banking organizations and the U.S. intermediate holding companies of foreign banking organizations, using a risk-based category framework that is consistent with the framework described in this final rule. In addition, the Board and the FDIC are separately adopting a final rule that amends the resolution planning requirements under section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act using a risk-based category framework that is consistent with the framework described in this final rule.

DATES: The final rule is effective December 31, 2019.

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I. Introduction

In 2018 and 2019, the Board of Governors of the Federal Reserve System (Board) sought comment on two separate proposals to revise the framework for determining application of prudential standards to large banking organizations. First, on October 31, 2018, the Board sought comment on a proposal to revise the criteria for determining the application of prudential standards for U.S. banking organizations with $100 billion or more in total consolidated assets (domestic proposal).[1] Then, on April 8, 2019, the Board sought comment on a proposal to revise the criteria for determining the application of prudential standards for foreign banking organizations with total consolidated assets of $100 billion or more (foreign bank proposal, and, together with the domestic proposal, the proposals).[2]

[1] *See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm;* Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, 83 FR 61408 (Nov. 29, 2018).

[2] *See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190408a.htm;* Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies, 84 FR 21988 (May 15, 2019). Foreign banking organization means a foreign bank that operates a branch, agency, or commercial lending company subsidiary

The Board is finalizing the framework set forth under the proposals, with certain adjustments.[3] Specifically, the final rule revises the thresholds for application of prudential standards to large banking organizations and tailors the stringency of these standards based on the risk profiles of these firms. For U.S. banking organizations with $100 billion or more in total consolidated assets and foreign banking organizations with $100 billion or more in combined U.S. assets, the final rule establishes four categories of prudential standards. The most stringent set of standards (Category I) applies to U.S. global systemically important bank holding companies (U.S. GSIBs) based on the methodology in the Board's GSIB surcharge rule.[4] The remaining categories of standards apply to U.S. and foreign banking organizations based on indicators of a firm's size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. The framework set forth in the final rule will be used throughout the Board's prudential standards framework for large banking organizations.

In connection with a proposal on which the Board sought comment in January 2019, and consistent with EGRRCPA, this final rule also revises the minimum asset threshold for state member banks to conduct stress tests, revises the frequency by which state member banks would be required to conduct stress tests, and removes the adverse scenario from the list of required scenarios in the Board's stress test rules. This final rule also makes conforming changes to the Board's Policy Statement on the Scenario Design Framework for Stress Testing.[5]

Concurrently with this final rule, the Board, with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) (together, the agencies), is separately finalizing amendments to the agencies' regulatory capital rule and liquidity coverage ratio (LCR) rule, to introduce the same risk-based categories for tailoring standards (the interagency capital and liquidity final rule). The Board and FDIC are also finalizing changes to the resolution planning requirements (resolution plan final rule) that would adopt the same risk-based category framework.

II. Background

The financial crisis revealed significant weaknesses in resiliency and risk management in the financial sector, and demonstrated how the failure or distress of large, leveraged, and interconnected financial companies, including foreign banking organizations, could pose a threat to U.S. financial stability. To address weaknesses in the banking sector that were evident in the financial crisis, the Board strengthened prudential standards for large U.S. and foreign banking organizations. These enhanced standards included capital planning requirements; supervisory and company-run stress testing; liquidity risk management, stress testing, and buffer requirements; and single-counterparty credit limits. The Board's enhanced standards also implemented section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directed the Board to establish enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more.[6]

The Board has calibrated the stringency of requirements based on the size and complexity of a banking organization. Regulatory capital requirements, such as the GSIB capital surcharge, advanced approaches capital requirements, enhanced supplementary leverage ratio standards for U.S. GSIBs,[7] as well as the requirements under the capital plan rule,[8] are examples of this tailoring.[9] For foreign banking organizations, the Board tailored enhanced standards based, in part, on the size and complexity of a foreign banking organization's activities in the United States. The standards applicable to foreign banking organizations with a more limited U.S. presence largely rely on compliance with comparable home-country standards applied at the consolidated foreign parent level. In comparison, a foreign banking organization with a significant U.S. presence is subject to enhanced prudential standards and supervisory expectations that generally apply to its combined U.S. operations.[10]

The Board regularly reviews its regulatory framework to update and streamline regulatory requirements based on its experience implementing the rules and consistent with the statutory provisions that motivated the rules. These efforts include assessing the impact of regulations as well as considering alternatives that achieve regulatory objectives while improving the simplicity, transparency, and efficiency of the regulatory regime. The final rule is the result of this practice and reflects amendments to section 165 of the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[11]

Specifically, EGRRCPA amended section 165 of the Dodd-Frank Act by raising the threshold for general application of enhanced prudential standards. By taking into consideration a broader range of risk-based indicators and establishing four categories of standards, the final rule enhances the risk sensitivity and efficiency of the Board's regulatory framework. This approach better aligns the prudential standards applicable to large banking organizations with their risk profiles, taking into account the size and complexity of these banking organizations as well as their potential

in the United States; controls a bank in the United States; or controls an Edge corporation acquired after March 5, 1987; and any company of which the foreign bank is a subsidiary. *See* 12 CFR 211.21(o); 12 CFR 252.2. An agency is place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United States. A branch is a place of business of a foreign bank, located in any state, at which deposits are received and that is not an agency. *See* 12 CFR 211.21(b) and (e).

[3] On January 8, 2019, the Board also issued a proposal that would revise the stress testing requirements that were proposed in the domestic proposal for certain savings and loan holding companies. *See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190108a.htm;* Regulations LL and YY; Amendments to the Company-Run and Supervisory Stress Test Rules, 84 FR 4002 (Feb. 19, 2019). This final rule adopts those proposed changes, with certain adjustments.

[4] 12 CFR 217.403.

[5] *See* 12 CFR part 252, appendix A. The proposals would have revised the scope of applicability of the capital plan rule to apply to U.S. bank holding companies and U.S. intermediate holding companies with $100 billion or more in assets. In addition, the proposals would have revised the definition of large and noncomplex bank holding company to mean banking organizations subject to Category IV standards. The Board received a number of comments about its capital requirements. While the Board intends separately to propose modifications at a future date to capital planning requirements to incorporate the proposed risk-based categories, the final rule revises the scope of applicability of the Board's capital plan rule to apply to U.S. bank holding companies and U.S. intermediate holding companies with $100 billion or more in total assets. This final rule does not revise the definition of large and noncomplex bank holding company.

[6] 12 U.S.C. 5365.

[7] 12 CFR 217.11.

[8] 12 CFR 225.8.

[9] For example, prior to the adoption of this final rule, heightened capital requirements and full LCR requirements applied to firms with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure, including the requirement to calculate regulatory capital requirements using internal models and meeting a minimum supplementary leverage ratio requirement.

[10] The combined U.S. operations of a foreign banking organization include any U.S. subsidiaries (including any U.S. intermediate holding company), U.S. branches, and U.S. agencies.

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

to pose systemic risk. The final rule also maintains the fundamental reforms of the post-crisis framework and supports large banking organizations' resilience.

III. Overview of the Notices of Proposed Rulemaking and General Summary of Comments

As noted above, the Board sought comment on two separate proposals to establish a framework for determining the prudential standards that would apply to large banking organizations. Specifically, the proposals would have calibrated requirements for large banking organizations using four risk-based categories. Category I would have been based on the methodology in the Board's GSIB surcharge rule for identification of U.S. GSIBs, while Categories II through IV would have been based on measures of size and the levels of the following indicators: Cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure (together with size, the risk-based indicators). The applicable standards would have included supervisory and company-run stress testing; risk committee and risk management requirements; liquidity risk management, stress testing, and buffer requirements; and single-counterparty credit limits. Foreign banking organizations with $100 billion or more in total consolidated assets that do not meet the thresholds for application of Category II, Category III, or Category IV standards due to their limited U.S. presence would have been subject to requirements that largely defer to compliance with similar home-country standards at the consolidated level, with the exception of certain risk-management standards.

The proposals would have applied to U.S. banking organizations, foreign banking organizations, and certain large savings and loan holding companies using the same categories, with some differences particular to foreign banking organizations. Specifically, while the foreign bank proposal was largely consistent with the domestic proposal, it would have included certain adjustments to reflect the unique structures through which foreign banking organizations operate in the United States. As Category I standards under the domestic proposal would have applied only to U.S. GSIBs, foreign banking organizations would have been subject to standards in Categories II, III, or IV. The foreign bank proposal based the requirements of Categories II, III, and IV on the risk profile of a foreign banking organization's combined U.S. operations or U.S. intermediate holding company, as measured by the level of the same risk-based indicators as under the domestic proposal. However, in order to reflect the structural differences between foreign banking organizations' operations in the United States and domestic holding companies, the foreign bank proposal would have adjusted the measurement of cross-jurisdictional activity to exclude inter-affiliate liabilities and to recognize collateral in calculating inter-affiliate claims.

A. General Summary of Comments

The Board received approximately 50 comments on the proposals from U.S. and foreign banking organizations, public entities, public interest groups, private individuals, and other interested parties.[12] Many commenters supported the proposals as meaningfully tailoring prudential standards. A number of commenters, however, expressed the view that the proposed framework would not have sufficiently aligned the Board's prudential standards with the risk profile of a firm. For example, some commenters on the domestic proposal argued that banking organizations with total consolidated assets of less than $250 billion that do not meet a separate indicator of risk should not be subject to any enhanced standards. Some commenters on both proposals argued that proposed Category II standards were too stringent given the risks indicated by a high level of cross-jurisdictional activity. By contrast, other commenters argued that the proposals would weaken the safety and soundness of large banking organizations and increase risks to U.S. financial stability.

In response to the foreign bank proposal, commenters generally argued that the framework remained too stringent for the risks posed by foreign banking organizations. These commenters also argued that the risk-based indicators would disproportionately and unfairly result in the application of more stringent requirements to foreign banking organizations and, as a result, could disrupt the efficient functioning of financial markets and have negative effects on the U.S. economy. A number of these commenters argued that all risk-based indicators should exclude transactions with affiliates. By contrast, other commenters criticized the foreign bank proposal for reducing the stringency of standards and argued that the proposal understated the financial stability risks posed by foreign banking organizations.

While some commenters argued that the proposed changes went beyond the changes mandated by EGRRCPA, other commenters argued that the proposals did not fully implement EGRRCPA. In addition, several commenters argued that the proposal exceeded the Board's authority under section 165 of the Dodd-Frank Act, as amended by EGRRCPA, and that enhanced standards should not be included in Category IV standards or applied to savings and loan holding companies. Foreign banking organization commenters also argued that the proposals did not adequately take into consideration the principle of national treatment and equality of competitive opportunity, or the extent to which a foreign banking organization is subject on a consolidated basis to home country standards that are comparable to those that are applied to the firm in the United States. As discussed in this **SUPPLEMENTARY INFORMATION**, the final rule largely adopts the proposals, with certain adjustments in response to comments.

IV. Overview of Final Rule

The final rule establishes four categories to apply enhanced standards based on indicators designed to measure the risk profile of a banking organization.[13] The prudential standards are applicable to U.S. bank holding companies, certain savings and loan holding companies, and foreign banking organizations. For U.S. banking organizations and savings and loan holding companies that are not substantially engaged in insurance underwriting or commercial activities (covered savings and loan holding companies), these risk-based indicators are measured at the level of the top-tier holding company. For foreign banking organizations, these risk-based indicators are generally measured at the level of such firms' combined U.S. operations, except for supervisory and company-run stress testing requirements and certain single-counterparty credit limits, which are based on the risk profile of such firms' U.S. intermediate holding companies. In addition, as discussed in the interagency capital and liquidity final rule, regulatory capital and LCR requirements also are based on the risk profile of such firms' U.S. intermediate holding company.

[12] The Board received a number of comments that were not specifically responsive to the proposals. In particular, commenters recommended specific changes related to the Board's supervisory stress test scenarios and stress capital buffer proposal. These comments are not within the scope of this rulemaking, and therefore are not discussed separately in this **SUPPLEMENTARY INFORMATION**.

[13] The final rule also increases the threshold for general application of enhanced prudential standards from $50 billion to $100 billion in total consolidated assets.

Under the final rule, and unchanged from the domestic proposal, the most stringent prudential standards apply to U.S. GSIBs under Category I, as these banking organizations have the potential to pose the greatest risks to U.S. financial stability. Category I includes standards that reflect agreements reached by the Basel Committee on Banking Supervision (BCBS).[14] The existing post-financial crisis framework for U.S. GSIBs has resulted in significant gains in resiliency and risk management. The final rule accordingly maintains the most stringent standards for these firms. For example, U.S. GSIBs are subject to the GSIB capital surcharge and enhanced supplementary leverage ratio standards under the agencies' regulatory capital rule. U.S. GSIBs are also subject to the most stringent stress testing requirements, including annual company-run and supervisory stress testing requirements, as well as the most stringent liquidity standards, including liquidity risk management, stress testing and buffer requirements, as well as single-counterparty credit limits. U.S. GSIBs also will remain subject to the most comprehensive reporting requirements, including the FR Y–14 (capital assessments and stress testing) and daily FR 2052a (complex institution liquidity monitoring report) reporting requirements.

The second set of standards, Category II standards, apply to U.S. banking organizations and foreign banking organizations that have $700 billion or more in total assets,[15] or $75 billion or more in cross-jurisdictional activity, and that do not meet the criteria for Category I. As a result, these standards apply to banking organizations that are very large or have significant international activity. In addition to being subject to current enhanced risk-management requirements, banking organizations subject to Category II standards are subject to annual supervisory stress testing and annual company-run stress testing requirements. These banking organizations also are subject to the FR Y–14 and daily FR 2052a reporting requirements and the most stringent liquidity risk management, stress testing, and buffer requirements. Category II standards also include single-counterparty credit limits.

The third set of standards, Category III standards, apply to U.S. banking organizations and foreign banking organizations that have $250 billion or more in total assets, or $75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure, and that do not meet the criteria for Category I or II. In addition to being subject to current enhanced risk management requirements, a banking organization subject to Category III standards is subject to annual supervisory stress testing. However, under Category III, a banking organization is required to publicly disclose company-run test results every other year, rather than on an annual basis. These banking organizations are subject to the existing FR Y–14 reporting requirements and the most stringent liquidity risk management, stress testing, and buffer requirements. Under Category III standards, banking organizations are subject to daily or monthly FR 2052a reporting requirements, depending on their levels of weighted short-term wholesale funding. Category III standards also include single-counterparty credit limits.

The fourth category, Category IV standards, apply to U.S. banking organizations and foreign banking organizations that have at least $100 billion in total assets and that do not meet the criteria for Category I, II, or III, as applicable. Category IV standards align with the scale and complexity of these banking organizations but are less stringent than Category I, II, or III standards, which reflects the lower risk profile of these banking organizations relative to other banking organizations with $100 billion or more in total assets. For example, a banking organization subject to Category IV standards is subject to supervisory stress testing every other year, and is not required to conduct and publicly report the results of a company-run stress test. In addition, Category IV standards under the final rule continue to include enhanced liquidity standards, including liquidity risk management, stress testing and buffer requirements, but the final rule reduces the required minimum frequency of liquidity stress tests and granularity of certain liquidity risk-management requirements, commensurate with these firms' size and risk profile.

TABLE I—SCOPING CRITERIA FOR CATEGORIES OF PRUDENTIAL STANDARDS

Category	U.S. banking organizations †	Foreign banking organizations ‡
I	U.S. GSIBs	N/A.
II	$700 billion or more in total assets; or $75 billion or more in cross-jurisdictional activity; do not meet the criteria for Category I.	
III	$250 billion or more in total assets; or $75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure; do not meet the criteria for Category I or II.	
IV	$100 billion or more in total assets; do not meet the criteria for Category I, II, or III.	

† For a U.S. banking organization, the applicable category of prudential requirements is measured at the level of the top-tier holding company.
‡ For a foreign banking organization, the applicable category of prudential requirements is measured at the level of the combined U.S. operations or U.S. intermediate holding company of the foreign banking organization, depending on the particular standard.

V. Tailoring Framework

This section describes the framework for determining the application of prudential standards under this final rule, including a discussion of comments received on the proposed framework. The final rule largely establishes the framework set forth in the proposals and introduces four

[14] International standards reflect agreements reached by the BCBS as implemented in the United States through notice and comment rulemaking.

[15] Category I–IV standards apply to U.S. banking organizations with $100 billion or more in total consolidated assets and foreign banking organizations with $100 billion or more in combined U.S assets. As discussed above, the risk-based indicators are measured at the level of the top-tier holding company for U.S. banking organizations and at the level of combined U.S. operations or U.S. intermediate holding company for foreign banking organizations. Accordingly, for U.S. banking organizations, total assets means total consolidated assets. For foreign banking organizations, total assets means combined U.S. assets or total consolidated assets of the U.S. intermediate holding company, as applicable. Foreign banking organizations with $100 billion or more in total consolidated assets but with combined U.S. assets of less than $100 billion are subject to less stringent standards than required under Category I–IV. *See* section X of this **SUPPLEMENTARY INFORMATION.**

categories of prudential standards based on certain indicators of risk.

A. Indicators-Based Approach and the Alternative Scoring Methodology

The proposals would have established four categories of prudential standards that would have applied to U.S banking organizations with $100 billion or more in total consolidated assets and three categories of prudential standards that would have applied to foreign banking organizations with $100 billion or more in combined U.S. assets, based on the risk profile of their U.S. operations. The proposals generally would have relied on five risk-based indicators to determine a banking organization's applicable category of standards: Size, cross-jurisdictional activity, nonbank assets, off-balance sheet exposure, and weighted short-term wholesale funding. The proposals also sought comment on an alternative approach that would have used a single, comprehensive score based on the GSIB identification methodology, which is currently used to identify U.S. GSIBs and apply risk-based capital surcharges to these banking organizations (scoring methodology).[16] Under the alternative approach, a banking organization's size and score from the scoring methodology would have been used to determine which category of standards would apply to the banking organization.

Most commenters preferred the proposed indicators-based approach to the scoring methodology for determining the category of standards that would apply to large banking organizations. These commenters stated that the indicators-based approach would be more transparent, less complex, and more appropriate for applying categories of standards to banking organizations that are not U.S. GSIBs. Some commenters also asserted that if the Board used the scoring methodology, the Board should use only method 1. These commenters argued that method 2 would be inappropriate for determining applicable prudential standards on the basis that the denominators to method 2 are fixed, rather than being updated annually. Commenters also asserted that method 2 was calibrated specifically for U.S. GSIBs and, as a result, should not be used to determine prudential standards for other banking organizations.

The final rule adopts the indicators-based approach for applying Category II, III, or IV standards to a banking organization, as this approach provides a simple framework that supports the objectives of risk sensitivity and transparency. Many of the risk-based indicators are used in the agencies' existing regulatory frameworks or are reported by banking organizations. By using indicators that exist or are reported by most banking organizations subject to the final rule, the indicators-based approach limits additional reporting requirements. The Board will continue to use the scoring methodology to apply Category I standards to a U.S. GSIB and its depository institution subsidiaries.[17]

B. Dodd-Frank Act Statutory Framework

The Board received a number of comments discussing the scope of the changes required by EGRRCPA and the Board's authority for implementing certain parts of the proposal. Some commenters argued that EGRRCPA did not require the Board to make any changes to prudential standards applied to bank holding companies and foreign banking organizations with $100 billion or more in total consolidated assets. Conversely, other commenters argued that, in passing EGRRCPA, Congress intended for banking organizations with less than $250 billion in total consolidated assets to be exempt from most enhanced prudential standards under section 165 of the Dodd-Frank Act. These commenters argued that the proposal was not consistent with the revised criteria for applying enhanced prudential standards to bank holding companies with between $100 billion and $250 billion in total consolidated assets provided under section 165(a)(2)(C) of the Dodd-Frank Act. Specifically, commenters argued that EGRRCPA does not permit the Board to apply enhanced prudential standards to a bank holding company with $100 billion or more in total consolidated assets if the bank holding company does not meet a risk-based indicator other than size. Some commenters urged the Board to apply enhanced prudential standards on a case-by-case basis. Foreign banking organization commenters argued that the proposals did not give adequate regard to the principle of national treatment and equality of competitive opportunity. These commenters also argued that the proposals did not appropriately account for home country standards applied to the foreign parent or the capacity of the foreign parent to serve as a source of strength during times of stress. To provide greater recognition of home country standards and parental support, foreign banking organization commenters asserted that standards applied to their U.S. operations should be discounted relative to the standards applied to U.S. banking organizations.

Section 401 of EGRRCPA amended section 165 of the Dodd-Frank Act by generally raising the minimum asset threshold for application of prudential standards under section 165 from $50 billion in total consolidated assets to $250 billion in total consolidated assets.[18] However, the Board is required to apply certain enhanced prudential standards to bank holding companies with less than $250 billion in total consolidated assets. Specifically, the Board must conduct periodic supervisory stress tests of bank holding companies with total consolidated assets equal to or greater than $100 billion and less than $250 billion,[19] and must require publicly traded bank holding companies with $50 billion or more in total consolidated assets to establish a risk committee.[20] In addition, section 165(a)(2)(C) of the Dodd-Frank Act authorizes the Board to apply enhanced prudential standards to bank holding companies with $100 billion or more, but less than $250 billion, in total consolidated assets, provided that the Board (1) determines that application of the prudential standard is appropriate to prevent or mitigate risks to the financial stability of the United States, or to promote the safety and soundness of a bank holding company or bank holding companies; and (2) takes into consideration a bank holding company's or bank holding companies' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and any other risk-

[16] For more discussion relating to the scoring methodology, see the Board's final rule establishing the GSIB identification methodology. See Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (Aug. 14, 2015).

[17] *See* the interagency capital and liquidity final rule for application of Category I liquidity and capital standards to depository institution subsidiaries of U.S. GSIBs.

[18] A bank holding company designated as a GSIB under the Board's GSIB surcharge rule is subject to section 165, regardless of its size. *See* EGRRCPA 401(f). The term bank holding company as used in section 165 of the Dodd-Frank Act includes a foreign bank or company treated as a bank holding company for purposes of the Bank Holding Company Act, pursuant to section 8(a) of the International Banking Act of 1978. *See* 12 U.S.C. 3106(a); 12 U.S.C. 5311(a)(1). *See also* EGRRCPA 401(g) (regarding the Board's authority to establish enhanced prudential standards for foreign banking organizations with total consolidated assets of $100 billion or more).

[19] EGRRCPA 401(e). Pursuant to section 165(i)(1), the Board must conduct an annual stress test of bank holding companies described in section 165(a), and nonbank financial companies designated for supervision by the Board. 12 U.S.C. 5365(i)(1).

[20] 12 U.S.C. 5365(h)(2)(A).

related factors that the Board of Governors deems appropriate.[21] Section 165(a)(2)(C) permits the Board to apply any enhanced prudential standard or standards to an individual bank holding company and also permits the Board to apply enhanced prudential standards to a class of bank holding companies. Similarly, in tailoring the application of enhanced prudential standards, section 165 provides the Board with discretion in differentiating among companies on an individual basis or by category.[22] Finally, in applying section 165 to foreign banking organizations, the Dodd-Frank Act directs the Board to give due regard to the principle of national treatment and equality of competitive opportunity, and to take into account the extent to which the foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States.

The framework for application of enhanced prudential standards established in this final rule is consistent with section 165 of the Dodd-Frank Act, as amended by EGRRCPA. The framework takes into consideration banking organizations' risk profiles by applying prudential standards based on a banking organization's size, cross-jurisdictional activity, nonbank assets, off-balance sheet exposure, and weighted short-term wholesale funding. By evaluating the degree of each risk-based indicator's presence at various thresholds, the framework takes into account concentrations in various types of risk. As explained below, the risk-based indicators were selected to measure risks to both financial stability and safety and soundness, including a bank holding company or bank holding companies' capital structure, riskiness, complexity, and financial activities. Size is specifically mentioned in section 165(a)(2)(C)(ii). By establishing categories of standards that increase in stringency based on risk, the framework would ensure that the Board's prudential standards align with the risk profile of large banking organizations, supporting financial stability and promoting safety and soundness.

Category IV standards apply if a banking organization reaches an asset size threshold ($100 billion or more, as identified in the statute) but does not meet the thresholds for the other risk-based indicators. Size, as discussed below in section V.C.1 of this Supplementary Information, provides a measure of the extent to which stress at a banking organization's operations could be disruptive to U.S. markets and present significant risks to U.S. financial stability. Size also provides a measure of other types of risk, including managerial and operational complexity. The presence of one factor and absence of other factors suggests that prudential standards should apply to this group of banking organizations, but with reduced stringency to account for these organizations' reduced risk profiles. In addition, as discussed above, the Board must apply periodic supervisory stress testing and risk-committee requirements to institutions of this size.

Under the final rule, the standards applied to the U.S. operations of foreign banking organizations are consistent with the standards applicable to U.S. bank holding companies. The standards also take into account the extent to which a foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States. Specifically, the final rule would continue the Board's approach of tailoring the application of prudential standards to foreign banking organizations based on the foreign banking organization's U.S. risk profile. For a foreign banking organization with a smaller U.S. presence, the final rule would largely defer to the foreign banking organization's compliance with home-country capital and liquidity standards at the consolidated level, and impose certain risk-management requirements that are specific to the U.S. operations of a foreign banking organization. For foreign banking organizations with significant U.S. operations, the final rule would apply a framework that is consistent with the framework applied to U.S. banking organizations. By using consistent indicators of risk, the final rule facilitates a level playing field between foreign and U.S. banking organizations operating in the United States, in furtherance of the principle of national treatment and equality of competitive opportunity. Differences in the measurement of risk-based indicators and in the application of standards between foreign banking organizations and U.S. banking organizations takes into account structural differences in operation and organization of foreign banking organizations, as well as the standards to which the foreign banking organization on a consolidated basis may be subject. For example, the cross-jurisdictional activity indicator excludes liabilities of the combined U.S. operations, or U.S. intermediate holding company, to non-U.S. affiliates, which recognizes the benefit of the foreign banking organization providing support to its U.S. operations.

Commenters also raised questions over the Board's legal authority to apply prudential standards to covered savings and loan holding companies. These comments are addressed in Section VIII of this Supplementary Information.

C. Choice of Risk-Based Indicators

To determine the applicability of the Category II, III, or IV standards, the proposals considered a banking organization's level of five risk-based indicators: Size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure.

The Board received a number of comments on the choice of risk-based indicators and suggested modifications to the calculation of the indicators. Several commenters expressed the general view that the proposed risk-based indicators were poor measures of risk. A number of these commenters also asserted that the Board did not provide sufficient justification to support the proposed risk-based indicators, and requested that the Board provide additional explanation regarding its selection. Commenters also asserted that the framework should take into consideration additional risk-mitigating characteristics when measuring the proposed risk-based indicators. Several other commenters argued that the proposals are too complex and at odds with the stated objective of simplicity and burden reduction.

By considering the relative presence or absence of each risk-based indicator, the proposals would have provided a basis for assessing a banking organization's financial stability and safety and soundness risks. The risk-based indicators generally track measures already used in the Board's existing regulatory framework and that are already publicly reported by affected banking organizations.[23] Together with fixed, uniform thresholds, use of the

[21] 12 U.S.C. 5365(a)(2)(C). Section 401(a) of EGRRCPA amended section 165 of the Dodd-Frank Act to add section 165(a)(2)(C).

[22] 12 U.S.C. 5365(a)(2)(A).

[23] Bank holding companies, covered savings and loan holding companies, and U.S. intermediate holding companies subject to this final rule already report the information required to determine size, weighted short-term wholesale funding, and off-balance sheet exposure on the Banking Organization Systemic Risk Report (FR Y–15). Such bank holding companies and covered savings and loan holding companies also currently report the information needed to calculate cross-jurisdictional activity on the FR Y–15. Nonbank assets are reported on the FR Y–9 LP. This information is publicly available.

indicators supports the Board's objectives of transparency and efficiency, while providing for a framework that enhances the risk-sensitivity of the Board's enhanced prudential standards in a manner that continues to allow for comparability across banking organizations. Risk-mitigating factors, such as a banking organization's high-quality liquid assets and the presence of collateral to secure an exposure, are incorporated into the enhanced standards to which the banking organization is subject.

One commenter asserted that an analysis of the proposed risk-based indicators based on a measure of the expected capital shortfall of a banking organization in the event of a steep equity market decline (SRISK) [24] demonstrated that only the cross-jurisdictional activity and weighted short-term wholesale funding indicators were positively correlated with SRISK while the other indicators were not important drivers of a banking organization's SRISK measures. Because SRISK is conditioned on a steep decline in equity markets, it does not capture the probability of a financial crisis or an idiosyncratic failure of a large banking organization. In addition, SRISK does not directly capture other important aspects of systemic risk, such as a banking organization's interconnectedness with other financial market participants. For these reasons, SRISK alone is not a sufficient means of determining the risk-based indicators used in the tailoring framework.

Accordingly and as discussed below, the Board is adopting the risk-based indicators as proposed.

1. Size

The proposals would have considered size in tailoring the application of enhanced standards to a domestic banking organization or the U.S. operations of a foreign banking organization.

Some commenters argued that the proposals placed too much reliance on size for determining the prudential standards applicable to large banking organizations. These commenters generally criticized the size indicator as not sufficiently risk sensitive and a poor measure of systemic and safety and soundness risk, and suggested using risk-weighted assets, as determined under the regulatory capital rule, rather than total consolidated assets or combined U.S. assets, as applicable. Several commenters argued that the proposals did not adequately explain the relationship between size and safety and soundness risk, particularly risks associated with operational or control gaps.

Other commenters, however, supported the use of size as a measure of financial stability and safety and soundness risk. These commenters asserted that size serves as an indicator of credit provision that could be disrupted in times of stress, as well as the difficulties associated with the resolution of a large banking organization. These commenters also recommended placing additional emphasis on size for purposes of tailoring prudential standards, and expressed the view that the size indicator is less susceptible to manipulation through temporary adjustments at the end of a reporting period as compared to the other risk-based indicators.

Section 165 of the Dodd-Frank Act, as amended by EGRRCPA, establishes thresholds based on total consolidated assets.[25] Size is also among the factors that the Board must take into consideration in differentiating among banking organizations under section 165.[26] A banking organization's size provides a measure of the extent to which stress at its operations could be disruptive to U.S. markets and present significant risks to U.S. financial stability. A larger banking organization has a greater number of customers and counterparties that may be exposed to a risk of loss or suffer a disruption in the provision of services if the banking organization were to experience distress. In addition, size is an indicator of the extent to which asset fire sales by a banking organization could transmit distress to other market participants, given that a larger banking organization has more counterparties and more assets to sell. The failure of a large banking organization in the United States also may give rise to challenges that complicate the resolution process due to the size and diversity of its customer base and the number of counterparties that have exposure to the banking organization.

The complexities associated with size also can give rise to operational and control gaps that are a source of safety and soundness risk and could result in financial losses to a banking organization and adversely affect its customers. A larger banking organization operates on a larger scale, has a broader geographic scope, and generally will have more complex internal operations and business lines relative to a smaller banking organization. Growth of a banking organization, whether organic or through an acquisition, can require more robust risk management and development of enhanced systems or controls; for example, when managing the integration and maintenance of information technology platforms.

Size also can be a proxy for other measures of complexity, such as the amount of trading and available-for-sale securities, over-the-counter derivatives, and Level 3 assets.[27] Using Call Report data from the first quarter of 2005 to the first quarter of 2018, the correlation between a bank's total trading assets (a proxy of complexity) and its total assets (a proxy of size) is over 90 percent.[28] As was seen in the financial crisis, a more complex institution can be more opaque to the markets and may have difficulty managing its own risks, warranting stricter standards for both capital and liquidity.

Further, notwithstanding commenters' assertions that risk-weighted assets more appropriately capture risk, an approach that relies on risk-weighted assets as an indication of size would not align with the full scope of risks intended to be measured by the size indicator. Risk-weighted assets

[24] For the definition and measurement of SRISK, see Acharya, V., Engle, R. and Richardson, M., 2012. Capital shortfall: A new approach to ranking and regulating systemic risks. *American Economic Review, 102*(3), pp.59–64, and *see* Brownlees, Christian, and Robert F. Engle (2017). ''SRISK: A conditional capital shortfall measure of systemic risk.'' *The Review of Financial Studies* 30.1 (2016): 48–79.

[25] *See generally* 12 U.S.C. 5635 and EGRRCPA section 401.

[26] EGRRCPA § 401(a)(1)(B)(i) (codified at 12 U.S.C. 5365(a)(2)(A)). The Board has also previously used size as a simple measure of a banking organization's potential systemic impact and risk, and have differentiated the stringency of capital and liquidity requirements based on total consolidated asset size. For example, prior to the adoption of this final rule, advanced approaches capital requirements, the supplementary leverage ratio, and the LCR requirement generally applied to banking organizations with total consolidated assets of $250 billion or more or total consolidated on-balance sheet foreign exposure of $10 billion or more.

[27] The FR Y–15 and the GSIB surcharge methodology include three indicators of complexity that are used to determine a banking organization's systemic importance for purposes of the GSIB surcharge rule: Notional amount of OTC derivatives, Level 3 assets, and trading and AFS securities. In the second quarter of 2019, the average complexity score of a U.S. GSIB was 104.7, the average complexity score of a banking organization with assets of greater than $250 billion that is not a U.S. GSIB was 12.0, the average complexity score of a banking organization with assets of more than $100 billion but less than $250 billion was 3.5, and the average complexity score of a banking organization with assets of $50 billion but less than $100 billion was 0.4.

[28] *See* Amy G. Lorenc, and Jeffery Y. Zhang (2018) ''The Differential Impact of Bank Size on Systemic Risk,'' *Finance and Economics Discussion Series* 2018–066. Washington: Board of Governors of the Federal Reserve System, available at: *https://doi.org/10.17016/FEDS.2018.066.*

serve as an indication of credit risk and are not designed to capture the risks associated with managerial and operational complexity or the potential for distress at a large banking organization to cause widespread market disruptions.

Some commenters argued that the Board staff analysis cited in the proposals does not demonstrate that size is a useful indicator for determining the systemic importance of a banking organization.[29] Specifically, one commenter asserted that the Board staff analysis (1) uses a flawed measure of bank stress and (2) does not use robust standard errors or sufficiently control for additional macroeconomic factors that may contribute to a decline in economic activity. The Board staff paper employs the natural logarithm of deposits at failed banks as a proxy of bank stress. This choice was informed by Bernanke's 1983 article, which uses the level (namely, thousands of dollars) of deposits at failed banks to proxy bank stress.[30] The staff paper makes modifications to this stress proxy in order to account for the evolution of the banking sector over time. In contrast to Bernanke's study of a three-year period during the Great Depression, Board staff's analysis spans almost six decades. Expressing bank stress in levels (namely, trillions of dollars) would not account for the structural changes that have occurred in the banking sector and therefore would place a disproportionately greater weight on the bank failures that occurred during the 2008–2009 financial crisis. In addition to the analysis conducted by Board staff, other research has found evidence of a link between size and systemic risk.[31]

For the reasons discussed above, the Board is adopting the proposed measure of size for foreign and domestic banking organizations without change. Size is a simple and transparent measure of systemic importance and safety and soundness risk that can be readily understood and measured by banking organizations and market participants.

2. Cross-Jurisdictional Activity

The proposals would have included a measure of cross-jurisdictional activity as a risk-based indicator to determine the application of Category II standards. For U.S. banking organizations, the domestic proposal defined cross-jurisdictional activity as the sum of cross-jurisdictional claims and liabilities. In recognition of the structural differences between foreign and domestic banking organizations, the foreign bank proposal would have adjusted the measurement of cross-jurisdictional activity for foreign banking organizations to exclude inter-affiliate liabilities and certain collateralized inter-affiliate claims.[32] Specifically, claims on affiliates[33] would be reduced by the value of any financial collateral in a manner consistent with the Board's capital rule,[34] which permits, for example, banking organizations to recognize financial collateral when measuring the exposure amount of repurchase agreements and securities borrowing and securities lending transactions (together, repo-style transactions).[35] The foreign bank proposal sought comment on alternative adjustments to the cross-jurisdictional activity indicator for foreign banking organizations, and on other modifications to the components of the indicator.

Some commenters urged the Board to adopt the cross-jurisdictional activity indicator as proposed. By contrast, a number of commenters expressed concern regarding this aspect of the proposals. Several commenters opposed the inclusion of cross-jurisdictional liabilities in the cross-jurisdictional activity indicator. Some commenters argued that cross-jurisdictional liabilities are not a meaningful indicator of systemic risk as measured by SRISK.[36] Other commenters asserted that cross-jurisdictional liabilities can reflect sound risk management practices on the basis that cross-jurisdictional liabilities can indicate a diversity of funding sources and may be used to fund assets in the same foreign jurisdiction as the liabilities. These commenters suggested modifying the indicator to exclude the amount of any central bank deposits, other high-quality liquid assets (HQLA), or assets that receive a zero percent risk weight under the capital rule if those assets are held in the same jurisdiction as a cross-jurisdictional liability.

A number of commenters suggested revisions to the cross-jurisdictional activity indicator that would exclude specific types of claims or liabilities. For example, some commenters asserted that the measure of cross-jurisdictional

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[29] As described in the proposals, relative to a smaller banking organization, the failure of a large banking organization is more likely to have a destabilizing effect on the economy, even if the two banking organizations are engaged in similar business lines. Board staff estimated that stress at a single large banking organization with an assumed $100 billion in deposits would result in approximately a 107 percent decline in quarterly real U.S. GDP growth, whereas stress among five smaller banking organizations—each with an assumed $20 billion in deposits—would collectively result in roughly a 22 percent decline in quarterly real U.S. GDP growth. Both scenarios assume $100 billion in total deposits, but the negative impact is significantly greater when the larger banking organization fails. *Id.*

[30] Bernanke, Ben S. 1983. ''Nonmonetary Effects of the Financial Crisis in the Propagation of the Great Depression.'' The American Economic Review Vol. 73, No. 3, pp. 257–276.

[31] *See* Bremus, Buck, Russ and Schnitzer, *Big Banks and Macroeconomic Outcomes: Theory and Cross-Country Evidence of Granularity,* Journal of Money, Credit and Banking (July 2018). Allen, Bali, and Tang construct a measure of systemic risk (CATFIN) and demonstrate that the CATFIN of both large and small banking organizations can forecast macroeconomic declines, and found that the CATFIN of large banks can successfully forecast lower economic activity sooner than that of small banks. *See,* Allen, Bali, and Tang, *Does Systemic Risk in the Financial Sector Predict Future Economic Downturns?,* Review of Financial Studies, Vol. 25, Issue 10 (2012). Adrian and Brunnermeier constructed a measurement of systemic risk, designated CoVar, and show that firms with higher leverage, more maturity mismatch, and larger size are associated with larger systemic risk contributions. Specifically, the authors find that if a bank is 10 percent larger than another bank, then the size coefficient predicts that the larger bank's CoVaR per unit of capital is 27 basis points higher than the smaller bank's CoVaR. *See,* Adrian & Brunnermeir, *CoVar,* American Economic Review Journal, Vol. 106 No. 7 (July 2016)

In the same vein, research conducted by the Bank for International Settlements suggests that the ratio of one institution's systemic importance to a smaller institution's systemic importance is larger than the ratio of the respective sizes. *See* Tarashev, Borio and Tsatsaronis, *Attributing systemic risk to individual institutions,* BIS Working Paper No. 308 (2010). Relatedly, Dávila and Walther (2017) show that large banks take on more leverage relative to small banks in times of stress and government bailouts. *See* Dávila & Walther, *Does Size Matter? Bailouts with Large and Small Banks,* NBER Working Paper No. 24132 (2017).

[32] Specifically, the proposal would have excluded from the cross-jurisdictional activity indicator all inter-affiliate claims of a foreign banking organization secured by financial collateral, in accordance with the capital rule. Financial collateral is defined under the capital rule to mean collateral, (1) in the form of (i) cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee), (ii) gold bullion, (iii) long-term debt securities that are not resecuritization exposures and that are investment grade, (v) short-term debt instruments that are not resecuritization exposures and that are investment grade, (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded, or (vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and (2) in which the banking organization has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent). *See* 12 CFR 217.2.

[33] For the combined U.S. operations, the measure of cross-jurisdictional activity would exclude all claims between the foreign banking organization's U.S. domiciled affiliates, branches, and agencies to the extent such items are not already eliminated in consolidation. For the U.S. intermediate holding company, the measure of cross-jurisdictional activity would eliminate through consolidation all intercompany claims within the U.S. intermediate holding company.

[34] *See* 12 CFR 217.37.

[35] *See* the definition of repo-style transaction at 12 CFR 217.2.

[36] *See, supra* note 25.

activity should exclude any claim secured by HQLA or highly liquid assets [37] based on the nature of the collateral. Another commenter suggested excluding operating payables arising in the normal course of business, such as merchant payables. Other commenters suggested that the indicator exclude exposures to U.S. entities or projects that have a foreign guarantee or foreign insurer, unless the U.S. direct counterparty does not meet an appropriate measure of creditworthiness. Some commenters stated that investments in co-issued collateralized loan obligations should be excluded from the measure of cross-jurisdictional activity.

Commenters also suggested specific modifications to exclude exposures to certain types of counterparties. For example, several commenters suggested excluding exposures to sovereign, supranational, international, or regional organizations. Commenters asserted that these exposures do not present the same interconnectivity concerns as exposures with other types of counterparties and that claims on these types of entities present little or no credit risk. Another commenter suggested excluding transactions between a U.S. intermediate holding company and any affiliated U.S. branches of its parent foreign banking organization on the basis that the foreign bank proposal could disadvantage foreign banking organizations relative to U.S. banking organizations that eliminate such inter-affiliate transactions in consolidation. Similarly, one commenter suggested excluding transactions between a U.S. intermediate holding company and any U.S. branch of a foreign banking organization, whether affiliated or not, on the basis that such exposures are geographically domestic. Another commenter argued that exposures denominated in a foreign banking organization's home currency should be excluded. By contrast, one commenter argued that cross-jurisdictional activity should be revised to include derivatives, arguing that derivatives can be used as a substitute for other cross-jurisdictional transactions and, as a result, could be used to avoid the cross-jurisdictional activity threshold.

A number of commenters provided other suggestions for modifying the cross-jurisdictional activity indicator. In particular, some commenters recommended that the cross-jurisdictional activity indicator permit netting of claims and liabilities with a counterparty, with only the net claim or liability counting towards cross-jurisdictional activity. Several commenters suggested that the Board should consider excluding assets or transactions that satisfy another regulatory requirement. For example, these commenters argued that the Board should consider excluding transactions resulting in the purchase of or receipt of HQLA.

Other commenters suggested modifications to the criteria for determining when an exposure is considered cross-border. Specifically, commenters requested modifications to the calculation of cross-jurisdictional activity for claims supported by multiple guarantors or a combination of guarantors and collateral, for example, by not attributing the claim to the jurisdiction of the entity holding the claim, or collateral that bears the highest rating for reporting on an ultimate-risk basis. Commenters also requested that the Board presume that an exposure created through negotiations with agents or asset managers would generally create an exposure based in the jurisdiction of the location of the agent or manager for their undisclosed principal.

Foreign banking organization commenters generally supported the approach taken in the foreign bank proposal with respect to the treatment of inter-affiliate cross-jurisdictional liabilities, but stated that such an approach would not adequately address the differences between domestic and foreign banking organizations. These commenters urged the Board to eliminate the cross-jurisdictional activity indicator for foreign banking organizations or, alternatively, to eliminate all inter-affiliate transactions from measurement of the indicator.

Significant cross-border activity can indicate heightened interconnectivity and operational complexity. Cross-jurisdictional activity can add operational complexity in normal times and complicate the ability of a banking organization to undergo an orderly resolution in times of stress, generating both safety and soundness and financial stability risks. In addition, cross-jurisdictional activity may present increased challenges in resolution because there could be legal or regulatory restrictions that prevent the transfer of financial resources across borders where multiple jurisdictions and regulatory authorities are involved. Banking organizations with significant cross-jurisdictional activity may require more sophisticated risk management to appropriately address the complexity of those operations and the diversity of risks across all of the jurisdictions in which the banking organization provides financial services. For example, banking organizations with significant cross-border activities may require more sophisticated risk management related to raising funds in foreign financial markets, accessing international payment and settlement systems, and obtaining contingent sources of liquidity. In addition, the application of consistent prudential standards to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity in the United States as well as abroad.

Measuring cross-jurisdictional activity taking into account both assets and liabilities—instead of just assets—provides a broader gauge of the scale of cross-border operations and associated risks, as it includes both borrowing and lending activities outside of the United States.[38] While both borrowing and lending outside the United States may reflect prudent risk management, cross-jurisdictional activity of $75 billion or more indicates a level of organizational complexity that warrants more stringent prudential standards. With respect to commenters' suggestion to exclude central bank deposits, HQLA, or assets that receive a zero percent risk weight in the same jurisdiction as a cross-jurisdictional liability, such an exclusion would assume that all local liabilities are used to fund local claims. However, because foreign affiliates rely on local funding to different extents, such an exclusion could understate risk.[39]

The cross-jurisdictional activity indicator and threshold is intended to identify banking organizations with significant cross-border activities. Significant cross-border activities indicate a complexity of operations, even if some of those activities are low risk. Excluding additional types of claims or liabilities would reduce the transparency and simplicity of the

[37] *See* 12 CFR part 252.35(b)(3)(i) and 252.157(c)(7)(i).

[38] The BCBS recently amended its measurement of cross-border activity to more consistently reflect derivatives, and the Board anticipates it will separately propose changes to the FR Y–15 in a manner consistent with this change. Any related changes to the proposed cross-jurisdictional activity indicator would be updated through those separately proposed changes to the FR Y–15.

[39] Based on data collected from the Country Exposure Report (FFIEC 009), some affiliates of U.S. banking organizations relied extensively (75 percent) on local funding, while others collected almost no local funding. In particular, approximately 40 percent of bank-affiliate locations had no local lending. *See* Nicola Cetorelli & Linda Goldberg, ''Liquidity Management of U.S. Global Banks: Internal Capital Markets In the Great Recession'' (Fed. Reserve Bank of N.Y. Staff Report No. 511, 2012), available at *http://www.newyorkfed.org/research/staff_reports/sr511.pdf.*

tailoring framework. In addition, excluding certain types of assets based on the credit risk presented by the counterparty would be inconsistent with the purpose of the indicator as a measure of operational complexity and risk. The measure of cross-jurisdictional activity in the final rule therefore does not exclude specific types of claims or liabilities, or claims and liabilities with specific types of counterparties, other than the proposed treatment of inter-affiliate liabilities and certain inter-affiliate claims.

The proposals requested comment on possible additional changes to the components of the cross-jurisdictional activity indicator to potentially provide more consistent treatment across repurchase agreements and other securities financing transactions and with respect to the recognition of collateral across types of transactions. Commenters were generally supportive of these additional changes. The proposals also requested comment on the most appropriate way in which the proposed cross-jurisdictional activity indicator could account for the risk of transactions with a delayed settlement date. Several commenters argued that the indicator should exclude trade-date receivables or permit the use settlement-date accounting in calculating the cross-jurisdictional activity indicator. Commenters also supported measuring securities lending agreements and repurchase agreements on an ultimate-risk basis, rather than allocating these exposures based on the residence of the counterparty.

The final rule adopts the cross-jurisdictional activity indicator as proposed. Under the final rule, cross-jurisdictional activity is measured based on the instructions to the FR Y–15 and, by reference, to the FFIEC 009.[40] The Board is considering whether additional technical modifications and refinements to the cross-jurisdictional indicator would be appropriate, including with respect to the treatment of derivatives, and would seek comment on any changes to the indicator through a separate notice. Specifically, cross-jurisdictional claims are measured according to the instructions to the FFEIC 009. The instructions to the FFIEC 009 currently do not permit risk transfer for repurchase agreements and securities financing transactions and the Board is not altering the measurement of repurchase agreements and securities financing transactions under this final rule. This approach maintains consistency between the FR Y–15 and FFIEC 009. In addition, the cross-jurisdictional indicator maintains the use of trade-date accounting for purposes of the final rule. The preference for trade-date accounting is consistent with other reporting forms (*e.g.,* Consolidated Financial Statements for Holding Companies (FR Y–9C)) and with generally accepted accounting principles. With respect to netting, the instructions to the FFIEC 009 permit netting in limited circumstances. Allowing banking organizations to net all claims and liabilities with a counterparty could significantly understate an organization's level of international activity, even if such netting might be appropriate from the perspective of managing risk.

As noted above, the risk-based indicators generally track measures already used in the Board's existing regulatory framework and rely on information that banking organizations covered by the final rule already publicly report.[41] The Board believes that the measure of cross-jurisdictional activity as proposed (including the current reported measurements of repurchase agreements and securities financing transactions, trade date accounting items, and netting) along with the associated $75 billion threshold, appropriately captures the risks that warrant the application of Category II standards. The Board may consider future changes regarding the measurement of cross-jurisdictional activity indicator, and in doing so, would consider the comments described above and the impact of any future changes on the $75 billion threshold, and would draw from supervisory experience following the implementation of the final rule. Any such changes would be considered in the context of a separate rulemaking process.

3. Nonbank Assets

The proposals would have considered the level of nonbank assets in determining the applicable category of standards for foreign and domestic banking organizations. The amount of a banking organization's activities conducted through nonbank subsidiaries provides a measure of the organization's business and operational complexity. Specifically, banking organizations with significant activities in nonbank subsidiaries are more likely to have complex corporate structures and funding relationships. In addition, in certain cases nonbank subsidiaries are subject to less prudential regulation than regulated banking entities.

Under the proposals, nonbank assets would have been measured as the average amount of assets in consolidated nonbank subsidiaries and equity investments in unconsolidated nonbank subsidiaries.[42] The proposals would have excluded from this measure assets in a depository institution subsidiary, including a national bank, state member bank, state nonmember bank, federal savings association, federal savings bank, or state savings association subsidiary. The proposals also would have excluded assets of subsidiaries of these depository institutions, as well as assets held in each Edge or Agreement Corporation that is held through a bank subsidiary.[43]

A number of commenters argued that measuring nonbank assets based on the location of the assets in a nonbank subsidiary provides a poor measure of risk. Some commenters requested that the Board instead consider whether the assets relate to bank-permissible activities. Other commenters argued that activities conducted in nonbank subsidiaries can present less risk than banking activities. Specifically, some commenters argued that the proposed measure of nonbank assets was over-inclusive on the basis that many of the assets in nonbank subsidiaries would receive a zero percent risk weight under the Board's capital rule. In support of this position, commenters noted that retail brokerage firms often hold significant amounts of U.S. treasury securities.

[40] Specifically, cross-jurisdictional claims are measured on an ultimate-risk basis according to the instructions to the FFIEC 009. The instructions to the FFIEC 009 currently do not permit risk transfer for repurchase agreements and securities financing transactions. Foreign banking organizations must include in cross-jurisdictional claims only the net exposure (*i.e.,* net of collateral value subject to haircuts) of all secured transactions with affiliates to the extent that these claims are collateralized by financial collateral or excluded in consolidation (*see supra* note 35).

[41] *See* Form FR Y–15. This information is publicly available.

[42] For a foreign banking organization, nonbank assets would have been measured as the average amount of assets in consolidated U.S. nonbank subsidiaries and equity investments in unconsolidated U.S. nonbank subsidiaries.

[43] As noted above, the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP), Schedule PC–B, line item 17 is used to determine nonbank assets. For purposes of this item, nonbank companies exclude (i) all national banks, state member banks, state nonmember insured banks (including insured industrial banks), federal savings associations, federal savings banks, and thrift institutions (collectively for purposes of this item, ''depository institutions'') and (ii) except for an Edge or Agreement Corporation designated as ''Nonbanking'' in the box on the front page of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b), any subsidiary of a depository institution (for purposes of this item, ''depository institution subsidiary''). The revised FR Y–15 includes a line item that would automatically populate this information. *See* Section XV of this SUPPLEMENTARY INFORMATION.

Other commenters argued that the measure of nonbank assets is poorly developed and infrequently used and urged the Board to provide additional support for the inclusion of the indicator in the proposed framework. Specifically, commenters requested that the Board provide additional justification for nonbank assets as an indicator of complex corporate structures and funding relationships, as well as interconnectedness. A number of commenters argued that, to the extent the measure was intended to address risk in broker-dealer operations, it was unnecessary in light of existing supervision and regulation of broker-dealers and application of consolidated capital, stress testing, and risk-management requirements to the parent banking organization.

A number of commenters argued that, if retained, the nonbank assets indicator should be more risk-sensitive. Some commenters suggested excluding assets related to bank-permissible activities as well as certain types of nonbanking activities, such as retail brokerage activity. The commenter argued that, at a minimum, the nonbank assets indicator should exclude any nonbank subsidiary or asset that would be permissible for a bank to own. Other commenters suggested risk-weighting nonbank assets or deducting certain assets held by nonbank subsidiaries, such as on-balance sheet items that are deducted from regulatory capital under the capital rule (*e.g.,* deferred tax assets and goodwill).

Both the organizational structure of a banking organization and the activities it conducts contribute to its complexity and risk profile. Banking organizations with significant investments in nonbank subsidiaries are more likely to have complex corporate structures, inter-affiliate transactions, and funding relationships.[44] A banking organization's complexity is positively correlated with the impact of the organization's failure or distress.[45]

Market participants typically evaluate the financial condition of a banking organization on a consolidated basis. Therefore, the distress or failure of a nonbank subsidiary could be destabilizing to, and cause counterparties and creditors to lose confidence in, the banking organization as a whole. In addition, the distress or failure of banking organizations with significant nonbank assets has coincided with or increased the effects of significant disruptions to the stability of the U.S. financial system.[46]

Nonbank activities also may involve a broader range of risks than those associated with activities that are permissible for a depository institution to conduct directly and can increase interconnectedness with other financial firms, requiring sophisticated risk management and governance, including capital planning, stress testing, and liquidity risk management. For example, holding companies with significant nonbank assets are generally engaged in financial intermediation of a different nature (such as complex derivatives activities) than those typically conducted through a depository institution. If not adequately managed, the risks associated with nonbank activities could present significant safety and soundness concerns and increase financial stability risks. Nonbank assets also reflect the degree to which a banking organization may be engaged in activities through legal entities that are not subject to separate capital or liquidity requirements or to the direct regulation and supervision applicable to a regulated banking entity.

The nonbank assets indicator in the final rule provides a proxy for operational complexity and nonbanking activities without requiring banking organizations to track assets, income, or revenue based on whether a depository institution has the legal authority to hold such assets or conduct the related activities (legal authority). In addition, a depository institution's legal authority depends on the institution's charter and may be subject to additional interpretation over time.[47] A measure of nonbank assets based on legal authority would be costly and complex for banking organizations to implement, as they do not currently report this information based on legal authority. Defining nonbank assets based on the type of entity that owns them, rather than legal authority, reflects the risks associated with organizational complexity and nonbanking activities without imposing additional reporting burden as a result of implementing the final rule or monitoring any future changes to legal authority. In addition, as noted above, the nonbank assets indicator is designed, in part, to identify activities that a banking organization conducts in subsidiaries that may be subject to less prudential regulation, which makes relevant whether the asset or activity is located in a bank or nonbank subsidiary.

Commenters' suggested modifications to exclude certain types of assets or entities, or to risk-weight nonbank assets, would not align with the full scope of risks intended to be measured by the indicator, including risks associated with operational and managerial complexity. As noted in the discussion of size above, risk weights are primarily designed to measure credit risk, and can underestimate operational and other risks. Further, because nonbank entities are permitted to conduct a wide range of complex activities, assets held by those entities, including those that receive a zero percent risk weight, may be held in connection with complex activities, such as certain prime brokerage or other trading activities. Finally, as noted above, the nonbank assets measure is a relatively simple and transparent measure of a banking organization's nonbank activities, and exclusion of specific assets based on risk could undermine the simplicity and transparency of the indicator. For these reasons, the Board is finalizing the nonbank assets indicator, including the measurement of the indicator, as proposed.

4. Off-Balance Sheet Exposure

The proposals included off-balance sheet exposure as a risk-based indicator to complement the measure of size. Under the proposals, off-balance sheet exposure would have been measured as the difference between total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, and total assets.[48] Total exposure includes on-balance sheet assets plus certain off-

[44] *See* ''Evolution in Bank Complexity'', Nicola Cetorelli, James McAndrews and James Traina, Federal Reserve Bank of New York Economic Policy Review (December 2014) (discussing acquisitions of nonbanking subsidiaries and cross-industry acquisitions as contributing to growth in organization complexity), available at, *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412cet2.pdf.*

[45] *See* 80 FR 49082 (August 14, 2015). *See also* BCBS, ''Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement'' (paragraph 25), available at *http://www.bis.org/publ/bcbs255.htm.*

[46] An example includes the near-failure of Wachovia Corporation, a financial holding company with $162 billion in nonbank assets as of September 30, 2008.

[47] *See, e.g.,* ''OCC Releases Updated List of Permissible Activities for Nat'l Banks & Fed. Sav. Associations,'' OCC NR 17–121 (Oct. 13, 2017) (''The OCC may permit national banks and federal savings associations to conduct additional activities in the future''), available at *https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/pub-activities-permissible-for-nat-banks-fed-saving.pdf.*

[48] Total exposure would be reported for domestic holding companies on the FR Y–15, Schedule A, Line Item 5, and for foreign banking organizations' U.S. intermediate holding companies and combined U.S. operations on the FR Y–15, Schedule H, Line Item 5. Total off-balance sheet exposure would be reported as Line Item M5 on Schedules A and H.

balance sheet exposures, including derivative exposures and commitments.

A number of commenters argued that the proposed measure of off-balance sheet exposure was not sufficiently risk-sensitive. Specifically, these commenters argued that the exposures captured by the indicator were generally associated with low-risk activities or assets, such as securities lending activities. In addition, the commenters argued that the proposed measure could be harmful to economic activity by discouraging corporate financing through commitments and letters of credit. Commenters accordingly urged the Board to modify the proposed approach to measuring the risk of off-balance sheet exposures, for example, by using the combination of credit-conversion factors and risk weights applied under the Board's capital rule. Other commenters suggested that the Board exclude certain types of exposures from the indicator, such as letters of credit. Foreign banking organization commenters also argued that inter-affiliate transactions should be excluded from the measure, including any guarantee related to securities used to fund the foreign parent, and guarantees used to facilitate clearing of swaps and futures for affiliates that are not clearing members. With respect to guarantees used to facilitate clearing, commenters argued that these exposures are the result of mandatory clearing requirements and help support the central clearing objectives of the Dodd-Frank Act. Commenters expressed concern that including these exposures also could result in increased concentration of clearing through U.S. GSIBs. For the same reasons, commenters argued that potential future exposures associated with derivatives cleared by an affiliate also should be excluded from the measure of off-balance sheet exposure.

Off-balance sheet exposure complements the size indicator under the tailoring framework by taking into account additional risks that are not reflected in a banking organization's measure of on-balance sheet assets. This indicator provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services stemming from off-balance sheet activities. In addition, off-balance sheet exposure can lead to significant future draws on liquidity, particularly in times of stress. For example, during stress conditions vulnerabilities at individual banking organizations may be exacerbated by calls on commitments and the need to post collateral on derivatives exposures. The nature of these off-balance sheet risks for banking organizations of significant size and complexity can also lead to financial stability risk, as they can manifest rapidly and with less transparency and predictability to other market participants relative to on-balance sheet exposures.

Excluding certain off-balance sheet exposures would be inconsistent with the purpose of the indicator as a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services. Commitments and letters of credit, like extensions of credit through loans and other arrangements included on a banking organization's balance sheet, help support economic activity. Because corporations tend to increase their reliance on committed credit lines during periods of stress in the financial system, draws on these instruments can exacerbate the effects of stress conditions on banking organizations by increasing their on-balance sheet credit exposure.[49] During the 2008–2009 financial crisis, reliance on lines of credit was particularly pronounced among smaller and non-investment grade corporations, suggesting that an increase in these exposures may be associated with decreasing credit quality.[50]

Including guarantees to affiliates related to cleared derivative transactions in off-balance sheet exposure also is consistent with the overall purpose of the indicators. A clearing member that guarantees the performance of a clearing member client to a central counterparty is exposed to a risk of loss if the clearing member client were to fail to perform its obligations under a derivative contract. By including these exposures, the indicator identifies a source of interconnectedness with other financial market participants. These transactions can arise with respect not only to principal trades, but also because a client wishes to face a particular part of the organization, and thus excluding these guarantees could insufficiently measure risk and interconnectedness.[51]

As described above, the tailoring framework's risk-based indicators and uniform category thresholds balance risk-sensitivity with simplicity and transparency. Excluding certain types of exposures would not align with the full scope of risks intended to be measured by the indicator. The final rule, therefore, adopts the off-balance sheet exposure indicator as proposed.

5. Weighted Short-Term Wholesale Funding

The proposed weighted short-term wholesale funding indicator would have measured the amount of a banking organization's short-term funding obtained generally from wholesale counterparties. Reliance on short-term, generally uninsured funding from more sophisticated counterparties can make a banking organization more vulnerable to large-scale funding runs, generating both safety and soundness and financial stability risks. The proposals would have calculated this indicator as the weighted-average amount of funding obtained from wholesale counterparties, certain brokered deposits, and certain sweep deposits with a remaining maturity of one year or less, in the same manner as currently reported by holding companies on the FR Y–15.[52]

A number of commenters expressed concern regarding the use of the weighted short-term wholesale funding indicator in the tailoring framework. Several commenters argued that this indicator fails to take into account the extent to which the risk of short-term wholesale funding has been mitigated through existing regulatory requirements, such as the Board's enhanced prudential standards rule and, for foreign banking organizations, standardized liquidity requirements applicable to foreign banking organizations at the global consolidated level. Other commenters argued that the indicator is a poor measure of risk more

[49] During the financial crisis, increased reliance on credit lines began as early as 2007, and increased after September 2008. *See* Jose M. Berrospide, Ralf R. Meisenzahl, and Briana D. Sullivan, ''Credit Line Use and Availability in the Financial Crisis: The Importance of Hedging,'' available at: *https://www.federalreserve.gov/pubs/feds/2012/201227/201227pap.pdf.* Some have found evidence that an increase in draws on credit lines may have been motivated by concerns about the ability of financial institutions to provide credit in the future. *See* Victoria Ivashina & David Scharfstein, ''Bank Lending During the Financial Crisis of 2008,'' 97 J. Fin. Econ. 319–338 (2010). *See also,* William F. Bassett, Simon Gilchrist, Gretchen C. Weinbach, and Egon Zakrajšek, ''Improving Our Ability to Monitor Bank Lending'' chapter on *Risk Topography: Systemic Risk and Macro Modeling* (2014), Markus Brunnermeier and Arvind Krishnamurthy, ed., pp. 149–161, available at: *http://www.nber.org/chapters/c12554.*

[50] *Id.*

[51] In order to facilitate clearing generally, the capital rule more specifically addresses the counterparty credit risk associated with transactions that facilitate client clearing, such as a shorter margin period of risk, and provides incentives that are intended to help promote the central clearing objectives of the Dodd-Frank Act. *See* 12 CFR 217.35.

[52] Average amounts over a 12 month period in each category of short-term wholesale funding are weighted based on four residual maturity buckets; the asset class of collateral, if any, securing the funding; and liquidity characteristics of the counterparty. Weightings reflect risk of runs and attendant fire sales. *See* 12 CFR 217.406 and 80 FR 49082 (August 14, 2015).

broadly because it fails to consider the maturity of assets funded by short-term wholesale funding. Commenters argued that focusing on liabilities and failing to recognize the types of assets funded by the short-term funding would disproportionately affect foreign banking organizations' capital market activities and ability to compete in the United States.

The weighted short-term wholesale funding indicator is designed to serve as a broad measure of the risks associated with elevated, ongoing reliance on funding sources that are typically less stable than funding of a longer term or funding such as fully insured retail deposits, long-term debt, and equity. For example, a banking organization's weighted short-term wholesale funding level serves as an indication of the likelihood of funding disruptions in firm-specific or market-wide stress conditions. These funding disruptions may give rise to urgent liquidity needs and unexpected losses, which warrant heightened application of liquidity and regulatory capital requirements. A measure of funding dependency that reflects the various types or maturities of assets supported by short-term wholesale funding sources, as suggested by commenters, would add complexity to the indicator. For example, because a banking organization's funding is fungible, monitoring the relationship between specific liabilities and assets with various maturities is complex and imprecise. The LCR rule and the proposed net stable funding ratio (NSFR) rule therefore include methodologies for reflecting asset maturity in regulatory requirements that address the associated risks.[53]

Commenters suggested revisions to the weighted short-term wholesale funding indicator that would align with the treatment of certain assets and liabilities under the LCR rule. For example, some commenters recommended that the Board more closely align the indicator's measurement of weighted short-term wholesale funding with the outflow rates applied in the LCR rule, such as by excluding from the indicator funding that receives a zero percent outflow in the LCR rule or reducing the weights for secured funding to match the LCR rule's outflow treatment. Similarly, commenters suggested that the Board provide a lower weighting for brokered and sweep deposits from affiliates, consistent with the lower outflow rates assigned to these deposits in the LCR rule. Specifically, commenters argued that the weighted short-term wholesale funding indicator inappropriately applies the same 25 percent weight to sweep deposits sourced by both affiliates and non-affiliates alike and treats certain non-brokered sweep deposits in a manner inconsistent with the LCR rule.

The Board notes that when it established the weights applied in calculating and reporting short-term wholesale funding for purposes of the GSIB surcharge rule, the Board took into account the treatment of certain liabilities in the LCR rule, including comments received in connection with that rulemaking, and fire sale risks in key short-term wholesale funding markets. At that time, the Board noted that the LCR rule does not fully address the systemic risks of certain types and maturities of funding.[54] The Board continues to believe the current scope of the weighted short-term wholesale funding indicator, and the weights applied in the indicator, are appropriately calibrated for assessing the risk to broader financial stability as a result of a banking organization's reliance on short-term wholesale funding. The final rule treats brokered deposits as short-term wholesale funding because they are generally considered less stable than standard retail deposits. In order to preserve the relative simplicity of the short-term wholesale funding metric, the final rule does not distinguish between different types of brokered deposits and sweep deposits. Accordingly, all retail deposits identified as brokered deposits and brokered sweep deposits under the LCR rule are reported on the FR Y–15 as retail brokered deposits and sweeps for purpose of the weighted short-term wholesale funding indicator.

Commenters also suggested other specific revisions to the calculation of the weighted short-term wholesale funding indicator. Some commenters argued that the weighted short-term wholesale funding indicator should look to the original maturity of the funding relationship—instead of the remaining maturity—and exclude long-term debt that is maturing within the next year. Commenters also urged the Board to recognize certain offsets to reduce the amount of short-term wholesale funding included in the indicator. For example, a number of commenters suggested that the amount of short-term wholesale funding should be reduced by the amounts of HQLA held by the banking organization, cash deposited at the Federal Reserve by the banking organization, or any high-quality collateral used for secured funding. Commenters argued that this approach would better reflect the banking organization's liquidity risk because it would take into account assets that could be used to meet cash outflows as well as collateral that typically maintains its value and therefore would not contribute to asset fire sales. Commenters also argued that the measure of weighted short-term wholesale funding should exclude funding that the commenters viewed as stable, such as credit lines from Federal Home Loan Banks and Federal Reserve Banks, savings and checking accounts of wholesale customers, and brokered sweep deposits received from an affiliate.

The Board believes that the remaining maturity of a funding relationship, instead of original maturity as suggested by commenters, provides a more accurate measure of the banking organization's ongoing exposure to rollover risk. As discussed above, because a banking organization's inability to rollover funding may generate safety and soundness and financial stability risks, the Board believes that using remaining maturity is more appropriate given the purposes of the weighted short-term wholesale funding indicator. Further, the weighted short-term wholesale funding indicator takes into account the quality of collateral used in funding transactions by assigning different weights to average amounts of secured funding depending on its collateral. These weights reflect the liquidity characteristics of the collateral and the extent to which the quality of such assets may mitigate fire sale risk. Revising the weighted short-term wholesale funding indicator to permit certain assets to offset liabilities because the assets may be used to address cash outflows, as suggested by commenters, could understate financial stability and safety and soundness risks because such an approach assumes those assets are available to offset funding needs in stress conditions. Further, the indicator measures average short-term funding dependency over the prior 12 months, and a banking organization's current holdings of liquid assets may not address the financial stability and safety and soundness risks associated with its ongoing funding structure. Similarly, excluding a banking organization's general reliance

[53] For example, the LCR rule includes cash inflows from certain maturing assets and the proposed NSFR rule would use the maturity profile of a banking organization's assets to determine its required stable funding amount.

[54] For example, the LCR rule generally does not address maturities beyond 30 calendar days and offsets outflows from certain short-term funding transactions with inflows from certain short-term claims, which may not fully address the risk of asset fire sales.

on certain types of short-term funding from the indicator may result in an underestimation of a banking organization's potential to contribute to systemic risk because such funding may be unavailable for use in a time of stress. Thus, the final rule does not exclude short-term borrowing from the Federal Home Loan Banks, which may be secured by a broad range of collateral, and the final rule treats such short-term borrowing the same as borrowing from other wholesale counterparties in order to identify risk. More generally, incorporating commenters' recommended exclusions and offsets would reduce the transparency of the weighted short-term wholesale funding indicator, contrary to the Board's intention to provide a simplified measure to identify banking organizations with heightened risks. For these reasons, the final rule adopts the weighted short-term wholesale funding indicator without change.

Commenters also provided suggestions to reduce or eliminate inter-affiliate transactions from the measure of weighted short-term wholesale funding. Specifically, commenters provided suggestions to weight inter-affiliate transactions or net transactions with affiliates.

Including funding from affiliated sources provides an appropriate measure of the risks associated with a banking organization's general reliance on short-term wholesale funding. Banking organizations that generally rely on funding with a shorter contractual maturity from financial sector affiliates may present higher risks relative to those that generally rely on funding with a longer contractual term from outside of the financial sector. While funding relationships with affiliates may provide a banking organization with additional flexibility in the normal course of business, ongoing reliance on contractually short-term funding from affiliates may present risks that are similar to funding from nonaffiliated sources.

For the reasons discussed above, the final rule adopts the weighted short-term wholesale funding indicator as proposed.

D. Application of Standards Based on the Proposed Risk-Based Indicators

The proposed risk-based indicators would have determined the application of enhanced standards under Categories II, III, and IV. By taking into consideration the relative presence or absence of each risk-based indicator, the proposals would have provided a basis for assessing a banking organization's financial stability and safety and soundness risks for purposes of determining the applicability and stringency of these requirements.

Commenters criticized the methods by which the proposed risk-based indicators would determine the category of standards applicable to a banking organization. Certain commenters expressed concern that a banking organization could become subject to Category II or III standards without first being subject to Category IV standards, due to the disjunctive use of the size and other risk-based indicators under the proposals. One commenter suggested that the Board should instead apply a category of standards based on a weighted average of the risk-based indicators. Another commenter suggested that application of Category II standards should be based on other risk factors that they asserted are more relevant to the determination of whether a banking organization has a risk profile that would warrant Category II standards. Several commenters suggested that the application of standardized liquidity requirements should be based only on the levels of the weighted short-term wholesale funding indicator, and not based on the levels of any other risk-based indicator. One commenter criticized the proposals for not providing sufficient justification for the number of categories.

Because each indicator serves as a proxy for various types of risk, a high level in a single indicator warrants the application of more stringent standards to mitigate those risks and support the overall purposes of each category. The Board therefore does not believe using a weighted average of a banking organization's levels in the risk-based indicators, or the methods that would require a banking organization to exceed multiple risk-based indicators, is appropriate to determine the applicable category of standards. The final rule therefore adopts the use of the risk-based indicators, generally as proposed.

Certain commenters suggested that the Board reduce requirements under the foreign bank proposal to account for the application of standards at the foreign banking organization parent. The final rule takes into account the standards that already apply to the foreign banking organization parent. Specifically, the final rule tailors the application of enhanced standards based, in part, on the size and complexity of a foreign banking organization's activities in the United States. The standards applicable to foreign banking organizations with a more limited U.S. presence largely rely on compliance with comparable home-country standards applied at the consolidated foreign parent level. In this way, the final rule helps to mitigate the risk such banking organizations present to safety and soundness and U.S. financial stability, consistent with the overall objectives of the tailoring framework. Requiring foreign banking organizations to maintain financial resources in the jurisdictions in which they operate subsidiaries also reflects existing agreements reached by the BCBS and international regulatory practice.

E. Calibration of Thresholds and Indexing

The proposals would have employed fixed nominal thresholds to assign the categories of standards that apply to banking organizations. In particular, the proposals included total asset thresholds of $100 billion, $250 billion, and $700 billion, along with $75 billion thresholds for each of the other risk-based indicators. The foreign bank proposal also included a $50 billion weighted short-term wholesale funding threshold for U.S. and foreign banking organizations subject to Category IV standards.

Some commenters expressed concerns regarding the use of $75 billion thresholds for cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. In particular, these commenters stated that the $75 billion thresholds were poorly justified and requested additional information as to why the Board chose these thresholds. A number of these commenters also supported the use of a higher threshold for these indicators. Other commenters urged the Board to retain the discretion to adjust the thresholds on a case-by-case basis, such as in the case of a temporary excess driven by customer transactions or for certain transactions that would result in a sudden change in categorization.

The $75 billion thresholds are based on the degree of concentration of a particular risk-based indicator for each banking organization relative to total assets. That is, a threshold of $75 billion represents at least 30 percent and as much as 75 percent of total assets for banking organizations with between $100 billion and $250 billion in total assets.[55] Thus, for banking organizations

[55] The $100 billion and $250 billion size thresholds are consistent with those set forth in section 165 of the Dodd-Frank Act, as amended by section 401 of EGRRCPA. Section 165 of the Dodd-Frank Act requires the application of enhanced prudential standards to bank holding companies and foreign banking organizations with $250 billion or more in total consolidated assets. Section 165

Continued

that do not meet the size threshold for Category III standards, other risks represented by the risk-based indicators would be substantial, while banking organizations with $75 billion in cross-jurisdictional activity have a substantial international footprint. In addition, setting the thresholds at $75 billion ensures that banking organizations that account for the vast majority of the total amount of each risk-based indicator among banking organizations with $100 billion or more in total assets are subject to prudential standards that account for the associated risks of these risk-based indicators, which facilitates consistent treatment of these risks across banking organizations. The use of a single threshold also supports the overall simplicity of the framework. Moreover, a framework that permits the Board to adjust thresholds on a temporary basis would not support the objectives of predictability and transparency.

One commenter stated that the Board should not use the $700 billion size threshold as the basis for applying Category II standards, arguing that the Board had not provided sufficient justification for that threshold. However, as noted in the proposals, historical examples suggest that the distress or failure of a banking organization of this size would have systemic impacts. For example, during the financial crisis significant losses at Wachovia Corporation, which had $780 billion in total assets at the time of being acquired in distress, had a destabilizing effect on the financial system. The $700 billion size threshold under Category II addresses the substantial risks that can arise from the activities and potential distress of very large banking organizations that are not U.S. GSIBs. Commenters did not request additional explanation regarding the $100 billion and $250 billion total asset thresholds. As noted above, these size thresholds are consistent with those set forth in section 165 of the Dodd-Frank Act, as amended by section 401 of EGRRCPA.

Several commenters requested that the Board index certain of the proposed thresholds based on changes in various measures, such as growth in domestic banking assets, inflation, gross domestic product growth or other measures of economic growth, or share of the indicator held by the banking organization in comparison to the amount of the indicator held in the financial system. These commenters requested that the thresholds be automatically adjusted on an annual basis based on changes in the relevant index, by operation of a provision in the rule. Other commenters expressed concern that indexing can have pro-cyclical effects.

As commenters noted, the $100 billion and $250 billion size thresholds prescribed in the Dodd-Frank Act, as amended by EGRRCPA, are fixed by statute.[56] Indexing the other thresholds would add complexity, a degree of uncertainty, and potential discontinuity to the framework. The Board acknowledges the thresholds should be reevaluated over time to ensure they appropriately reflect growth on a macroeconomic and industry-wide basis, as well as to continue to support the objectives of this rule. The Board plans to accomplish this by periodically reviewing the thresholds and proposing changes through the notice and comment process, rather than including an automatic adjustment of thresholds based on indexing.

F. The Risk-Based Categories

1. Category I

Under the proposals, Category I standards would have applied to U.S. GSIBs, which are banking organizations that have a U.S. GSIB score of 130 or more under the scoring methodology.[57] Category I standards would have included the most stringent standards relative to those imposed under the other categories to reflect the heightened risks that banking organizations subject to Category I standards pose to U.S. financial stability. The requirements applicable to U.S. GSIBs would have largely remained unchanged from existing requirements.

The Board did not receive comments regarding the criteria for application of Category I standards to U.S. GSIBs. Several commenters expressed concern regarding applying more stringent standards than Category II standards to foreign banking organizations, even if the risk profile of a foreign banking organization's U.S. operations were comparable to a U.S. GSIB. The final rule adopts the scoping criteria for Category I, and the prudential standards that apply under this category, as proposed.[58] U.S. GSIBs have the potential to pose the greatest risks to U.S. financial stability due to their systemic risk profile and, accordingly, should be subject to the most stringent prudential standards. The treatment for U.S. GSIBs aligns with international efforts to address the financial stability risks posed by the largest, most interconnected financial institutions. In 2011, the BCBS adopted a framework to identify global systemically important banking organizations and assess their systemic importance.[59] This framework generally applies to the global consolidated parent organization, and does not apply separately to subsidiaries and operations in host jurisdictions. Consistent with this approach, the U.S. operations of foreign banking organizations are not subject to Category I standards under the final rule. The Board will continue to monitor the systemic risk profiles of foreign banking organization's U.S. operations, and consider whether application of more stringent requirements is appropriate to address any increases in their size, complexity or overall systemic risk profile.

2. Category II

The proposals would have applied Category II standards to banking organizations with $700 billion in total assets or $100 billion or more in total assets and $75 billion or more in cross-jurisdictional activity. The proposals also sought comment on whether Category II standards should apply based on a banking organization's weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure, using a higher threshold than the $75 billion threshold that would have applied for Category III standards.

Some commenters argued that cross-jurisdictional activity should be an indicator for Category III standards rather than Category II standards. Another commenter expressed concern

authorizes the Board to apply enhanced prudential standards to such banking organizations with assets between $100 billion and $250 billion, taking into consideration the firm's capital structure, riskiness, complexity, financial activities (including those of subsidiaries), size, and any other risk-related factors the Board deems appropriate. 12 U.S.C. 5365.

[56] Section 165 of the Dodd-Frank Act does provide the Board with discretion to establish a minimum asset threshold above the statutory thresholds for some, but not all, enhanced prudential standards. However, the Board may only utilize this discretion pursuant to a recommendation by the Financial Stability Oversight Council in accordance with section 115 of the Dodd-Frank Act. This authority is not available for stress testing and risk committee requirements. 12 U.S.C. 5365(a)(2)(B).

[57] As noted above, the foreign bank proposal would not have applied Category I standards to the U.S. operations of foreign banking organizations because the Board's GSIB surcharge rule would not identify a foreign banking organization or a U.S. intermediate holding company as a U.S. GSIB. The foreign bank proposal sought comment on the advantages and disadvantages of applying standards that are more stringent than Category II standards to the U.S. operations of foreign banking organizations with a comparable risk profile to U.S. GSIBs. Several commenters expressed general opposition to such an approach.

[58] Under the final rule, a U.S. banking organization that meets the criteria for Categories I, II, or III standards is required to calculate its method 1 GSIB score annually.

[59] *See* BCBS, ''Global systemically important banks: Assessment methodology and the additional loss absorbency requirement'' (November 4, 2011).

with expanding the criteria for Category II standards to include any of the other risk-based indicators used for purposes of Category III standards. Some commenters also argued that the proposed Category II standards were too stringent relative to the risks indicated by a high level of cross-jurisdictional activity or very large size. Other commenters argued that application of Category II standards to foreign banking organizations was unnecessary because these banking organizations are already subject to BCBS-based standards on a global, consolidated basis by their home-country regulators. Another commenter requested that the Board provide greater differentiation between Category I and Category II standards.

As discussed above, banking organizations that engage in significant cross-jurisdictional activity present complexities that support the application of more stringent standards relative to those that would apply under Category III. In addition, application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity among U.S. banking organizations and their foreign peers, while applying standards that appropriately reflect the risk profiles of banking organizations that meet the thresholds for Category III standards. As noted above, this approach is consistent with international regulatory practice.

Accordingly, and consistent with the proposal, the final rule applies Category II standards to banking organizations with $700 billion in total consolidated assets or cross-jurisdictional activity of $75 billion or more.

3. Category III

Under the proposals, Category III standards would have applied to banking organizations that are not subject to Category I or II standards and that have total assets of $250 billion or more. They also would have applied to banking organizations with $100 billion or more in total assets and $75 billion or more in nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure.

A number of commenters supported the proposed scoping criteria for Category III, as well as the standards that would have applied under this category. Several other commenters requested certain changes to the specific thresholds and indicators used to determine which banking organizations would have been subject to Category III standards, as well as the prudential standards that would have applied under this category. Comments regarding the prudential standards that would have applied under Category III are discussed in section VI.C of this Supplementary Information.

The final rule generally adopts the scoping criteria for Category III, and the prudential standards that apply under this Category, as proposed.

4. Category IV

Under the proposals, Category IV standards would have applied to banking organizations with $100 billion or more in total assets that do not meet the thresholds for any other category. A number of commenters argued that no heightened prudential standards should apply to banking organizations that meet the criteria for Category IV because such banking organizations are not as large or complex as banking organizations that would be subject to more stringent categories of standards under the proposals. Alternatively, these commenters suggested that the threshold for application of Category IV standards should be raised from $100 billion to $250 billion in total assets.[60] In contrast, one commenter argued that the Board should not reduce the requirements applicable to banking organizations that would be subject to Category IV until current requirements have been in effect for a full business cycle.

The final rule includes Category IV because banking organizations subject to this category of standards generally have greater scale and operational and managerial complexity relative to smaller banking organizations and, as a result, present heightened safety and soundness risks. In addition, the failure of one or more banking organizations subject to Category IV standards could have a more significant negative effect on economic growth and employment relative to the failure or distress of smaller banking organizations.[61] The final rule generally adopts the scoping criteria for Category IV, and the prudential standards that apply under this Category, as proposed.

G. Specific Aspects of the Foreign Bank Proposal—Treatment of Inter-Affiliate Transactions

Except for cross-jurisdictional activity, which would have excluded liabilities to and certain collateralized claims on non-U.S. affiliates, the proposed risk-based indicators would have included transactions between a foreign banking organization's combined U.S. operations and non-U.S. affiliates.[62] Similarly, and as noted above, except for cross-jurisdictional activity, a U.S. intermediate holding company would have included transactions with affiliates outside the U.S. intermediate holding company when reporting its risk-based indicators.

Most commenters on the foreign bank proposal supported the proposed exclusion of certain inter-affiliate transactions in the cross-jurisdictional activity indicator, and argued further that all risk-based indicators should exclude transactions with affiliates. These commenters asserted that including inter-affiliate transactions disadvantaged foreign banking organizations relative to U.S. peers and argued that the rationale for excluding certain inter-affiliate claims from the cross-jurisdictional activity measure applied equally to all other risk-based indicators. A number of commenters argued that including inter-affiliate transactions would overstate the risks to a foreign banking organization's U.S. operations or U.S. intermediate holding company because inter-affiliate transactions may be used to manage risks of the foreign banking organization's global operations. Similarly, some commenters asserted that the inclusion of inter-affiliate transactions was inconsistent with risks that the risk-based indicators are intended to capture. Other commenters argued that any risks associated with inter-affiliate transactions were appropriately managed through the supervisory process and existing regulatory requirements, and expressed concern that including inter-affiliate transactions could encourage ring fencing in other jurisdictions. Some commenters suggested that, if the Board does not exclude inter-affiliate transactions entirely, the Board should weight inter-affiliate transactions at no more than 50 percent. By contrast, one commenter argued that inter-affiliate transactions should be included in the risk-based indicators, arguing that the purpose of the Board's U.S. intermediate holding company framework is that resources located outside the organization may not be reliably available during periods of financial stress.

Tailoring standards based on the risk profile of the U.S. intermediate holding company or combined U.S. operations of a foreign banking organization, as applicable, requires measurement of risk-based indicators at a sub-

[60] Commenters also argued that the Board had not sufficiently justified the application of enhanced prudential standards to firms subject to Category IV standards. These comments are addressed in section VI.D. of this **SUPPLEMENTARY INFORMATION**.

[61] *See* section V.C.1. of this **SUPPLEMENTARY INFORMATION**.

[62] *See supra* note 34.

consolidated level rather than at the global parent. As a result, calculation of the risk-based indicators must distinguish between such a banking organization's U.S. operations or U.S. intermediate holding company, as applicable, and affiliates outside of the United States, including by providing a treatment for inter-affiliate transactions that would otherwise be eliminated in consolidation at the global parent. Including inter-affiliate transactions in the calculation of risk-based indicators would mirror, as closely as possible, the risk profile of a U.S. intermediate holding company or combined U.S. operations if each were consolidated in the United States.

Including inter-affiliate transactions in the calculation of risk-based indicators is consistent with the Board's approach to measuring and applying standards at a sub-consolidated level in other contexts. For example, existing thresholds and requirements in the Board's Regulation YY are based on measures of a foreign banking organization's size in the United States that includes inter-affiliate transactions.[63] Similarly, the total consolidated assets of a U.S. intermediate holding company or depository institution include transactions with affiliates outside of the U.S. intermediate holding company.[64] Capital and liquidity requirements applied to U.S. intermediate holding companies and insured depository institutions generally do not distinguish between exposures with affiliates and third parties. For example, the LCR rule assigns outflow rates to funding according to the characteristics of the source of funding, but generally does not distinguish between funding provided by an affiliate or third party.[65] Excluding inter-affiliate transactions from off-balance sheet exposure, size, and weighted short-term wholesale funding indicators would be inconsistent with the treatment of these exposures under the capital and liquidity rules.

In some cases, the exclusion of inter-affiliate transactions would not align with the full scope of risks intended to be measured by an indicator. Inter-affiliate positions can represent sources of risk—for example, claims on the resources of a foreign banking organization's U.S. operations.[66] As another example, short-term wholesale funding provided to a U.S. intermediate holding company by its parent foreign bank represents funding that the parent could withdraw quickly, which could leave fewer assets available for U.S. counterparties of the U.S. intermediate holding company.[67] By including inter-affiliate transactions in weighted short-term wholesale funding while excluding these positions from cross-jurisdictional liabilities, the framework provides a more risk-sensitive measure of funding risk from foreign affiliates as it takes into consideration the maturity and other risk characteristics of the funding for purposes of the weighted short-term wholesale funding measure. Additionally, because long-term affiliate funding (such as instruments used to meet total loss absorbing capacity requirements) would not be captured in weighted short-term wholesale funding, the indicator is designed to avoid discouraging a foreign parent from providing support to its U.S. operations.

Similarly, with respect to off-balance sheet exposure, an exclusion for inter-affiliate transactions would not account for the risks associated with any funding commitments provided by the U.S. operations of a foreign banking organization to non-U.S. affiliates. Accordingly, the Board believes it would be inappropriate to exclude inter-affiliate transactions from the measure of off-balance sheet exposure.

For purposes of the nonbank assets indicator, the proposals would have treated inter-affiliate transactions similarly for foreign and domestic banking organizations. For foreign banking organizations, the proposals would have measured nonbank assets as the sum of assets in consolidated U.S. nonbank subsidiaries together with investments in unconsolidated U.S. nonbank companies that are controlled by the foreign banking organization.[68] Both foreign and domestic banking organizations would have included in nonbank assets inter-affiliate transactions between the nonbank company and other parts of the organization.[69]

Accordingly, for purposes of the risk-based indicators, the final rule adopts the treatment of inter-affiliate transactions as proposed.

H. Determination of Applicable Category of Standards

Under the proposals, a banking organization would have determined its category of standards based on the average levels of each indicator at the banking organization, reported over the preceding four calendar quarters. If the banking organization had not reported risk-based indicator levels for each of the preceding four calendar quarters, the category would have been based on the risk-based indicator level for the quarter, or average levels over the quarters, that the banking organization has reported.

For a change to a more stringent category (for example, from Category IV to Category III), the change would have been based on an increase in the average value of its indicators over the prior four quarters of a calendar year. In contrast, for a banking organization to change to a less stringent category (for example, Category II to Category III), the banking organization would have been required to report risk-based indicator levels below any applicable threshold for the more stringent category in each of the four preceding calendar quarters. Changes in a banking organization's requirements that result from a change in category generally would have taken effect on the first day of the second quarter following the change in the banking organization's category.

The Board received several comments on the process for determining the applicable category of standards under the proposal and on the amount of time provided to comply with the

[63] *See* 12 CFR 252.2 and 252.150 (definition of ''Average combined U.S. assets).''

[64] *See* Call Report instructions, FR Y–9C.

[65] For example, the LCR rule differentiates between unsecured wholesale funding provided by financial sector entities and by non-financial sector entities, but does not differentiate between financial sector entities that are affiliates and those that are not affiliates. 12 CFR 249.32(h). The LCR rule differentiates between affiliates and third parties under limited circumstances. *See, e.g.,* 12 CFR 249.32(g)(7).

[66] Domestic banking organizations are required to establish and maintain procedures for monitoring risks associated with funding needs across significant legal entities, currencies, and business lines. *See, e.g.,* 12 CFR 252.34(h)(2).

[67] *See e.g.,* Robert H. Gertner, David S. Scharfstein & Jeremy C. Stein, ''Internal Versus External Capital Markets,'' 109 Q.J. ECON. 1211 (1994) (discussing allocation of resources within a consolidated organization through internal capital markets); Nicola Cetorelli & Linda S. Goldberg, ''Global Banks and International Shock Transmission: Evidence from the Crisis,'' 59 IMF ECON. REV. 41 (2011) (discussing the role of internal capital markets as a mechanism for transmission of stress in the financial system); Nicola Cetorelli & Linda Goldberg, ''Liquidity Management of U.S. Global Banks: Internal Capital Markets in the Great Recession'' (Fed. Reserve Bank of N. Y. Staff Report No. 511, 2012), available at: *http://www.newyorkfed.org/research/staff_reports/sr511.pdf* (finding that foreign affiliates were both recipients and providers of funds to the parent between March 2006 and December 2010). *See also,* Ralph de Haas and Iman Van Lelyvelt, ''Internal Capital Markets and Lending by Multinational Bank Subsidiaries (2008) (discussing substitution effect in lending across several countries as a parent bank expand its business in those countries where economic conditions improve and decrease its activities where economic circumstance worsen), available at: *https://www.ebrd.com/downloads/research/economics/workingpapers/wp0105.pdf.*

[68] *See* FR Y–9LP, Schedule PC–B, line item 17.

[69] *See* FR Y–9 LP Instructions for Preparation of Parent Company Only Financial Statements for Large Holding Companies (September 2018).

requirements of a new category. In particular, several commenters suggested providing banking organizations with at least 18 months to comply with a more stringent category of standards. Several commenters recommended that the Board retain discretion to address a temporary increase in an activity, such as to help a banking organization avoid a sudden change in the categorization of applicable standards. These commenters suggested that any adjustments of thresholds could consider both qualitative information and supervisory judgment. Commenters also requested that the Board clarify the calculation of certain indicators; for example, by providing references to specific line items in the relevant reporting forms. One commenter also suggested that the Board revise the reporting forms used to report risk-based indicator levels so that they apply to a depository institution that is not part of a bank or savings and loan holding company structure.

The final rule maintains the process for determining the category of standards applicable to a banking organization as proposed. To move into a category of standards or to determine the category of standards that would apply for the first time, a banking organization would rely on an average of the previous four quarters or, if the banking organization has not reported in each of the prior four quarters, the category would be based on the risk-based indicator level for the quarter, or average levels over the quarter or quarters, that the banking organization has reported. Use of a four-quarter average would capture significant changes in a banking organization's risk profile, rather than temporary fluctuations, while maintaining incentives for a banking organization to reduce its risk profile relative to a longer period of measurement.

To move to a less stringent category of standards, a banking organization must report risk-based indicator levels below any applicable threshold for the more stringent category in each of the four preceding calendar quarters. This approach is consistent with the existing applicability and cessation requirements of the Board's enhanced prudential standards rule.[70] In addition, the final rule would adopt the transition for compliance with a new category of standards as proposed. Specifically, a banking organization that changes from one category of applicable standards to another category must generally comply with the new requirements no later than on the first day of the second quarter following the change in category.

The final rule does not provide for discretionary adjustments of thresholds on a case-by-case basis, because such an approach would diminish the transparency and predictability of the framework and could reduce incentives for banking organizations to engage in long-term management of their risks.[71]

Each risk-based indicator will generally be calculated in accordance with the instructions to the FR Y–15, FR Y–9LP, Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q), or FR Y–9C, as applicable. The risk-based indicators must be reported for the banking organization on a quarterly basis.[72] U.S. banking organizations currently report the information necessary to determine their applicable category of standards based on a four-quarter average. In response to concerns raised by commenters, the Board also is revising its reporting forms to specify the line items used in determining the risk-based indicators. Section XV of this **SUPPLEMENTARY INFORMATION** discusses changes to reporting requirements, and identifies the specific line items that will be used to calculate risk-based indicators.[73] With respect to the commenters' concern regarding the applicability of these reporting forms to depository institutions that are not part of a bank or savings and loan holding company structure, the Board notes that no such depository institution would be subject to the final rule based on first quarter 2019 data. The Board will monitor the implementation of the final rule and make any such adjustments to reporting forms, as needed, to require such a depository institution to report risk-based indicator levels.

Some commenters asserted that banking organizations could adjust their exposures to avoid thresholds, including by making temporary adjustments to lower risk-based indicator levels reported. The Board will continue to monitor risk-based indicator amounts reported and information collected through supervisory processes to ensure that the risk-based indicators are reflective of a banking organization's overall risk profile, and would consider changes to reporting forms, as needed. In particular, the Board will monitor weighted short-term wholesale funding levels reported at quarter-end, relative to levels observed during the reporting period.

VI. Prudential Standards for Large U.S. and Foreign Banking Organizations

A. Category I Standards

U.S. GSIBs are subject to the most stringent prudential standards relative to other firms, which reflects and helps to mitigate the heightened risks these firms pose to U.S. financial stability.

The domestic proposal would have required that U.S. GSIBs remain subject to the most stringent stress testing requirements, such as an annual supervisory stress testing, FR Y–14 reporting requirements, and a requirement to conduct company-run stress tests on an annual basis. Consistent with changes made by EGRRCPA, the proposal would have removed the mid-cycle company-run stress test requirement for all bank holding companies, including U.S. GSIBs.[74] The proposal would have maintained the requirement for a U.S. GSIB to conduct an annual company-run stress test.

While many commenters supported a reduction in the frequency of company-run stress testing, some commenters expressed the view that this aspect of the proposal could weaken a tool that is intended to enhance the safety and soundness of banking organizations. These commenters argued that the Board should postpone removing the mid-cycle company-run stress test until the efficacy of this requirement has been evaluated over a full business cycle.

Relative to the annual company-run stress test, the mid-cycle company-run stress test has provided only modest risk management benefits and limited incremental information to market participants. To provide additional flexibility to respond to changes in the risk profile of a banking organization or in times of stress, it is important for the Board to have the ability to adjust the frequency of the company-run stress test requirement. Accordingly, and in

[70] *See, e.g.,* 12 CFR 252.43.

[71] The Board retains the general authority under its enhanced prudential standards, capital, and liquidity rules to increase or adjust requirements as necessary on a case-by-case basis. *See* 12 CFR 217.1(d); 249.2; 252.3.

[72] A foreign banking organization must also report risk-based indicators as with respect to the organization's combined U.S. operations as applicable under the final rule.

[73] Although U.S. intermediate holding companies currently report the FR Y–15, the revised form would reflect the cross-jurisdictional activity indicator adopted in the final rule.

[74] Section 401 of EGRRCPA amended section 165(i) of the Dodd-Frank Act to require company-run stress tests to be conducted periodically rather than on a semi-annual basis. Certain commenters requested that the Board remove the mid-cycle company-run stress test requirement for the 2019 stress test cycle. Because the final rule is effective after October 5, 2019, which was the due date for mid-cycle company-run stress tests, the removal of this requirement will take effect for the 2020 stress test cycle.

response to commenters, the final rule eliminates the mid-cycle stress testing requirement for all bank holding companies but provides the Board authority to adjust the required frequency at which a banking organization, including a U.S. GSIB, must conduct a stress test based on its financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy. The final rule therefore provides flexibility to the Board to require more frequent company-run stress testing as needed, while minimizing the burden associated with an ongoing semi-annual requirement.

Some commenters also requested that the Board eliminate its ability to object to a firm's capital plan on the basis of qualitative deficiencies (qualitative objection) for all banking organizations.[75] This comment was addressed after the domestic proposal was issued in a separate rulemaking. In March 2019, the Board eliminated the qualitative objection for most firms, including firms that are subject to Category I standards under this final rule.[76] In recognition of the progress that firms have made in their risk management and capital planning practices, their significantly strengthened capital positions, and changes to the Board's supervisory processes, the Board expressed its belief that it is appropriate to transition away from the qualitative objection under the capital plan rule. Because the qualitative objection has led to improvements in firms' capital planning, however, the Board decided to temporarily retain the qualitative objection for firms that recently became subject to the Federal Reserve's qualitative assessment, including certain U.S. intermediate holding companies. In doing so, the capital plan rule provides additional time for those firms to improve their capital planning practices before the qualitative objection is removed. While the qualitative objection no longer applies to certain banking organizations, all banking organizations continue to be subject to robust supervisory assessments of their capital planning practices.

The proposal also would have required U.S. GSIBs to remain subject to the most stringent liquidity standards, including the liquidity risk management, monthly internal liquidity stress testing, and liquidity buffer requirements under the enhanced prudential standards rule. The proposal also would have required U.S. GSIBs to report certain liquidity data for each business day under the FR 2052a. The Board did not receive comments on the continued application of these enhanced liquidity standards to U.S. GSIBs and is finalizing liquidity requirements for U.S. GSIBs as proposed.

B. Category II Standards

The proposals would have required banking organizations subject to Category II standards to remain subject to the most stringent stress testing requirements, including annual supervisory stress testing, FR Y–14 reporting requirements, and a requirement to conduct company-run stress tests on an annual basis. As noted above, the failure or distress of a U.S. banking organization or the U.S. operations of a foreign banking organization that is subject to Category II standards could impose significant costs on the U.S. financial system and economy, although these banking organizations generally do not present the same degree of systemic risk as U.S. GSIBs. Sophisticated stress testing helps to address the risks presented by the size and cross-jurisdictional activity of such banking organizations.[77]

The Board did not receive any comments related to capital planning and stress testing for firms subject to Category II standards, other than those discussed for Category I. The Board is finalizing the removal of the mid-cycle stress test for firms subject to Category II standards and adjusting the frequency of stress testing requirements, as discussed above. The Board is not finalizing changes to the capital plan rule to amend the definition of large and noncomplex bank holding company at this time, however. The Board intends to consider such changes in conjunction with other changes to the capital plan rule as part of a future capital plan proposal.

With respect to liquidity, the proposals would have maintained the existing liquidity risk management, monthly internal liquidity stress testing, and liquidity buffer requirements under the enhanced prudential standards rule for banking organizations that would have been subject to Category II standards. The liquidity risk management requirements under the Board's enhanced prudential standards rule reflect important elements of liquidity risk management in normal and stressed conditions, such as cash flow projections and contingency funding plan requirements. Similarly, internal liquidity stress testing and buffer requirements require a banking organization to project its liquidity needs based on its own idiosyncratic risk profile and to hold a liquidity buffer sufficient to cover those needs. A banking organization subject to Category II standards under the proposals would have been required to conduct internal liquidity stress tests on a monthly basis. A U.S. banking organization would have conducted such stress tests at the top-tier consolidated level, whereas a foreign banking organization would have been required to conduct internal liquidity stress tests separately for each of its U.S. intermediate holding company, if applicable, its collective U.S. branches and agencies, and its combined U.S. operations. The proposals would have also required a top-tier U.S. depository institution holding company or foreign banking organization subject to Category II standards to report FR 2052a liquidity data for each business day.

Category II liquidity standards are appropriate for banking organizations of a very large size or with significant cross-jurisdictional activity. Such banking organizations may have greater liquidity risk and face heightened challenges for liquidity risk management compared to an organization that is smaller or has less of a global reach. In addition, a very large banking organization that becomes subject to funding disruptions may need to engage in asset fire sales to meet its liquidity needs and has the potential to transmit distress to the financial sector on a broader scale because of the greater volume of assets it could sell in a short period of time. Similarly, a banking organization with significant cross-jurisdictional activity may have greater challenges in the monitoring and management of its liquidity risk across jurisdictions and may be exposed to a greater diversity of liquidity risks as a result of its more global operations.

The Board received comments related to the frequency and submission timing of FR 2052a reporting for banking organizations subject to Category II standards. These comments are discussed below in section XV of this **SUPPLEMENTARY INFORMATION**. Otherwise,

[75] The qualitative assessment evaluates the strength of a company's capital planning process, including the extent to which the analysis underlying a company's capital plan comprehensively captures and addresses potential risks stemming from company-wide activities, as well as the reasonableness of a company's capital plan and the assumptions and analysis underlying the plan.

[76] 84 FR 8953 (March 13, 2019). Specifically, a firm that participates in four assessments and successfully passes the qualitative evaluation in the fourth year is no longer subject to a potential qualitative objection.

[77] *See* section V.C of this **SUPPLEMENTARY INFORMATION**.

commenters did not provide views on liquidity requirements applicable under Category II. The Board is adopting Category II liquidity standards as proposed.

C. Category III Standards

For banking organizations subject to Category III standards, the proposals would have removed the mid-cycle company-run stress testing requirement and changed the frequency of the required public disclosure for company-run stress test results to every other year rather than annually. The proposals would have maintained all other stress testing requirements for banking organizations subject to Category III standards. These standards would have included the requirements for an annual capital plan submission and annual supervisory stress testing. A firm subject to Category III standards would also be required to conduct an internal stress test, and report the results on the FR Y–14A, in connection with its annual capital plan submission.

A number of commenters requested that the Board clarify the relationship between the capital plan rule and the stress testing rules and minimize the imposition of any additional requirements or processes. Specifically, commenters requested that the Board clarify expectations for internal stress testing conducted in years during which a company-run stress test would not be required. These commenters requested that internal stress tests be aligned with the analysis required under the capital plan rule by, for example, relying on the capital action assumptions in the Board's stress testing rules. In addition, some of these commenters suggested that the Board reduce burden by limiting the number of scenarios required. Alternatively, some commenters requested that the Board reduce the frequency of the stress testing cycle—including capital plan submissions—to every other year for banking organizations subject to Category III standards.

The final rule retains the frequency of supervisory stress testing and FR Y–14 reporting requirements as proposed. These requirements help to ensure that a banking organization subject to Category III standards maintains sufficient capital to absorb unexpected losses and continue to serve as a financial intermediary under stress. Additionally, all large banking organizations should maintain a sound capital planning process on an ongoing basis, including in years during which a company-run stress test is not required.[78] As noted in the proposals, the Board will consider any other changes to the capital plan rule as part of a separate capital plan proposal. Reporting requirements are discussed in more detail in section XV of this **SUPPLEMENTARY INFORMATION.**

Other commenters requested that the Board retain the requirement for banking organizations to publicly disclose the results of their stress tests on an annual basis. The Board will continue to publish its annual supervisory stress test results for firms subject to Category III standards and thus the reduced frequency to every other year of firm's required public disclosure should only modestly limit the amount of information that is publicly available. Accordingly, the final rule adopts the stress testing disclosure requirements for banking organizations subject to Category III standards without change.

The proposals would have applied the existing liquidity risk management, monthly internal liquidity stress testing, and liquidity buffer requirements under the enhanced prudential standards rule to banking organizations subject to Category III standards. Additionally, the proposals would have required a top-tier U.S. depository institution holding company or foreign banking organization subject to Category III standards to report daily or monthly FR 2052a liquidity data, depending on the weighted short-term wholesale funding level of the domestic holding company or the foreign banking organization's combined U.S. operations. Specifically, to provide greater insight into banking organizations with heightened liquidity risk, the Board proposed that a top-tier U.S. holding company with $75 billion or more in weighted short-term wholesale funding, or a foreign banking organization with U.S. operations having at least that amount of weighted short-term wholesale funding, be required to submit FR 2052a data for each business day.

The Board did not receive comments on the application of liquidity stress testing and buffer requirements to banking organizations subject to Category III standards. With respect to liquidity risk management requirements, some commenters requested that the rule permit a banking organization's board of directors to delegate certain oversight and approval functions to a risk committee with primary responsibility for overseeing liquidity risks, including approval of liquidity policies and review of quarterly risk reports. These commenters also requested elimination of the requirement for a banking organization's board or risk committee to review or approve certain operational documents, such as cash flow projection methodologies and liquidity risk procedures, arguing that these responsibilities are more appropriate for senior management than the board or a committee of the board.

The Board has long taken the view that the board of directors should have responsibility for oversight of liquidity risk management because the directors have ultimate responsibility for the strategic direction of the banking organization, and thus its liquidity profile. Certain risk management responsibilities, however, are assigned to senior management. As such, the final rule maintains the requirement for the board of directors to approve and periodically review the liquidity risk management strategies and policies and review quarterly risk reports. In addition, the final rule continues to state that the liquidity risk management requirements for certain operational documents such as cash flow projection methodologies require submission to the risk committee, rather than the board of directors, for approval.[79] The final rule adopts Category III liquidity risk-management standards as proposed, including monthly liquidity stress testing and liquidity buffer maintenance requirements.

Additionally, as discussed in section XV of this Supplementary Information, the Board received certain comments related to the frequency and timeliness of FR 2052a reporting for banking organizations subject to Category III standards. As discussed in that section, the Board is finalizing FR 2052a reporting requirements for banking organizations subject to Category III standards generally as proposed, with minor changes to submission timing.

D. Category IV Standards

The proposal would have applied revised stress testing requirements to banking organizations subject to Category IV standards to align with the risk profile of these firms. Specifically, the proposal would have revised the frequency of supervisory stress testing to every other year and eliminated the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of a company-run stress test. Firms subject to Category IV standards also would be subject to FR Y–14 reporting requirements. Relative to current requirements under the enhanced

[78] *See* SR letters 15–18 and 15–19.

[79] *See* 12 CFR 252.34(e)(3).

prudential standards rule, the proposed Category IV standards would have maintained core elements of existing standards but tailored these requirements to reflect these banking organizations' lower risk profile and lesser degree of complexity relative to other large banking organizations.

Many commenters supported the reduced frequency of supervisory stress tests as a form of burden reduction. However, some commenters opposed this change and expressed concern that it would allow banking organizations subject to Category IV standards to take on additional risk during off-cycle years, and limit the public and market's ability to assess systemic risk. Other commenters also argued that stress testing requirements are not justified for banking organizations subject to Category IV standards in view of the significant costs and burden associated with such requirements. Some commenters requested that the Board provide additional information on the impact of reducing the frequency of supervisory stress testing for banking organizations subject to Category IV standards.

Supervisory stress testing on a two-year cycle is consistent with section 401(e) of EGRRCPA, and takes into account the risk profile of these banking organizations relative to those that are larger and more complex. Maintaining FR Y–14 reporting requirements for firms subject to Category IV standards will provide the Board with the data it needs to conduct supervisory stress testing and inform ongoing supervision of these firms. The Federal Reserve will continue to supervise banking organizations subject to Category IV standards on an ongoing basis, including evaluation of the capital adequacy and capital planning processes during off-cycle years. In addition, the final rule provides the Board with authority to adjust the frequency of stress testing requirements based on the risk profile of a banking organization or other factors. Accordingly, the final rule adopts the revisions to the frequency of supervisory stress testing requirements for firms subject to Category IV standards as proposed. Reporting requirements are discussed in more detail in section XV below.

Similar to the comments discussed above, several commenters requested that the Board clarify the relationship between the capital plan rule and the stress testing rules for banking organizations subject to Category IV standards. In particular, commenters requested that the Board clarify what information would be required in a capital plan and related reporting forms submitted by a banking organization subject to Category IV standards, given that these banking organizations would not be subject to company-run stress testing requirements. Other commenters requested that any forward-looking analysis required for banking organizations subject to Category IV standards be limited and not require hypothetical stress scenarios. The Board plans to propose changes to the capital plan rule as part of a separate proposal, including providing firms subject to Category IV standards additional flexibility to develop their annual capital plans.

Under the proposals, Category IV standards would have included liquidity risk management, stress testing, and buffer requirements. Banking organizations subject to Category IV standards also would have been required to report FR 2052a liquidity data on a monthly basis. While the proposals would have retained core liquidity requirements under Category IV standards, certain liquidity risk management and liquidity stress testing requirements would have been further tailored to more appropriately reflect the risk profiles of banking organizations subject to this category of standards.

As a class, banking organizations that would have been subject to Category IV standards tend to have more stable funding profiles, as measured by their generally lower level of weighted short-term wholesale funding, and lesser degrees of liquidity risk and operational complexity associated with size, cross-jurisdictional activity, nonbank assets, and off-balance sheet exposure. Accordingly, the proposals would have reduced the frequency of required internal liquidity stress testing to at least quarterly, rather than monthly. The proposals would not have changed other aspects of the liquidity buffer requirements for banking organizations subject to Category IV standards.

The proposals would have modified certain liquidity risk-management requirements under the enhanced prudential standards rule for banking organizations subject to Category IV standards. First, the proposals would have required such banking organizations to calculate collateral positions on a monthly basis, rather than a weekly basis. Second, the proposals would have further tailored the requirement under the enhanced prudential standards rule for certain bank holding companies to establish risk limits to monitor sources of liquidity risk.[80] Third, Category IV standards would have specified fewer required elements of monitoring intraday liquidity risk exposures.[81] Such changes would have reflected the generally more stable funding profiles and lower degrees of intraday risk and operational complexity of these banking organizations relative to those that are larger and more complex. Under the proposals, banking organizations subject to Category IV standards also would have been required to report FR 2052a liquidity data on a monthly basis.

Some commenters objected to the liquidity risk-management standards proposed for banking organizations subject to Category IV standards, on the basis that any reduction in such requirements could increase safety and soundness and financial stability risks. Other commenters supported this aspect of the proposals, and asserted that it would distinguish more effectively between banking organizations in this category and those that are larger and more complex.

Banking organizations subject to Category IV standards generally are less prone to funding disruptions, even under stress conditions. Monthly FR 2052a information, which is discussed in more detail in section XV below, together with information obtained through the supervisory process, allows the Board to monitor the liquidity risk profiles of these banking organizations. Accordingly, the final rule adopts the proposed Category IV liquidity standards without change.

VII. Single-Counterparty Credit Limits

In 2018, the Board adopted a final rule to apply single-counterparty credit limits to large U.S. and foreign banking organizations (single-counterparty credit limits rule). The single-counterparty credit limits rule limits the aggregate net credit exposure of a U.S. GSIB and any bank holding company with total consolidated assets of $250 billion or more to a single counterparty. The credit exposure limits are tailored to the size and systemic footprint of the firm. Single-counterparty credit limit requirements also apply to a foreign banking organization with $250 billion or more in total consolidated assets with respect to its combined U.S. operations, and separately to any subsidiary U.S. intermediate holding company of such a firm.[82] A foreign banking organization may comply with single-counterparty credit limits applicable to its combined U.S. operations by certifying that it

[80] 12 CFR 252.34(g).

[81] *See* 12 CFR 252.34(h)(3).

[82] 12 CFR 252.170(a).

meets, on a consolidated basis, standards established by its home country supervisor that are consistent with the BCBS large exposure standard.[83]

The domestic proposal would have modified the thresholds for application of the single-counterparty credit limit rule to apply single-counterparty credit limits to all U.S. bank holding companies that would be subject to Category II or Category III standards. This change would have aligned the thresholds for application of single-counterparty credit limits requirements with the proposed thresholds for other prudential standards. Similarly, the foreign bank proposal would have revised the single-counterparty credit limit requirements to align with the proposed thresholds for other enhanced prudential standards applied to the U.S. operations of foreign banking organizations. Under the proposal, single-counterparty credit limits would have applied to foreign banking organizations subject to Category II or Category III standards or to a foreign banking organization with $250 billion or more in total consolidated assets. The proposal would have preserved the ability of a foreign banking organization to comply with the single-counterparty credit limits by certifying to the Board that it meets comparable home-country standards that apply on a consolidated basis. The proposal also would have applied single-counterparty credit limits separately to a U.S. intermediate holding company subsidiary of a foreign banking organization subject to Category II or Category III standards, based on the risk profile of the foreign banking organization's combined U.S. operations. Under the proposal, the requirements previously applicable to U.S. intermediate holding companies with $250 billion or more in assets would have applied to all U.S. intermediate holding companies subject to single-counterparty credit limits—specifically, the aggregate net credit exposure limit of 25 percent of tier 1 capital, the treatment regarding exposures to special purpose vehicles (SPVs) and the application of the economic interdependence and control relationship tests, as well as the required frequency of compliance. The proposal also would have eliminated the distinction under the single-counterparty credit limits rule for ''major'' U.S. intermediate holding companies, and subjected all U.S. intermediate holding companies subject to the single-counterparty credit limits rule to the same aggregate net credit exposure limit. The proposal would not have applied single-counterparty credit limits to U.S. intermediate holding companies under Category IV.

Many commenters supported the proposed exclusion of U.S. intermediate holding company subsidiaries of foreign banking organizations subject to Category IV standards from single-counterparty credit limits.[84] Some commenters asserted that single-counterparty credit limits for a U.S. intermediate holding company should be determined based on the risk profile of the U.S. intermediate holding company rather than on the risk profile of the combined U.S. operations of its parent foreign banking organization. While some commenters supported the proposal's expansion of single-counterparty credit limit requirements for U.S. intermediate holding companies with less than $250 billion in assets under Categories II and III, others argued that this approach was unnecessary. Some commenters also requested an extended compliance period for the treatment of exposures to SPVs and application of the economic interdependence and control test. The commenters also argued that the Board should give the single-counterparty credit limits rule the opportunity to take effect before considering further changes.

Single-counterparty credit limits support safety and soundness and are designed to reduce transmission of distress, particularly for larger, riskier, and interconnected banking organizations. The risks indicated by size, cross-jurisdictional activity, off-balance sheet exposure, and weighted short-term wholesale funding and that result in the application of Category II and Category III standards evidence vulnerability to safety and soundness and financial stability risks, which may be exacerbated if a banking organization has outsized credit exposure to a single counterparty. Therefore, the final rule adopts the single-counterparty credit limits proposed for U.S. banking organizations without change. The Board is, however, revising the proposed single-counterparty credit limit requirements for U.S. intermediate holding companies so that the application of such requirements are based on the risk profile of the U.S. intermediate holding company rather than on the risk profile of the combined U.S. operations of its parent foreign banking organization. This revision would improve the focus and efficiency of single-counterparty credit limits relative to the proposal, because single-counterparty credit limits that apply to a U.S. intermediate holding company will be based on the U.S. intermediate holding company's own risk profile. As a result, only U.S. intermediate holding companies subject to Category II or III standards are separately subject to the single-counterparty credit limits rule. These U.S. intermediate holding companies are subject to a single net aggregate credit exposure limit of 25 percent of tier 1 capital. In addition, these firms are subject to the treatment for exposures to SPVs, the economic interdependence and control tests, and the daily compliance requirement that was previously only applicable to U.S. intermediate holding companies with $250 billion or more in assets. The final rule would provide U.S. intermediate holding companies with less than $250 billion in assets that are subject to Category II or III standards an additional transition time, until January 1, 2021, to come into compliance with more stringent requirements.

VIII. Covered Savings and Loan Holding Companies

The proposal would have subjected covered savings and loan holding companies to supervisory and company-run stress testing requirements; risk-management and risk-committee requirements; liquidity risk management, stress testing, and buffer requirements; and single-counterparty credit limits, pursuant to section 10(g) of the Home Owners' Loan Act (HOLA).[85] These requirements would have been applied to covered savings and loan holding companies in the same manner as a similarly situated bank holding company.[86] As described in the reporting section, section XV, the proposal would have expanded the scope of applicability of the FR Y–14 reporting requirements to apply to covered savings and loan holding companies with total consolidated assets of $100 billion or more. The proposal also noted that the Board planned to seek comment on the application of capital planning requirements to covered savings and

[83] 12 CFR 252.172(d). *See also* BCBS, Supervisory Framework for Measuring and Controlling Large Exposures (April 2014). The large exposures standard establishes an international single-counterparty credit limit framework for internationally active banks.

[84] Some commenters' suggested modifications to the single-counterparty credit limit rule that are beyond the scope of changes in this rulemaking. Therefore, these changes are not discussed separately in this **SUPPLEMENTARY INFORMATION**.

[85] 12 U.S.C. 1467a(g).

[86] A covered savings and loan holding company would not be subject to Category I standards as the definition of ''global systemically important BHC'' under the GSIB surcharge rule does not include savings and loan holding companies. *See* 12 CFR 217.2.

loan holding companies that would be consistent with the capital planning requirements for large bank holding companies as part of a separate proposal.

Some commenters argued that the Board lacks the authority to apply prudential standards to savings and loan holding companies that are not designated by the Financial Stability Oversight Council (FSOC) as systemically important nonbank financial companies under section 113 of the Dodd-Frank Act.[87] These commenters argued that the Board may only apply the proposed prudential standards to covered savings and loan holding companies that have been designated by the FSOC for supervision by the Board and not based on the general grant of authority in section 10(g) of the HOLA.[88] Commenters argued that application of prudential standards to covered savings and loan holding companies pursuant to section 10(g) of HOLA implied that these prudential standards could be applied to banking organizations regardless of size, an inference that commenters asserted would be contrary to the congressional intent of the Dodd-Frank Act and EGRRCPA.

Section 10(g) of HOLA authorizes the Board to issue such regulations and orders, including regulations relating to capital requirements, as the Board deems necessary or appropriate to administer and carry out the purposes of section 10 of HOLA. As the primary federal regulator and supervisor of savings and loan holding companies, one of the Board's objectives is to ensure that savings and loan holding companies operate in a safe-and-sound manner and in compliance with applicable law. Like bank holding companies, savings and loan holding companies must serve as a source of strength to their subsidiary savings associations and may not conduct operations in an unsafe and unsound manner.

Section 165 of the Dodd-Frank Act directs the Board to establish specific enhanced prudential standards for large bank holding companies and companies designated by FSOC in order to prevent or mitigate risks to the financial stability of the United States.[89] Section 165 does not prohibit the application of standards to savings and loan holding companies and bank holding companies pursuant to other statutory authorities.[90]

One commenter supported the proposal's application of prudential standards to covered savings and loan holding companies, asserting that covered savings and loan holding companies have similar risk profiles as bank holding companies and therefore should not be treated differently under the Board's regulatory framework. Another commenter asserted that certain of the risk-based indicators were not reflective of risks to safety and soundness for savings and loan holding companies and should be modified. Similarly, this commenter also argued that covered savings and loan holding companies were less risky and less complex than bank holding companies of the same size and should be subject to streamlined capital planning requirements and supervisory expectations. The commenter also opposed the application of single-counterparty credit limits to covered savings and loan holding companies on the basis that the application of these standards would be inconsistent with the qualified thrift lender test, described below. This commenter argued that, if applied, the limits should be modified to exclude mortgage-backed securities of U.S. government-sponsored enterprises.

Large covered savings and loan holding companies engage in many of the same activities and face similar risks as large bank holding companies. By definition, covered savings and loan holding companies are substantially engaged in banking and financial activities, including deposit taking, lending, and broker-dealer activities.[91] Large covered savings and loan holding companies engage in credit card and margin lending and certain complex nonbanking activities that pose higher levels of risk. Large covered savings and loan holding companies can also rely on high levels of short-term wholesale funding, which may require sophisticated capital, liquidity, and risk management processes. Similar to large bank holding companies, large covered savings and loan holding companies also conduct business across a large geographic footprint, which in times of stress could present certain operational risks and complexities. As discussed above in section V, the risk-based indicators identify risks to safety and soundness in addition to risks to financial stability. The category framework would align requirements with the risk profile of a banking organization, including by identifying risks that warrant more sophisticated capital planning, more frequent company-run stress testing, and greater supervisory oversight through supervisory stress testing, to further the safety and soundness of these banking organizations. By strengthening the risk-management, capital, and liquidity requirements commensurate with these risks, the final rule would improve the resiliency and promote the safe and sound operations of covered savings and loan holding companies. Accordingly, the Board is adopting the application of prudential standards to covered savings and loan holding companies as proposed.

These standards include supervisory stress testing and, for Categories II and III, company-run stress testing requirements.[92] Stress testing requirements provide a means to better understand the financial condition of the banking organization and risks within the banking organization that may pose a threat to safety and soundness. To implement the supervisory stress testing requirements, the Board is requiring covered savings and loan holding companies to report the FR Y–14 reports in the same manner as a bank holding company.[93] The final rule does not establish capital planning requirements for covered savings and loan holding companies. The Board intends to propose to apply those requirements to covered savings and loan holding companies as part of a separate proposal that would be issued for public notice and comment.

The final rule also would apply liquidity risk management, stress testing and buffer requirements to covered savings and loan holding companies. Specifically, a covered savings and loan holding company is required to conduct internal stress tests at least monthly (or

[87] 12 U.S.C. 5323.

[88] Specifically, commenters argued that relying on the general authority of section 10(g) of HOLA to apply prudential standards to covered savings and loan holding companies would be inconsistent with a canon of statutory construction that specific statutory language ordinarily prevail over conflicting general language.

[89] 12 U.S.C. 5365(a)(1).

[90] *See* EGRRCPA 401(b).

[91] A covered savings and loan holding company must have less than 25 percent of its total consolidated assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit), must not have a top-tier holding company that is an insurance underwriting company, and must derive a majority of its assets or revenues from activities that are financial in nature under section 4(k) of the Bank Holding Company Act. 12 CFR 217.2.

[92] Company-run stress test requirements are discussed further in section XIII. of this **SUPPLEMENTARY INFORMATION**.

[93] Covered savings and loan holding companies with total consolidated assets of $100 or more are required to report the FR Y–14M and all schedules of the FR Y–14Q except for Schedules C—Regulatory Capital Instruments and Schedule D—Regulatory Capital Transitions. These firms also are required to report the FR Y–14A Schedule E—Operational Risk. Covered savings and loan holding companies subject to Category II or III standards are required to submit the FR Y–14A Schedule A—Summary and Schedule F—Business Plan Changes in connection with the company-run stress test requirement.

quarterly, for a firm that is subject to Category IV standards) to measure its potential liquidity needs across overnight, 30-day, 90-day, and 1-year planning horizons during times of instability in the financial markets. In addition, the covered savings and loan holding company is required to hold highly liquid assets sufficient to meet the projected 30-day net stress cash-flow need under internal stress scenarios. A covered savings and loan holding company is also required to meet specified corporate governance requirements around liquidity risk management, to produce cash flow projections over various time horizons, to establish internal limits on certain liquidity metrics, and to maintain a contingency funding plan that identifies potential sources of liquidity strain and alternative sources of funding when usual sources of liquidity are unavailable. These liquidity risk management, liquidity stress testing, and buffer requirements help to ensure that covered savings and loan holding companies have effective governance and risk-management processes to determine the amount of liquidity to cover risks and exposures, and sufficient liquidity to support their activities through a range of conditions.

The final rule applies single-counterparty credit limits to covered savings and loan holding companies that are subject to Category II or III standards as proposed. Application of single-counterparty credit limits to covered savings and loan holding companies would reduce the likelihood that distress at another firm would be transmitted to the savings and loan holding company.

The single-counterparty credit limits exempt transactions with government-sponsored entities (GSEs), such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corp. (Freddie Mac), from limits on credit exposure, so long as the GSE remains under U.S. government conservatorship.[94] As commenters observed, if the GSEs exit conservatorship, the single-counterparty credit limits would limit a banking organization from holding mortgage-backed securities of U.S. GSEs (Agency MBS) in excess of 25 percent of tier 1 capital.[95] The qualified thrift lender test (QTL test) requires a savings association to either be a domestic building association or have qualified thrift investments exceeding 65 percent of its portfolio assets.[96] The QTL test permits Agency MBS to be used to satisfy the QTL test without limit.[97] While the GSEs are under U.S. government conservatorship, the single-counterparty credit limits would not affect the ability of a banking organization, including a savings association, to hold Agency MBS.

Fannie Mae and Freddie Mac have been operating under the conservatorship of the Federal Housing Finance Agency since 2008 and, concurrent with being placed in conservatorship, received capital support from the United States Department of the Treasury.[98] The timing and terms of Fannie Mae and Freddie Mac exiting conservatorship are uncertain. In addition, other aspects of the Board's regulatory framework could be affected by a change to the conservatorship status of Fannie Mae or Freddie Mac. The Board will continue to monitor and take into consideration any future changes to the conservatorship status of the GSEs, including the extent and type of support received by the GSEs. As appropriate, the Board will consider changes to the application of single-counterparty credit limits to covered savings and loan holding companies and other banking organizations, as well as to other aspects of the Board's regulatory framework.

Finally, one commenter urged the Board to provide covered savings and loan holding companies extended transition periods to come into compliance with the new requirements, if adopted. The final rule would provide covered savings and loan holding companies a transition period to come into compliance with the new prudential standards. Specifically, a covered savings and loan holding company will be required to comply with risk-management and risk-committee requirements as well as the liquidity risk-management, stress testing, and buffer requirements on the first day of the fifth quarter following the effective date of the final rule. A covered savings and loan holding company will be required to comply with single-counterparty credit limits and stress testing requirements on the first day of the ninth quarter following the effective date of the final rule. Transition periods for reporting requirements are discussed in section XV of this **SUPPLEMENTARY INFORMATION**.

IX. Risk Management and Risk Committee Requirements

Section 165(h) of the Dodd-Frank Act requires certain publicly traded bank holding companies to establish a risk committee that is "responsible for the oversight of the enterprise-wide risk management practices" and meets other statutory requirements.[99] EGRRCPA raised the threshold for mandatory application of the risk-committee requirement from publicly traded bank holding companies with $10 billion or more in total consolidated assets to publicly traded bank holding companies with $50 billion or more in total consolidated assets. However, the Board has discretion to apply risk-committee requirements to publicly traded bank holding companies with under $50 billion in total consolidated assets if the Board determines doing so would be necessary or appropriate to promote sound risk-management practices.

The proposal would have raised the threshold for application of risk-committee requirements consistent with the changes made by EGRRCPA. Under the proposal, a publicly traded or privately held U.S. bank holding company with total consolidated assets of $50 billion or more would have been required to maintain a risk committee. The proposal would have applied the same risk-committee requirements to covered savings and loan holding companies with $50 billion or more in total consolidated assets as would have applied to a U.S. bank holding company of the same size.

Under the enhanced prudential standards rule, as adopted, all foreign banking organizations with total consolidated assets of $50 billion or more, and publicly traded foreign banking organizations with $10 billion or more in total consolidated assets, were required to maintain a risk committee that met specified requirements. These requirements varied based on a foreign banking organization's total consolidated assets and combined U.S. assets. Publicly traded foreign banking organizations with at least $10 billion but less than $50 billion in total consolidated assets, as well as foreign banking organizations with total consolidated assets of $50 billion or more but less than $50 billion in combined U.S. assets, were required to annually certify to the Board that they maintain a qualifying committee that oversees the risk management practices

[94] The Board's single-counterparty credit limits exclude any direct claim on, and the portion of a claim that is directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency. 12 CFR 252.77. Agency MBS also are considered eligible collateral while the GSEs remain in conservatorship. 12 CFR 252.71.

[95] 12 CFR 252.177(a)(1); 12 CFR 238.150.

[96] 12 U.S.C. 1467a(m)(3)(C).

[97] 12 U.S.C. 1467a(m)(4)(C)(ii)(III).

[98] *See* 79 FR 77602 (December 24, 2014).

[99] 12 U.S.C. 5363(h).

of the combined U.S. operations of the foreign banking organization. In contrast, foreign banking organizations with total consolidated assets of $50 billion or more and $50 billion or more in combined U.S. assets were subject to more detailed risk-committee and risk-management requirements, including the requirement to appoint a U.S. chief risk officer.

Consistent with EGRRCPA, the proposal would have raised the total consolidated asset threshold for application of the risk-committee requirements to foreign banking organizations but would not have changed the substance of the risk-committee requirements for these firms.

One commenter argued for additional flexibility in meeting certain requirements for certain foreign banking organizations that do not have a U.S. intermediate holding company. Specifically, the commenter requested that the Board modify the U.S. chief risk officer requirement so that foreign banking organizations without a U.S. intermediate holding company could be allowed to identify a senior officer to serve as the point of contact responsible for the U.S. risk management structure.

The Board is finalizing the risk-committee requirements as proposed. Sound enterprise-wide risk management supports safe and sound operations of banking organizations and reduces the likelihood of their material distress or failure, and thus also promotes financial stability. The final rule applies risk-committee requirements to a publicly traded or privately held bank holding company or covered savings and loan holding company with total consolidated assets of $50 billion or more. These standards enhance safety and soundness and help to ensure independent risk management, which is appropriate for firms of this size, including both privately held as well as publicly traded banking organizations. Applying the same minimum standards to covered savings and loan holding companies accordingly furthers their safety and soundness by addressing concerns that apply equally across large depository institution holding companies.

Taking into consideration varying structures of their U.S. operations, the proposed risk-management requirements are important to ensure safety and soundness of the U.S. operations of a foreign banking organization as well. Under the final rule, foreign banking organizations with $50 billion or more but less than $100 billion in total consolidated assets, as well as foreign banking organizations with total consolidated assets of $100 billion or more but less than $50 billion in combined U.S. assets, are required to maintain a risk committee and make an annual certification to that effect. Additionally, foreign banking organizations with total consolidated assets of $100 billion or more and $50 billion or more in combined U.S. assets are required to comply with the more detailed risk-committee and risk-management requirements under the enhanced prudential standards rule, which include the chief risk officer requirement. The final rule eliminates the risk-committee requirements that apply to foreign banking organizations with less than $50 billion in total consolidated assets. For banking organizations with less than $50 billion in total consolidated assets, the Board proposes to review the risk-management practices of such firms through existing supervisory processes and expects that all firms establish risk-management processes and procedures commensurate with their risks.

X. Enhanced Prudential Standards for Foreign Banking Organizations With a Smaller U.S. Presence

The Board's regulatory framework tailors the application of enhanced prudential standards to foreign banking organizations based on the size and complexity of the organization's U.S. operations. In particular, subparts L and M of the enhanced prudential standards rule, as adopted, established company-run stress testing and risk-management and risk-committee requirements for foreign banking organizations with at least $10 billion but less than $50 billion in total consolidated assets, the latter of which is described above. Additionally, subpart N, as adopted, established risk-based and leverage capital, risk-management and risk-committee, liquidity risk management, and capital stress testing requirements for foreign banking organizations with at least $50 billion in total consolidated assets but less than $50 billion in combined U.S. assets.[100] These provisions largely required the foreign banking organization to comply with home-country capital and liquidity standards at the consolidated level, and imposed certain risk-management requirements that are specific to the U.S. operations of a foreign banking organization.

The proposal would have maintained this approach for foreign banking organizations with a limited U.S. presence; however, it would have also implemented targeted changes to reduce the stringency of certain requirements applicable to these firms. It also would have maintained certain risk-management and capital requirements for a U.S. intermediate holding company of a foreign banking organization that does not meet the thresholds under the proposal for the application of Category II, III, or IV standards.

A. Enhanced Prudential Standards for Foreign Banking Organizations With Less Than $50 Billion in Total Consolidated Assets

The proposal would have eliminated risk-committee and risk-management requirements for foreign banking organizations with less than $50 billion in total consolidated assets, as described above.

In addition, consistent with EGRRCPA, the proposal would have eliminated subpart L of the Board's enhanced prudential standards rule, which currently prescribes company-run stress testing requirements for foreign banking organizations with more than $10 billion but less than $50 billion in total consolidated assets.[101] As a result, foreign banking organizations with less than $50 billion in total consolidated assets would no longer be required to be subject to a home-country capital stress testing regime, or if the foreign banking organization was not subject to qualifying home country standards, additional stress testing requirements in subpart L.[102]

EGRRCPA raised the threshold for mandatory application of company-run stress testing requirements from financial companies with more than $10 billion in total consolidated assets to financial companies with more than $250 billion in total consolidated assets. Commenters were generally supportive of the Board's proposed changes to raise the thresholds for application of standards consistent with EGRRCPA. Accordingly, the Board is finalizing

[100] 79 FR 17240 (March 27, 2014).

[101] Subpart L, as adopted, also applied to foreign savings and loan holding companies with more than $10 billion in total consolidated assets. *See* 12 CFR 252.120 *et seq.*

[102] For foreign savings and loan holding companies, the proposal would have applied company-run stress testing requirements to foreign savings and loan holding companies with more than $250 billion in total consolidated assets. These requirements would have been the same as those that were established under subpart L of the enhanced prudential standards rule. *See id.* Raising the asset size threshold for application of company-run stress testing requirements for foreign savings and loan holding companies to more than $250 billion in total consolidated assets would be consistent with section 165(i)(2) of the Dodd-Frank Act, as amended by EGRRCPA. Under this final rule, company-run stress test requirements for foreign savings and loan holding companies would be in the new subpart R of Regulation LL.

changes to the thresholds for application of the company-run stress testing, risk-committee and risk-management requirements as proposed.

B. Enhanced Prudential Standards for Foreign Banking Organizations With $100 Billion or More in Total Consolidated Assets but Less Than $100 Billion in Combined U.S. Assets

Subpart N of the enhanced prudential standards rule, as adopted, established risk-based and leverage capital, liquidity risk management, and capital stress testing requirements for foreign banking organizations with $50 billion or more in total consolidated assets but less than $50 billion in combined U.S. assets. These standards largely required compliance with home-country standards.

Under the proposed rule, the requirements under subpart N would have continued to largely defer to home-country standards and remain generally unchanged from the requirements that apply currently to a foreign banking organization with a limited U.S presence, including liquidity risk management requirements, risk-based and leverage capital requirements, and capital stress testing requirements. However, consistent with the proposed changes to the frequency of stress testing for smaller and less complex domestic holding companies, the proposal would have required foreign banking organizations with total consolidated assets of less than $250 billion that do not meet the criteria for application of Category II, III, or IV standards to be subject to a home-country supervisory stress test on a biennial basis, rather than annually.

As discussed above, risk-committee requirements in subpart N would have been further differentiated based on combined U.S. assets. Under the proposal, foreign banking organizations with $100 billion or more in total consolidated assets but less than $50 billion in combined U.S. assets would have been required to certify on an annual basis that they maintain a qualifying risk committee that oversees the risk management policies of the combined U.S. operations of the foreign banking organization. In contrast, foreign banking organizations with $100 billion or more in total consolidated assets, and at least $50 billion but less than $100 billion in combined U.S. assets would have been subject to more detailed risk-committee and risk-management requirements, which include the chief risk officer requirement. These more detailed risk-committee requirements would be the same requirements that previously applied to foreign banking organizations with $100 billion or more in combined U.S. assets.

The Board did not propose to revise the $50 billion U.S. non-branch asset threshold for the U.S. intermediate holding company formation requirement. Because a foreign banking organization with less than $100 billion in combined U.S. assets may have or could be required to form a U.S. intermediate holding company, the proposal would have established an intermediate holding company requirement for these foreign banking organizations in subpart N (subpart N intermediate holding company). Under the proposal, a subpart N intermediate holding company would not have been subject to Category II, III, or IV capital standards, but would have remained subject to the risk-based and leverage capital requirements that apply to a U.S. bank holding company of a similar size and risk profile under the Board's capital rule.[103] Similarly, a subpart N intermediate holding company would have been required to comply with risk-management and risk-committee requirements. As under the current rule, under the proposal the risk committee of the U.S. intermediate holding company would have also been able to serve as the U.S. risk committee for the foreign banking organization's combined U.S. operations.

Some commenters objected to the U.S. intermediate holding company requirement entirely. These commenters also argued that, if the requirement is retained, the threshold should be increased to $100 billion or more, arguing that a $100 billion threshold would be more consistent with section 401 of EGRRCPA and principle of national treatment and competitive equality.

A number of commenters argued that the U.S. intermediate holding company requirement and the standards applied to U.S. intermediate holding companies discouraged growth through subsidiaries rather than branches (non-branch assets). Instead, commenters argued that growth in non-branch assets should be encouraged on the basis that it improved a foreign banking organization's liquidity risk profile in the United States. These commenters argued that disincentives to form an U.S. intermediate holding company were particularly pronounced if the standards that are applied to the U.S. intermediate holding company are calibrated based on the risk profile of the foreign banking organization's combined U.S. operations. Some commenters supported the proposed application of fewer enhanced prudential standards to subpart N intermediate holding companies. Other commenters argued that a subpart N intermediate holding company should be subject to risk management standards only.

The Board did not propose to amend the threshold for formation of the U.S. intermediate holding company requirement. The U.S. intermediate holding company requirement has resulted in substantial gains in the resilience and safety and soundness of foreign banking organizations' U.S. operations. EGRRCPA raised the thresholds for application of section 165 of the Dodd-Frank Act, but did not affect the $50 billion threshold for application of the U.S. intermediate holding company requirement.[104]

The final rule would adopt the subpart N intermediate holding company requirements as proposed. By applying risk management and standardized capital requirements to subpart N intermediate holding companies, the enhanced prudential standards rule would treat a subpart N intermediate holding company similarly to a domestic banking organization of the same size. As some commenters observed, a subpart N intermediate holding company would be subject to fewer and less stringent requirements than a U.S. intermediate holding company of a foreign banking organization subject to subpart O of the Board's enhanced prudential standards rule (subpart O intermediate holding company). Specifically, a subpart N intermediate holding company is not subject to liquidity risk management, liquidity stress testing and buffer requirements. In addition, as discussed above, the application of capital, liquidity and single-counterparty credit limits to a subpart O intermediate holding company would be based on the risk profile of the subpart O intermediate holding company. By establishing two tiers of U.S. intermediate holding company and tailoring the standards applicable to each type of U.S. intermediate holding company, this approach would significantly reduce cliff-effects in the standards applied to U.S. intermediate holding companies and reduce

[103] 12 CFR part 217. As discussed in the interagency foreign banking organization capital and liquidity proposal, such a U.S. intermediate holding company would be subject to the generally applicable risk-based and leverage capital requirements.

[104] *See also* EGRRCPA 401(g) (discussing the Board's authority to apply enhanced prudential standards to foreign banking organizations with more than $100 billion in total consolidated assets.

disincentives to growth in branch assets relative to non-branch assets.

XI. Technical Changes to the Regulatory Framework for Foreign Banking Organizations and Domestic Banking Organizations

The proposal would have made several technical changes and clarifying revisions to the Board's enhanced prudential standards rule. In addition to any defined terms described previously in this **SUPPLEMENTARY INFORMATION**, the proposal would have added defined terms for foreign banking organizations with combined U.S. operations subject to Category II, III, or IV standards, defined as ''Category II foreign banking organization,'' ''Category III foreign banking organization,'' or ''Category IV foreign banking organization,'' respectively. Similarly, the proposal would have added defined terms for ''Category II U.S. intermediate holding company,'' ''Category III U.S. intermediate holding company,'' and ''Category IV U.S. intermediate holding company.'' The addition of these terms would facilitate the requirements for application of enhanced prudential standards under the category framework. The final rule uses the Board's GSIB surcharge methodology to identify a U.S. GSIB and refers to these banking organizations as global systemically important bank holding companies, consistent with the term used elsewhere in the Board's regulations. The final rule adopts these changes as proposed, consistent with the adoption of the category framework in this final rule.

In addition, the final rule further streamlines the Board's enhanced prudential standards rule by locating certain definitions common to all subparts into a common definitions section.[105] In addition, the proposal would have made revisions to streamline the process for forming a U.S. intermediate holding company and for requesting an alternative organizational structure. The Board did not receive any comments on these aspects of the proposal and is adopting these changes as proposed.

Specifically, the final rule eliminates the requirement to submit an implementation plan for formation of a U.S. intermediate holding company. The implementation plan requirement was intended to facilitate initial compliance with the U.S. intermediate holding company requirement. To assess compliance with the U.S. intermediate holding company requirement under the proposal, information would have been requested through the supervisory process. Such information could include information on the U.S. subsidiaries of the foreign banking organization that would be transferred, a projected timeline for the structural reorganization, and a discussion of the firm's plan to comply with the enhanced prudential standards that would be applicable to the U.S. intermediate holding company.

In addition, the Board is making conforming amendments to the process for requesting an alternative organizational structure for a U.S. intermediate holding company, as well as clarifying that a foreign banking organization may submit a request for an alternative organizational structure in the context of a reorganization, anticipated acquisition, or prior to formation of a U.S. intermediate holding company. In light of the requests received under this section following the initial compliance with the U.S. intermediate holding company requirement, the final rule shortens the time period for action by the Board from 180 days to 90 days. This process applies to both subpart N and subpart O intermediate holding companies.

As discussed above in sections VI and VII of this Supplementary Information, capital, liquidity and single-counterparty credit limits would apply to a U.S. intermediate holding company based on its risk profile. Subpart O of the enhanced prudential standards rule currently provides that a foreign banking organization that forms two or more U.S. intermediate holding companies would meet any threshold governing applicability of particular requirements by aggregating the total consolidated assets of all such U.S. intermediate holding companies. The final rule retains this aggregation requirement, but amends the requirement to consider the risk-based indicators discussed above.

In addition, the final rule provides a reservation of authority to permit a foreign banking organization to comply with the requirements of the enhanced prudential standards rule through a subsidiary foreign bank or company of the foreign banking organization. In making this determination, the Board would take into consideration the ownership structure of the foreign banking organization, including whether the foreign banking organization is owned or controlled by a foreign government; (2) whether the action would be consistent with the purposes of the enhanced prudential standards rule; and (3) any other factors that the Board determines are relevant. For example, if a top-tier foreign banking organization is a sovereign wealth fund that controls a U.S. bank holding company, with prior approval of the Board, the U.S. bank holding company could comply with the requirements established under the enhanced prudential standards rule instead of the sovereign wealth fund, provided that doing so would not raise significant supervisory or policy issues and would be consistent with the purposes the enhanced prudential standards rule. The reservation of authority is intended to provide additional flexibility to address certain foreign banking organization structures the Board has encountered following the initial implementation of the rule, as well as to provide clarity and reduce burden for these institutions.

Finally, the proposal would have eliminated transition and initial applicability provisions that were relevant only for purposes of the initial adoption and implementation of the enhanced prudential standards rule. For example, the proposal would have removed paragraph (a)(2) of § 252.14 of part 252, which provides the required timing of the stress tests for each stress test cycle prior to October 1, 2014. The Board did not receive comments on these aspects of the proposals and is adopting them without change.

XII. Changes to Liquidity Buffer Requirements

Banking organizations subject to the Board's enhanced prudential standards rule are required to maintain liquidity buffers composed of unencumbered highly liquid assets sufficient to cover projected net stressed cash-flow needs determined under firm-conducted stress scenarios over specified planning horizons.[106] At the time of the proposals, the rule stated that cash and securities issued or guaranteed by the U.S. government or a U.S. government-sponsored enterprise are highly liquid assets.[107] In addition, the rule required

[105] *See* 12 CFR 252.2.

[106] A bank holding company subject to the enhanced prudential standards rule must maintain a liquidity buffer sufficient to meet its projected net stressed cash-flow needs over a 30-day planning horizon. Similarly, a foreign banking organization subject to the enhanced prudential standards rule must maintain a liquidity buffer for a U.S. intermediate holding company, if any, sufficient to meet its projected net stressed cash-flow needs over a 30-day planning horizon. Separately, such a foreign banking organization must maintain a liquidity buffer for its collective U.S. branches and agencies sufficient to meet their net stressed cash-flow need over the first 14 days of a stress test with a 30-day planning horizon. *See* 12 CFR 252.35(b)(1) and 252.157(c)(2)–(3).

[107] 12 CFR 252.35(b)(3)(i)(A)–(B) and 12 CFR 252.157(c)(7)(i)(A)–(B). The foreign bank proposal requested comment on whether it would be appropriate to limit ''cash'' in the enhanced prudential standards rule to Reserve Bank balances

banking organizations to demonstrate to the satisfaction of the Board that any other asset meets specific liquidity criteria in order to use it to meet the rule's liquidity buffer requirements.[108]

The criteria for highly liquid assets set forth in the enhanced prudential standards rule are substantially similar to the qualifying criteria for HQLA under the LCR rule, which requires banking organizations covered by that rule to maintain an amount of HQLA sufficient to meet net stressed outflows over a 30-day period of stress.[109] Under the LCR rule, HQLA includes asset classes that are expected to be easily and immediately convertible into cash with little or no expected loss of value during a period of stress. Certain of the asset classes are also subject to additional, asset-specific requirements. In the preamble to the enhanced prudential standards rule, which was adopted prior to finalization of the LCR rule, the Board indicated that assets that would qualify as HQLA under the then-proposed LCR rule would be liquid under most scenarios, but a banking organization would still be required to demonstrate to the Board that the asset meets the criteria for highly liquid assets set forth in the enhanced prudential standards rule.

The foreign bank proposal sought comment on whether to more closely align the assets that qualify as highly liquid assets in the enhanced prudential standards rule with HQLA under the LCR rule. Specifically, the foreign bank proposal asked how, if at all, should the Board adjust the current definition of highly liquid assets in 12 CFR 252.35(b)(3) and 252.157(c)(7) of the enhanced prudential standards rule to improve alignment with the definition of HQLA. The foreign bank proposal also sought comment on whether the Board should incorporate other HQLA requirements in the enhanced prudential standards rule for highly liquid assets, such as the LCR rule's Level 2A and Level 2B liquid asset haircuts, the 40 percent composition limit on the total amount of Level 2 liquid assets, as well as the operational requirements set forth in 12 CFR 249.22.

Commenters generally supported aligning the definition of highly liquid assets with HQLA. However, commenters did not support including in the enhanced prudential standards rule the haircuts and composition limits under the LCR rule. These commenters argued that firms should instead continue to evaluate all market and credit risk characteristics of assets eligible for inclusion as highly liquid assets, and apply market and credit risk haircuts consistent with the design of their internal liquidity stress test scenarios. Commenters also did not support adding the operational requirements for eligible HQLA under the LCR rule to the requirements for highly liquid assets under the enhanced prudential standards rule, arguing that firms should be able to apply independent judgement in assessing operational or other risks in the context of highly liquid assets.

Due to the similarity in asset qualification requirements under the two rules, the Board is amending the definition of highly liquid assets under the enhanced prudential standards rule to include all assets that would qualify as HQLA under LCR rule. The asset must satisfy all the qualifying criteria for HQLA, including, where appropriate, that the asset is liquid and readily marketable as defined in the LCR rule and meets the additional asset-specific criteria under the LCR rule.[110] In addition, the Board is amending the definition of highly liquid assets to include requirements that the banking organization subject to the rule demonstrate each asset is under the control of the management function that is charged with managing liquidity risk (liquidity management function) and demonstrate the capability to monetize the highly liquid assets. For banking organizations that are subject to the LCR rule, the liquidity management function that controls the highly liquid assets is intended to be the same function that controls eligible HQLA. For a foreign banking organization, the appropriate management function is the one that is charged with managing liquidity risk for its combined U.S. operations.

The Board is retaining, without change, the provision that permits other assets to qualify as highly liquid assets if the banking organization demonstrates to the satisfaction of the Board that these assets meet the criteria for highly liquid assets (Section C assets).[111] The Board is clarifying that the banking organization cannot include Section C assets in its buffer until it has received approval from the Board.

As a result of the expansion of the definition of highly liquid assets to include HQLA, the Board expects other assets will qualify as highly liquid assets only in narrow circumstances. However, the Board is retaining this provision to provide a banking organization the opportunity to determine and demonstrate to the Board that other assets meet the criteria for highly liquid assets.[112] For example, it may be possible for a banking organization to demonstrate that an asset that is eligible as HQLA under another jurisdiction's LCR rule meets the requirements for Section C assets. The Board is not changing the definition of highly liquid assets or other asset requirements under the rule to include the haircuts or quantitative limits that exist in the LCR rule. The Board believes that the requirements in the enhanced prudential standards rule that banking organizations discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset serve to address similar concerns as the LCR rule's haircuts while permitting a banking organization to perform its own assessment of potential stress. In addition, the enhanced prudential standard rule's diversification requirement that a liquidity buffer not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the banking organization's risk address similar risks as the LCR rule's quantitative limits to the composition of the HQLA amount, and permit a banking organization to consider its idiosyncratic risk profile and market conditions. Consistent with the LCR rule's composition limits on Level 2 and Level 2B liquid assets, the Board believes overreliance on Level 2 liquid assets that are generally not immediately convertible to cash and subject to greater price volatility, present safety and soundness concerns and increase the risks a banking organization would not be able to meet its obligations during a period of stress. The Board is clarifying that the diversification requirements in the enhanced prudential standards rule are

and foreign withdrawable reserves. The Board received a comment recommending that the Board not limit ''cash'' for purposes of the definition of highly liquid asset. The Board is not revising the term ''cash'' as part of this final rule.

[108] 12 CFR 252.35(b)(3)(i)(C) and 12 CFR 252.157(c)(7)(i)(C).

[109] 12 CFR part 249.

[110] *See* 12 CFR 249.20.

[111] *See* 12 CFR 252.35(d)(b)(i)(C) and 12 CFR 252.157(c)(7)(i)(C). The requirements for a Section C asset include that the bank holding company or foreign banking organization demonstrate to the satisfaction of the Board that the asset: (*1*) Has low credit risk and low market risk; (*2*) is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and (*3*) is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

[112] *Id.*

intended to prevent such overreliance.[113]

Although commenters requested that the definition of highly liquid assets or other asset requirements not include the operational requirements for eligible HQLA prescribed in the LCR rule, the Board believes demonstrating the liquidity buffer is under the control of the liquidity management function and demonstrating the capability to monetize the liquidity buffer are fundamental risk management processes that ensure the liquidity buffer is available during times of stress. Specifically, these requirements are intended to ensure a banking organization can monetize highly liquid assets during the relevant stress scenario and have the proceeds available to the liquidity management function without conflicting with another business or risk management strategy, sending a negative signal to market participants, or adversely affecting its reputation or franchise. However, to address commenters' concern that banking organizations be allowed to apply independent judgement in assessing operational and other risks in the context of highly liquid assets, the Board is not incorporating the LCR rule's more prescriptive requirements for demonstrating the operational capability to control and monetize assets. The Board believes it is appropriate to allow for a greater range of risk management practices to demonstrate control or monetization capabilities for a firm's highly liquid asset buffer, consistent with the goal that the internal liquidity stress test be tailored to a firm's risk profile, size, and complexity. The Board is clarifying, however, that a banking organization's approach to demonstrating control and monetization capabilities under the LCR rule would also meet the requirements of the amended definition.

XIII. Changes to Company-Run Stress Testing Requirements for State Member Banks, Removal of the Adverse Scenario, and Other Technical Changes Proposed in January 2019

In January 2019, the Board requested comment on a proposed rule that would amend the Board's stress testing rules, consistent with section 401 of EGRRCPA (stress testing proposal).[114]

Prior to the passage of EGRRCPA, section 165(i) of the Dodd-Frank Act[115] required each state member bank with total consolidated assets of more than $10 billion to conduct annual stress tests. In addition, section 165 required the Board to issue regulations that establish methodologies for conducting stress tests, which were required to include at least three different stress-testing scenarios: ''baseline,'' ''adverse,'' and ''severely adverse.''[116]

Section 401 of EGRRCPA amended certain aspects of the stress testing requirements applicable to state member banks under section 165(i) of the Dodd-Frank Act.[117] Specifically, 18 months after the date of enactment, section 401 of EGRRCPA raises the minimum asset threshold for application of the stress testing requirement from more than $10 billion to more than $250 billion in total consolidated assets; revises the requirement for state member banks to conduct stress tests ''annually,'' and instead requires them to conduct stress tests ''periodically.'' In addition, EGRRCPA amended section 165(i) to no longer require the Board's supervisory stress test and firms' company-run stress tests to include an ''adverse'' scenario, thus reducing the number of required stress test scenarios from three to two.

The stress testing proposal would have raised the minimum asset threshold for state member banks to conduct stress tests from more than $10 billion to more than $250 billion, and revised the frequency with which state member banks with assets greater than $250 billion would have been required to conduct stress tests. In addition, the stress testing proposal would have removed the adverse scenario from the list of required scenarios in the Board's stress testing rules and the Board's Policy Statement on the Scenario Design Framework for Stress Testing. As discussed below, the Board received two comments on the stress testing proposal and is adopting the proposal without change.

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

A. Minimum Asset Threshold for State Member Banks

As described above, section 401 of EGRRCPA amends section 165 of the Dodd-Frank Act by raising the minimum asset threshold for state member banks required to conduct company-run stress tests from more than $10 billion to more than $250 billion. Consistent with EGRRCPA, the proposal would have raised this threshold such that only state member banks with total consolidated assets greater than $250 billion would be required to conduct stress tests. The Board did not receive comments on this aspect of the proposal and is finalizing it without change.

B. Frequency of Stress Testing for State Member Banks

Section 401 of EGRRCPA revised the requirement under section 165 of the Dodd-Frank Act for state member banks to conduct stress tests, changing the required frequency from ''annual'' to ''periodic.'' Under the stress testing proposal, state member banks with total consolidated assets of more than $250 billion generally would have no longer been required to conduct stress tests annually; rather, they would be required to conduct stress tests once every other year. As an exception to the two-year cycle, state member banks that are subsidiaries of banking organizations subject to Category I or Category II standards would have been required to conduct a stress test on an annual basis. The proposed frequency was intended to provide the Board and the state member bank with information necessary to satisfy the purposes of stress testing, including: Assisting in an overall assessment of the state member bank's capital adequacy, identifying downside risks and the potential impact of adverse conditions on the state member bank's capital adequacy, and determining whether additional analytical techniques and exercises are appropriate for the state member bank to employ in identifying, measuring, and monitoring risks to the soundness of the state member bank.

One commenter asserted that the Board should not reduce the frequency of stress testing for any covered banks. Based on the Board's experience overseeing and reviewing the results of company-run stress testing since 2012, the Board believes that a two-year stress testing cycle generally would be appropriate for certain state member banks. Specifically, the state member banks that would be subject to a two-

[113] *See* 12 CFR 238.124(b)(3)(v) (covered savings and loan holding companies), 12 CFR 252.35(b)(3)(v) and 12 CFR 252.157(c)(7)(v). As discussed in Section VIII of this Supplementary Information, this final rule adopts the same liquidity risk management, stress testing and buffer requirements for covered savings and loan holding companies.

[114] 84 FR 4002 (February 14, 2019).

[115] Public Law 111–203, 124 Stat. 1376 (2010).

[116] 12 U.S.C. 5365(i)(2)(C).

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

year stress testing cycle under the proposal would not be the subsidiaries of larger, more complex firms, which can present greater risk and therefore merit closer monitoring. State member banks that are subsidiaries of larger, more complex firms would continue to be required to conduct stress tests on an annual basis. Accordingly, the final rule retains the frequency of company-run stress test requirements for state member banks set forth in the stress testing proposal without change. In addition, and as discussed above, the final rule provides the Board with the authority to adjust the required frequency for a holding company or state member bank subject to the Board's stress testing rules based on the company's financial condition, size, complexity, risk profile, scope of operations, activities, or risks to the U.S. economy. The final rule therefore provides flexibility to the Board to require more frequent company-run stress testing at the state member bank or holding company level, which would take into account the risk profile of the subsidiary state member bank, as needed.

Under the stress testing proposal, all state member banks that would conduct stress tests every other year would have been required to conduct stress tests in the same even numbered year (*i.e.,* the reporting years for these state member banks would be synchronized). By requiring these state member banks to conduct their stress tests in the same year, the proposal would continue to allow the Board to make comparisons across state member banks for supervisory purposes and assess macroeconomic trends and risks to the banking industry. The Board did not receive comments on this aspect of the stress testing proposal and is adopting it without change.

Under the stress testing proposal, a state member bank that was subject to a two-year stress test cycle would have become subject to an annual stress test if, for example, the parent bank holding company of the bank becomes a firm subject to Category I or II standards. The proposal would not have established a transition period in these cases. Accordingly, a state member bank that becomes subject to an annual stress test requirement would have been required to begin stress testing on an annual basis as of the next year. The Board did not receive comments on this aspect of the proposal and is adopting it without change.

C. Removal of ''Adverse'' Scenario

As adopted, the Board's stress testing requirements—which are applicable to state member banks, savings and loan holding companies, bank holding companies, U.S. intermediate holding companies of foreign banking organizations, and any nonbank financial company supervised by the Board—required the inclusion of an ''adverse'' scenario in the stress test. Section 401 of EGRRCPA amends section 165(i) of the Dodd-Frank Act to no longer require the Board to include an ''adverse'' scenario in the company-run stress test or its supervisory stress tests, reducing the number of required stress test scenarios from three to two. The stress testing proposal would have removed the ''adverse'' scenario from the list of required scenarios in the Board's stress testing rules. In addition, the proposal would have made conforming changes to the Board's Policy Statement on the Scenario Design Framework for Stress Testing to reflect the removal of the adverse scenario.

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

One commenter requested that the Board immediately eliminate certain stress testing requirements that would no longer be in effect upon finalization of the proposal or that are not appropriate for any firm of any size. Specifically, the commenter asserted that the Board should immediately eliminate the ''adverse'' scenario from the scenarios required for purposes of the Board's 2019 stress test cycle. Because the final rule is effective after the October 5, 2019, due date for mid-cycle company-run stress tests, and there is no additional requirement that necessitates use of the ''adverse'' scenarios for the 2019 stress test cycle, the removal of this requirement will take effect for the 2020 stress test cycle.

D. Review by Board of Directors

The enhanced prudential standards rule, as adopted, required the board of directors of a banking organization to ''review and approve the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than annually.'' [118] The domestic proposal would have established similar requirements for covered savings and loan holding companies. The stress testing proposal would have revised the frequency of these requirements for banking organizations from ''annual'' to ''no less than each year a stress test is conducted'' in order to make review by the board of directors consistent with the supervised firm's stress testing cycle. The Board did not receive comments on this aspect of the proposal and is adopting it without change.

E. Scope of Applicability for Savings and Loan Holding Companies

The stress testing proposal would have revised the company-run stress testing requirements for covered savings and loan holding companies included in the domestic proposal. As part of the domestic proposal, the Board generally proposed to apply prudential standards to certain covered savings and loan holding companies using the standards for determining prudential standards for large bank holding companies. Section 165(i)(2) of the Dodd-Frank Act, as amended by EGRRCPA, requires all financial companies that have total consolidated assets of more than $250 billion to conduct periodic stress tests. Consistent with EGRRCPA, the Board proposed to revise the scope of applicability of the company-run stress testing requirements included in the domestic proposal to include all savings and loan holding companies that meet the criteria for Category II or Category III standards. The proposal also would have amended the proposed company-run stress test requirements to maintain the existing transition provision that provides that a savings and loan holding company would not be required to conduct its first stress test until after it is subject to minimum capital requirements. The Board did not receive comments on this aspect of the proposal and adopting it generally as proposed. The final rule applies company-run

[118] *See* 77 FR 62396 (October 12, 2012); 77 FR 62378 (October 12, 2012).

stress testing requirements to covered savings and loan holding companies subject to Category II or III standards, consistent with the requirements that apply to similarly-situated bank holding companies. In addition, the final rule applies company-run stress test requirements to all other savings and loan holding companies with total consolidated assets of $250 billion or more, consistent with the Dodd-Frank Act, as amended by EGRRCPA. A savings and loan holding company is required to comply with company-run stress testing requirements after it is subject to minimum regulatory capital requirements. Covered savings and loan holding companies are subject to minimum regulatory capital requirements through the Board's capital rule.[119]

XIV. Changes to Dodd-Frank Definitions

The proposal would have made changes to the Board's implementation of certain definitions in the Dodd-Frank Act. Specifically, the Dodd-Frank Act directed the Board to define the terms ''significant bank holding company'' and ''significant nonbank financial company,'' terms that are used in the credit exposure reports provision in section 165(d)(2).[120] The terms ''significant nonbank financial company'' and ''significant bank holding company'' are also used in section 113 of the Dodd-Frank Act, which specifies that FSOC must consider the extent and nature of a nonbank company's transactions and relationships with other ''significant nonbank financial companies'' and ''significant bank holding companies,'' among other factors, in determining whether to designate a nonbank financial company for supervision by the Board.[121] The Board previously defined ''significant bank holding company'' and ''significant nonbank financial company'' using $50 billion minimum asset thresholds to conform with section 165.[122] In light of EGRRCPA's amendments, the Board proposed to amend these definitions to include minimum asset thresholds of $100 billion, and make other conforming edits in the Board's regulation on definitions in Title I of the Dodd-Frank Act.[123] The Board did not receive any comments on this aspect of the proposal and is finalizing it as proposed.

XV. Reporting Requirements

In the proposals, the Board proposed changes to the FR Y–14, FR Y–15, FR 2052a, FR Y–9C, FR Y–9LP, FR Y–7, and FR Y–7Q report forms. The Board received comments on changes to the FR Y–14, FR Y–15, and FR 2052a, which are discussed below. The Board did not receive comments on its proposed changes to the FR Y–9C, FR Y–9LP, FR Y–7 and FR Y–7Q, and is finalizing those changes as proposed.

Some commenters requested that the Board clearly identify in the preamble to the final rule the specific line items and forms that would be used to determine a banking organization's size and other risk-based indicators. Table II below indicates the line items that measure risk-based indicators under the final rule:

TABLE II—LINE ITEMS FOR RISK-BASED INDICATORS

	Reporting unit		
	U.S. holding companies	U.S. intermediate holding companies of foreign banking organizations	Combined U.S. operations of foreign banking organizations
Size	FR Y–15, Schedule A, Line Item M4	FR Y–15, Schedule H, Line Item M4, Column A.	FR Y–15, Schedule H, Line Item M4, Column B.
Cross-jurisdictional activity	FR Y–15, Schedule E, Line Item 5	FR Y–15, Schedule L, Line Item 4, Column A.	FR Y–15, Schedule L, Line Item 4, Column B.
Nonbank assets	FR Y–15, Schedule A, Line Item M6	FR Y–15, Schedule H, Line Item M6, Column A.	FR Y–15, Schedule H, Line Item M6, Column B.
Short-term wholesale funding.	FR Y–15, Schedule G, Line Item 6	FR Y–15, Schedule N, Line Item 6, Column A.	FR Y–15, Schedule N, Line Item 6, Column B.
Off-balance sheet exposure.	FR Y–15, Schedule A, Line Item M5	FR Y–15, Schedule H, Line Item M5, Column A.	FR Y–15, Schedule H, Line Item M5, Column B.

The proposal would have added two line items to Schedule A and Schedule H of the FR Y–15 to clarify the calculation of risk-based indicators: Line Item M4 would calculate total assets and Line Item M5 would calculate total off-balance sheet exposure. The Board did not receive specific comments on these line items and is adopting them as proposed.[124] To further clarify the line items for calculating risk-based indicators, the Board has added Line Item 5, Cross-jurisdictional activity, to Schedule E of the FR Y–15. The Board has also added Line Item M6, Total non-bank assets, on Schedule A and Schedule H of the FR Y–15.

The Board received a number of general comments on compliance periods. Various commenters requested that the Board provide banking organizations subject to new or heightened reporting requirements under the proposals with extended compliance periods for such requirements. The Board is providing a phase-in time for banking organizations to prepare for new reporting requirements, as applicable. The compliance and transition periods for each form are discussed below.

The Board also received comments that were outside the scope of the proposals, such as suggested changes to forms that the Board did not propose to modify through these proposals. Some commenters requested tailoring of the proposed FR 2590, which relates to compliance with the single-counterparty credit limits rule. Proposed changes to the proposed FR 2590 will be addressed in a separate Board action. Commenters also requested a change to the FFIEC forms. The agencies are reviewing interagency forms and intend to propose changes to them to conform to EGRRCPA and this final rule.

[119] 12 CFR 217.

[120] 12 U.S.C. 5311(a)(7); 5365(d)(2). EGRRCPA changed credit exposure reports from a mandatory to discretionary prudential standard under section 165.

[121] *See* 12 U.S.C. 5323.

[122] 12 CFR 242.4.

[123] 12 CFR part 242.

[124] Comments regarding the composition of the risk-based indicators are discussed in section V of this SUPPLEMENTARY INFORMATION.

A. FR Y–14

Consistent with EGRRCPA's changes and the Board's July 2018 statement relating to EGRRCPA,[125] the proposals would have revised the FR Y–14 series of reports (FR Y–14A, Y–14Q, and Y–14M) so that domestic bank holding companies and U.S. intermediate holding companies with less than $100 billion in total consolidated assets would no longer be required to submit the forms. Under the proposals, domestic bank holding companies and U.S. intermediate holding companies with $100 billion or more in total consolidated assets would continue to submit the FR Y–14 reports.

The proposal also would have required all covered savings and loan holding companies with $100 billion or more in total consolidated assets to complete elements of the FR Y–14 series of reports that are used in conducting supervisory stress tests: (1) The FR Y–14M; (2) all schedules of the FR Y–14–Q except for Schedule C—Regulatory Capital Instruments and Schedule D—Regulatory Capital Transitions; and (3) Schedule E—Operational Risk of the FR Y–14A. The proposal would have required covered savings and loan holding companies subject to Category II or III standards to report the Form FR Y–14A Schedule A—Summary and Schedule F—Business Plan Changes with respect to company run stress testing.

Commenters argued that the Board should adjust various FR Y–14 reporting requirements for banking organizations subject to the proposals. Commenters generally requested that the FR Y–14 be amended to provide reductions in burden for banking organizations, particularly those subject to Category III or IV standards. Some commenters asked the Board to revise the FR Y- 14M and Y–14A for banking organizations subject to Category IV standards, by reducing the frequency of the Y–14M from monthly to quarterly and altering or eliminating certain Y–14A schedules and worksheets. These commenters also asked the Board to review the relevance of information requested on the Y–14Q for banking organizations subject to Category IV standards. Other commenters suggested that certain Y–14A sub-schedules should not be required for banking organizations subject to Category III standards. Some commenters requested that the Board simplify the Y–14A Summary schedule for all banking organizations.

The final rule adopts the changes to the FR Y–14 largely as proposed. The final rule maintains the existing FR Y–14 substantive reporting requirements in order to provide the Board with the data it needs to conduct supervisory stress testing and inform the Board's ongoing monitoring and supervision of bank holding companies, covered savings and loan holding companies, and U.S. intermediate holding companies. However, as discussed in the proposals, the Board intends to provide greater flexibility to banking organizations subject to Category IV standards in developing their annual capital plans and consider further changes to the FR Y–14 forms as part of a separate proposal. The Board has also revised the FR Y–14 instructions to remove references to the adverse scenario, consistent with the changes in this final rule.

The final rule does not finalize certain definitional changes to the FR Y–14 series of reports, however. The proposal would have made changes to the definitions of ''large and complex'' and ''large and noncomplex'' bank holding company to align with proposed changes in section 225.8(d)(9). The Board is not finalizing these changes as part of this final rule, and instead intends to consider these changes in conjunction with other changes to the capital plan rule as part of a separate capital plan proposal.

Commenters also requested that the Board provide an initial transition period for covered savings and loan holding companies to submit their first FR Y–14 reports. The final rule provides covered savings and loan holding companies with an extended amount of time to file their first reports. Table III details the submission date requirements for covered savings and loan holding companies with $100 billion or more in total consolidated assets that will be submitting FR Y–14 reports under the final rule for the first time:

TABLE III—FIRST SUBMISSION DATES OF FR Y–14 FOR COVERED SAVINGS AND LOAN HOLDING COMPANIES

Form	First as-of date	First submission dates
FR Y–14A	12/31/2021	April 5, 2022.
FR Y–14Q	6/30/2020	90 days after quarter end for first two quarterly submissions; 65 days after quarter end for the third and fourth quarterly submissions.
FR Y–14M	6/30/2020	For the first three monthly submissions, 90 days after the month-end as-of date.

B. FR Y–15

The proposals would have modified the reporting panel and substantive requirements of the FR Y–15. First, the domestic proposal would have no longer required U.S. bank holding companies and covered savings and loan holding companies with $50 billion or more, but less than $100 billion, in total consolidated assets to file the FR Y–15. The foreign bank proposal would have further revised the reporting panels and scope of the FR Y–15. Currently, U.S. intermediate holding companies with $50 billion or more in total consolidated assets report the FR Y–15. Under the foreign bank proposal, foreign banking organizations with $100 billion or more in combined U.S. assets, rather than U.S. intermediate holding companies, would have been required to submit the FR Y–15 with respect to their combined U.S. operations. Specifically, the proposal would have required a foreign banking organization to report information described in the FR Y–15 separately for its (i) U.S. branch and agency network, if any; (ii) U.S. intermediate holding company, if any; and (iii) combined U.S. operations.

Some commenters supported the changes to the FR Y–15's scope and reporting panel in the proposals. Commenters noted that the Board does not currently compile systemic risk data on foreign banking organizations that includes information on branch networks. These commenters argued that incorporating combined U.S. operations into the FR Y–15 would provide more complete information on a foreign banking organization's

[125] *See* Board statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act, July 6, 2018, available at: *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180706b.htm.*

financial profile, and that such a revision was overdue. However, other commenters opposed the changes. These commenters argued that the proposed reporting based on the combined U.S. operations was unjustified, and would require significant modifications to foreign banking organizations' existing reporting systems at a substantial cost. Some commenters also argued that the proposed FR Y–15 changes would disproportionately burden foreign banking organizations compared to domestic banking organizations, and therefore were inconsistent with the principle of national treatment.

To address these concerns, commenters suggested alternatives to the proposal. Some commenters stated that the FR Y–15 should not include any reporting on a combined U.S. operations basis. In particular, commenters argued that the Board should implement a tailoring framework that does not measure risk-based indicators across a foreign banking organization's combined U.S. operations, and eliminate FR Y–15 reporting on a combined U.S. operations basis. Other commenters suggested that a foreign banking organization should only be required to report information on its combined U.S. operations that is necessary for calculating the risk-based indicators. Commenters also recommended that the Board allow banking organizations to file a modified FR Y–15 with an option to prepare top-line items and not require more nuanced risk-based indicator calculations with respect to a particular indicator if a banking organization is well below the threshold for the risk-based indicator based on the top-line item. Another commenter also requested removal of the requirement to calculate risk-weighted assets at the combined U.S. operations level.

As commenters acknowledged, the proposal would have required foreign banking organizations to calculate size, cross-jurisdictional activity, nonbank assets, off-balance sheet exposure, and weighted short-term wholesale funding for their combined U.S. operations in order to determine the category of standards that would apply to a foreign banking organization at the level of its combined U.S. operations.[126] Most of these indicators are already reported by U.S. bank holding companies, covered savings and loan holding companies, and U.S. intermediate holding companies. Requiring a foreign banking organization to report this information for its combined U.S. operations supports tailoring prudential standards based on the risk-profile of foreign banking organization's U.S. operations. This approach also establishes a central location for information on the risk-based indicators to help support the transparency of the framework.

The purpose and use of the FR Y–15 is broader than compliance with the tailoring framework, however. The FR Y–15 requests granular data on an institution's funding, structure, and activities that is consistent and comparable among institutions, and is often unavailable from other sources. The Board uses this information to monitor the systemic risk profile of banking organizations, as well as for other purposes.[127] Information on the combined U.S. operations of foreign banking organizations from the FR Y–15 will enhance the Board's ability to monitor and supervise the U.S. footprint of large foreign banking organizations and compare the risk profiles of large banking organizations. Having this data reported on the FR Y–15 also ensures that information on the combined U.S. operations of foreign banking organizations is available to the public, and thus can be used by the market to evaluate the systemic importance of domestic banking organizations and the U.S. operations of foreign banking organizations.

Accordingly, the final rule requires foreign banking organizations to report the FR Y–15 at the U.S. intermediate holding company and combined U.S. operations levels largely as proposed. The FR Y–15 as finalized is consistent with the principle of national treatment because it requires similarly-situated domestic holding companies and foreign banking organizations to report similar data on their U.S. footprint, taking into account the unique structures of foreign banking organizations. In response to comments, and because the Board is not applying categories of standards to the U.S. operations of foreign banking organizations based only on the risk profile of their U.S. branch and agency networks, the Board will not require foreign banking organizations to provide standalone data on their U.S. branches and agencies on the FR Y–15. Accordingly, the Board is modifying the proposal by eliminating the U.S. branch and agency column on the FR Y–15, and instead will only require foreign banking organizations to complete the FR Y–15 in two columns for purposes of the final rule: Column A, U.S. intermediate holding companies, if any; and Column B, combined U.S. operations. Foreign banking organizations also will not be required to calculate average risk-weighted assets for their combined U.S. operations in Column B on Schedule N, line item 7. Because branches and agencies are not subject to capital requirements, this information would provide limited supervisory benefit and could be burdensome to compile and calculate.

Commenters requested a number of specific line item changes and instruction clarifications for completing the FR Y–15. These commenters requested more clarity in the General Instructions on the rule of consolidation for foreign banking organizations and foreign affiliate netting. The final form includes revised language in the General Instructions and certain schedules that is intended to further clarify and address questions regarding consolidation rules and netting. The Board also intends to continue to review the FR Y–15 instructions in light of the changes in this final rule and, if necessary, further refine the form and instructions to provide additional clarity on how to report line items for the combined U.S. operations of foreign banking organizations. Commenters requested that the Board permit foreign banking organizations to report size as a spot, rather than average measure, on proposed Schedule H of the FR Y–15 unless the foreign banking organization's U.S. intermediate holding company is subject to the supplementary leverage ratio. Averages provide a more reliable and risk-sensitive estimate of the banking organization's size over the period, and as such, the Board is finalizing the calculation of total exposure on Schedule H as proposed.

Commenters raised a number of issues and questions regarding proposed Schedule L—FBO Cross-Jurisdictional Activity Indicators. For purposes of reporting cross-jurisdictional activity, the proposal would have required a foreign banking organization to report assets and liabilities of the combined U.S. operations, U.S. intermediate holding company, and U.S. branch and agency network, excluding cross-jurisdictional liabilities to non-U.S. affiliates and cross-jurisdictional claims on non-U.S. affiliates to the extent that these claims are secured by eligible financial collateral. To effectuate this

[126] Standards that apply to the combined U.S. operations of a foreign banking organization include liquidity stress tests, risk management, and buffer requirements under the enhanced prudential standards rule; resolution planning requirements; and the reporting frequency of the FR 2052a.

[127] For example, the FR Y–15 is used to facilitate the implementation of GSIB capital surcharges, identify other institutions which may present significant systemic risk, and analyze the systemic risk implications of proposed mergers and acquisitions.

change, the proposal would have amended the FR Y–15 by adding new line items to proposed Schedule L and changed the accompanying FR Y–15 instructions. Comments related to the substance of the cross-jurisdictional indicator are discussed in section V. The Board is finalizing Schedule L substantively as proposed, with some technical edits to language to provide further clarity on how to report line items for a foreign banking organization's combined U.S. operations.

One commenter recommended expanding line item 4 on Schedule E—Cross-Jurisdictional Activity Indicators to separately identify deposits; trading liabilities; borrowings (including short-term borrowings, long-term debt, federal funds purchased, and repurchase agreements); accounts payable; and other liabilities. The commenter argued that such additional specificity would provide the Board and the public with additional insight into the nature of an institution's cross-jurisdictional liabilities without increasing reporting burden. The Board finds that line item 4 is reported with sufficient granularity to understand the risk profile of the banking organizations and is adopting it as proposed.

Commenters expressed concern about the amount of time required to establish systems necessary to collect information from combined U.S. operations of a foreign banking organization as well as with the accuracy and integrity of the data collected. Commenters also requested at minimum, a 12-month phase-in period to accommodate the expanded scope of the FR Y–15 reporting requirements, and that the first two quarterly FR Y–15 filings be prepared on a ''best efforts'' basis. To allow firms to develop reporting and data systems, the final rule provides a phase-in period to meet the expanded reporting requirements in the FR Y–15. Under the phase-in period, banking organizations will be required to report the first combined U.S. operations data on the FR Y–15 with an as-of date of June 30, 2020, and submit the data to the Board no later than August 19, 2020.

Under the foreign bank proposal, Schedule N—FBO Short-Term Wholesale Funding Indicator of the FR Y–15 would have required foreign banking organizations that report the FR 2052a daily to report the average weighted short-term wholesale funding values using daily data, and all other foreign banking organizations to report average values using monthly data. Some commenters requested that weighted short-term wholesale funding in Schedule N be reported using monthly data for all foreign banking organizations. An average of day-end data points is a more accurate representation of a banking organization's ongoing reliance on wholesale funding. Accordingly, for foreign banking organizations that have sufficient liquidity risks that would require FR 2052a daily reporting, the final rule requires these banking organizations to report Schedule N on the FR Y–15 using daily data. For firms not subject to FR 2052a daily reporting, the Board is finalizing the rule for calculating weighted short-term wholesale funding as proposed.

The Board continues to evaluate whether the benefits of a more frequent average would be justified for these firms, particularly for firms that report the LCR on a daily basis, and may propose adjustments to the calculation frequency. Furthermore, the Board intends to monitor a firm's weighted short-term wholesale funding position at month-end relative to its position throughout the month through the supervisory process, and continues to have the authority to apply additional prudential standards based on the risk profile of a firm, including its liquidity risk profile.[128]

C. FR 2052a

The proposals would have modified the current reporting frequency and granularity of the FR 2052a to align with the proposed tailoring framework. Specifically, the proposals would have required U.S. bank holding companies and covered savings and loan holding companies, each with $100 billion or more in total consolidated assets, or foreign banking organizations with combined U.S. assets of $100 billion or more, to report FR 2052a data each business day if they were (i) subject to Category I or II standards, as applicable, or (ii) subject to Category III standards and had $75 billion or more in weighted short-term wholesale funding (for foreign banking organizations, this would be measured at the level of the combined U.S. operations). All other domestic holding companies and foreign banking organizations would have been required to report the FR 2052a on a monthly basis. These changes would have increased the frequency of reporting for domestic banking organizations subject to Category II standards with less than $700 billion in total consolidated assets, and domestic banking organizations subject to Category III standards with $75 billion or more in weighted short-term wholesale funding; both groups of banking organizations currently report the FR 2052a monthly. Similarly, the frequency of reporting would have changed for some foreign banking organizations. The proposals also would have simplified the FR 2052a reporting thresholds by eliminating the current criteria used to identify daily filers of the FR 2052a—for domestic holding companies, those firms with $700 billion or more in total assets or $10 trillion or more in assets under custody, and for foreign banking organizations, those firms included in the Large Institution Supervision Coordinating Committee portfolio—and replacing these criteria with the category framework.

A number of commenters requested that the Board reduce or eliminate proposed FR 2052a reporting requirements. Commenters requested that the Board modify the proposed FR 2052a reporting frequencies so that banking organizations subject to Category II and Category III standards would be subject to monthly or quarterly, rather than daily, reporting. Similarly, commenters argued that the Board should not expand the scope of daily FR 2052a reporting beyond its current reach, and that no banking organization should be subject to more frequent FR 2052a reporting under the proposals. Some commenters suggested that the requirement to report FR 2052a data each business day should not be based on the $75 billion weighted short-term wholesale funding threshold, but instead on a higher short-term wholesale funding threshold, such as $100 billion or $125 billion. Commenters on the foreign proposal noted that certain foreign banking organizations would move from monthly to daily FR 2052a reporting under the proposal and argued that this was unjustified, as well as inconsistent with the principle of national treatment.

The Board is finalizing the FR 2052a generally as proposed, with certain modifications as discussed below. Daily FR 2052a reporting is appropriate for institutions subject to Category II standards or Category III standards with $75 billion or more in weighted short-term wholesale funding. The Board uses liquidity data provided through FR 2052a reporting to monitor and assess the liquidity risks and resiliency of large banking organizations on an ongoing basis. The frequency and timeliness with which data is provided to supervisors should be commensurate with the scale and dynamic nature of a banking organization's liquidity risk. Liquidity stresses can materialize rapidly for banking organizations of all

[128] *See* 12 CFR 217.1(d); 12 CFR 249.2(a); 12 CFR 252.3(a).

sizes, but banking organizations with significant size and cross-jurisdictional activity in the United States may be more likely to face stress suddenly due to the scale of their funding and their operational complexity. Moreover, greater reliance on short-term wholesale funding may indicate heightened rollover risk and greater volatility in the funding profile of a banking organization or its U.S. operations. Banking organizations subject to Category II standards or Category III standards with $75 billion or more in weighted short-term wholesale funding have liquidity risk profiles that present higher risk to both financial stability and safety and soundness. Therefore, supervisory monitoring through daily FR 2052a reporting is critical to ensure these banking organizations are maintaining appropriate levels of liquidity and supervisors have a detailed understanding of their funding sources. The Board is thus finalizing the FR 2052a criteria and reporting frequency as proposed for banking organizations subject to Category II or III standards.

Some commenters on the domestic proposal argued that banking organizations that engage in activities that present lower liquidity risk, such as custodial activities, should not be required to submit the FR 2052a daily. Liquidity stresses may arise from a broad range of sources and markets, and can be impactful for banking organizations that have a range of business models. Accordingly, the Board is not providing different FR 2052a reporting requirements for institutions that engage in custodial activities.

A number of commenters argued that banking organizations subject to Category IV standards should be subject to quarterly reporting to align with the institutions' liquidity stress testing requirements. Other commenters requested that the Board eliminate FR 2052a reporting for banking organizations subject to Category IV standards, or instead require these institutions to report on an alternative form, such as the previously-used FR 2052b. If banking organizations subject to Category IV standards report the FR 2052a but are not subject to an LCR requirement under the final rule, commenters requested that the Board clarify and confirm that FR 2052a reporting will not implicitly bind these firms to the LCR rule.

The Board uses FR 2052a information to analyze systemic and idiosyncratic liquidity risk and to inform supervisory processes. As a class, banking organizations that are subject to Category IV standards tend to have more stable funding profiles, as measured by their generally lower level of weighted short-term wholesale funding, and lesser degrees of liquidity risk and operational complexity associated with size, cross-jurisdictional activity, nonbank assets, and off-balance sheet exposure compared to institutions subject to Categories I, II, or III standards. For this reason, the Board previously tailored data elements in the FR 2052a report based on the risk profiles for firms, and currently requires most banking organizations that would be subject to Category IV standards under the final rule to report the FR 2052a monthly rather than daily. The size of institutions subject to Category IV standards indicates that such institutions still present heightened liquidity risk relative to smaller banking organizations, however, and should continue to provide the information on the FR 2052a to ensure sufficient supervisory monitoring.

Similarly, because of their potential liquidity risks, banking organizations that would be subject to Category IV standards would still be required to develop comprehensive liquidity stress tests and short term daily cash flow projections under the enhanced prudential standards rule. The FR 2052b, which was discontinued in 2017, did not capture cash flow projections but collected information covering broad funding classifications by product, outstanding balance, and purpose, each segmented by maturity date. FR 2052a reporting aligns with the cash flows projection expectations and is substantially similar to the management information system a banking organization is required to develop to meet liquidity stress test requirements. The FR 2052a thus is a more comprehensive reporting form that is more appropriate for firms subject to the tailoring framework.

Accordingly, the Board is finalizing the FR 2052a largely as proposed, and requiring institutions subject to Category IV standards to report the form on a monthly basis. As discussed above, the purpose of FR 2052a reporting is broader than compliance with the LCR rule. In particular, the FR 2052a report collects data elements that enable the Federal Reserve to assess the cash flow profile of reporting firms. As a result, the Board notes that FR 2052a reporting will not be used to implicitly bind firms to an LCR rule.

Some commenters requested that banking organizations that would have been subject to monthly FR 2052a reporting be required to submit the form ten days after the as-of date (T+10) rather than two days after the as-of date (T+2). Under the proposals, top-tier U.S. depository institution holding companies and foreign banking organizations subject to either (1) Category III standards with less than $75 billion in weighted short-term wholesale funding or (2) Category IV standards with $50 billion or more in weighted short-term wholesale funding would have filed the FR 2052a monthly on a T+2 basis; all other monthly filers would have filed on a T+10 basis. Some commenters noted that, based on estimated categories included in the proposal, more foreign banking organizations would be required to file on a T+2 basis when compared to domestic banking organizations. Under the interagency capital and liquidity final rule, all banking organizations subject to Category III standards continue to be required to compute the LCR each business day. For banking organizations subject to Category III standards that file the FR 2052a monthly, a T+2 submission is not expected to create significant additional burden and the final rule will continue to require submission on a T+2 basis for these firms. However, for all banking organizations subject to Category IV standards that are subject to FR 2052a reporting on a monthly basis, the Board will require these firms to submit data on a T+10 basis, regardless of their level of weighted short-term wholesale funding. Based on the lower liquidity risk profile of Category IV banking organizations, the benefits of T+2 reporting for these firms would not outweigh the burden for these institutions.

Commenters requested clarification that foreign banking organizations may use the FR 2052a to calculate both the LCR and proposed NSFR. Appendix VI within the FR 2052a instructions was developed to assist reporting firms subject to the LCR rule in mapping the provisions of the LCR rule to the unique data identifiers reported on FR 2052a. This mapping document is neither part of the LCR rule nor a component of the FR 2052a report, and therefore may be used at firms' discretion. Finally, the FR 2052a includes a number of additional technical edits to the form and appendices to conform to the substantive changes in this final rule.

D. Summary of Reporting Effective Dates

The following chart summarizes when banking organizations will be required to first determine their category under this final rule, as well as when amended reporting forms and new reporting requirements will take effect. As reflected on the chart, U.S. bank holding companies, covered U.S. savings and loan holding companies, and U.S. intermediate holding companies should determine the category of standards that apply to them on the effective date of this final rule, using data from the FR Y–15 and FR Y–9LP reports as-of the quarter end dates for the previous four quarters. Foreign banking organizations will not be required to comply with the amended Schedule L of the FR Y–15 with respect to their U.S. intermediate holding companies until as-of June 30, 2020. Until that time, U.S. intermediate holding companies should determine their category under the tailoring framework consistent with the cross-jurisdictional activity schedule on the FR Y–15 that previously applied to U.S. intermediate holding companies provided that, when a foreign banking organization reports on the amended Schedule L with respect to its U.S. intermediate holding company, the U.S. intermediate holding company's measure of cross-jurisdictional activity will be based on the amount reported on the amended Schedule L and will not be averaged with amounts of cross-jurisdictional activity previously reported by the U.S. intermediate holding company.

In contrast, foreign banking organizations will not be required to determine the category of standards applied to their combined U.S. operations until the submission date of the FR Y–15 following the June 30, 2020 as-of date. Accordingly, a foreign banking organization would be required to comply with the category of standards applied to its combined U.S. operations beginning on October 1, 2020. This delay is to account for foreign banking organizations filing the FR Y–15 on behalf of their combined U.S. operations for the first time as-of June 30, 2020.

TABLE IV—TIMELINE FOR INITIAL CATEGORIZATIONS AND REPORTING UNDER THE FINAL RULE

	Reporting unit			
	U.S. bank holding companies	Covered U.S. savings and loan holding companies	U.S. intermediate holding companies	Combined U.S. operations of foreign banking organizations
Date for first categorization under 12 CFR 252.5 or 12 CFR 238.10.	Effective date of final rule[129].	Effective date of final rule[130].	Effective date of final rule[131].	Submission date of FR Y–15 as-of June 30, 2020.
First as-of date for amended FR Y–15	June 30, 2020	June 30, 2020	June 30, 2020.[132]	
First as-of date for amended FR 2052a	June 30, 2020	June 30, 2020	October 1, 2020.[133]	
First as-of date for amended FR Y–14A	Next report after effective date of final rule.	December 31, 2021	Next report after effective date of final rule.	N/A.
First as-of date for amended FR Y–14Q	Next report after effective date of final rule.	June 30, 2020	Next report after effective date of final rule.	N/A.
First as-of date for amended FR Y–14M	Next report after effective date of final rule.	June 30, 2020	Next report after effective date of final rule.	N/A.
First as-of date for amended FR Y–9C	Next report after effective date of final rule.	Next report after effective date of final rule.	Next report after effective date of final rule.	N/A.
First as-of date for amended FR Y–9LP	Next report after effective date of final rule.	Next report after effective date of final rule.	Next report after effective date of final rule.	N/A.
First as-of date for amended FR Y–7Q	N/A	N/A	Next report after effective date of final rule.[134]	
First as-of date for amended FR Y–7	N/A	N/A	Next report after effective date of final rule (fiscal year-end 2020).[135]	

XVI. Impact Assessment

In general, U.S. banking organizations with less than $100 billion in total consolidated assets and U.S. intermediate holding companies with less than $100 billion in total consolidated assets would have significantly reduced compliance costs, as under the final rule these firms are no longer subject to the enhanced prudential standards rule or the capital plan rule, and are no longer required to file FR Y–14, FR Y–15, or FR 2052a reports.[136] While these banking organizations are no longer subject to internal liquidity stress testing and buffer requirements, these firms currently hold highly liquid assets well in excess of their current liquidity buffer requirements.

[129] A bank holding company should determine its initial category based on averages using the bank holding company's four most recent FR Y–15 and FR Y–9LP filings.

[130] A covered savings and loan holding company should determine its initial category based on averages using the covered savings and loan holding company's four most recent FR Y–15 and FR Y–9LP filings.

[131] A U.S. intermediate holding company should determine its initial category based on averages using the U.S. intermediate holding company's four most recent FR Y–15 and FR Y–9LP filings. When a foreign banking organization reports on the amended Schedule L with respect to its U.S. intermediate holding company, the U.S. intermediate holding company's measure of cross-jurisdictional activity will be based on the amount reported on the amended Schedule L and will not be averaged with amounts of cross-jurisdictional activity previously reported by the U.S. intermediate holding company.

[132] As-of this date, top-tier foreign banking organizations will report the FR Y–15 on behalf of their U.S. intermediate holding company and combined U.S. operations.

[133] Until this date, a foreign banking organization should report the FR 2052a with the frequency and as-of date (Day T) as the foreign banking organization was required to report on September 1, 2019.

[134] Top-tier foreign banking organizations currently, and will continue to, report the FR Y–7Q.

[135] Top-tier foreign banking organizations currently, and will continue to, report the FR Y–7. The FR Y–7 is due annually at the end of a foreign banking organization's fiscal year.

[136] However, bank holding companies have not been complying with these requirements since July 6, 2018, when the Board issued a statement noting that it would no longer enforce these regulations or reporting requirements with respect to these firms. *See* Board statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act, July 6, 2018, available at, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf.*

For U.S. banking organizations with $100 billion or more in total consolidated assets and foreign banking organizations with $100 billion or more in combined U.S. assets, the Board expects the adjustments to the enhanced prudential standards under this final rule to reduce aggregate compliance costs with minimal effects on the safety and soundness of these firms and U.S. financial stability. With respect to reporting, foreign banking organizations will experience an increase in compliance costs as a result of having to report the information required under Form FR Y–15 at the level of their combined U.S. operations, and certain banking organizations with weighted short-term wholesale funding of $75 billion or more that previously filed the FR 2052a on a monthly basis may experience an increase in compliance costs due to the increase in reporting frequency of the FR 2052a to daily. The interagency capital and liquidity final rule provides additional impact information.

A. Liquidity

The changes to liquidity requirements are expected to reduce compliance costs for banking organizations subject to Category IV standards by reducing the required frequency of internal liquidity stress tests from monthly to quarterly, and tailoring the liquidity risk management requirements to the risk profiles of these firms. The Board does not expect these changes to materially affect the liquidity buffer levels held by these banking organizations or their exposure to liquidity risk.

B. Stress Testing

First, while the Board expects the changes to stress testing requirements to have no material impact on the capital levels of U.S. banking organizations and U.S. intermediate holding companies with $100 billion or more in total consolidated assets, the final rule will reduce compliance costs for those firms subject to Category III or IV capital standards. These firms were previously required to conduct company-run stress tests on a semi-annual basis. For U.S. banking organizations and U.S. intermediate holding companies subject to Category III standards, the final rule reduces this frequency to every other year. For U.S. banking organizations and U.S. intermediate holding companies subject to Category IV standards, the final rule removes the company-run stress test requirement altogether.[137] In addition, under the final rule, the Board will conduct supervisory stress tests of U.S. banking organizations and U.S. intermediate holding companies subject to Category IV standards on a two-year, rather than annual, cycle.

C. Single-Counterparty Credit Limits

The changes to the single-counterparty credit limits framework under the final rule are not expected to increase risks to safety and soundness or U.S. financial stability. The final rule removes U.S. intermediate holding companies subject to Category IV standards from the applicability of single-counterparty credit limits. While these firms would recognize reductions in compliance costs associated with these requirements, they typically do not present the risks that are intended to be addressed by the single-counterparty credit limits framework. In addition, the final rule removes the single-counterparty credit limits applicable to major U.S. intermediate holding companies; however, there currently are no U.S. intermediate holding companies that meet or exceed the asset size threshold for these requirements.

The final rule will increase the costs of compliance for U.S. intermediate holding companies with less than $250 billion in total consolidated assets and that are subject to Category II or Category III standards, by extending the applicability of certain provisions under the single-counterparty credit limits framework to these firms. Specifically, as of January 1, 2021, U.S. intermediate holding companies with less than $250 billion in total consolidated assets that subject to Category II or Category III standards will be subject to a net credit exposure limit equal to 25 percent of tier 1 capital, the treatment for investments in and exposures to certain special purpose entities and the economic interdependence and control relationship tests for purposes of aggregating exposures to connected counterparties.

D. Covered Savings and Loan Holding Companies

For covered savings and loan holding companies, the final rule increases compliance costs while reducing risks to the safety and soundness of these firms. The Board expects the new requirements for covered savings and loan holding companies to meaningfully improve the risk management capabilities of these firms and their resiliency to stress, which furthers their safety and soundness.

A covered savings and loan holding company that is subject to Category II or III standards is required to conduct company-run stress tests, which would be a new requirement. In connection with the application of supervisory and company-run capital stress testing requirements, covered savings and loan holding companies with total consolidated assets of $100 billion or more must report the FR Y–14 reports. In addition, the final rule requires a covered savings and loan holding company with total consolidated assets of $100 billion or more to conduct internal liquidity stress testing and maintain a liquidity buffer. While covered savings and loan holding companies will incur costs for conducting internal liquidity stress testing, this requirement will serve to improve the capability of these firms to understand, manage, and plan for liquidity risk exposures across a range of conditions. Depending on its liquidity buffer requirement, a covered savings and loan holding company may need to increase the amount of liquid assets it holds or otherwise adjust its risk profile to reduce estimated net stressed cash-flow needs. Because covered savings and loan holding companies are already subject to the LCR rule, which also requires a firm to maintain a minimum amount of liquid assets to meet net outflows under a stress scenario, covered savings and loan holding companies generally will need to hold only an incremental amount—if any—above the levels already required to comply with the LCR rule.

XVII. Administrative Law Matters

A. Paperwork Reduction Act Analysis

Certain provisions of the final rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board

[137] Although the final rule would not modify the requirement for a U.S. banking organization or intermediate holding company subject to Category IV standards to conduct an internal capital stress test as part of its annual capital plan submission, the Board intends to propose changes in the future capital plan proposal to align with the proposed removal of company-run stress testing requirements for these firms. *See* section IV.D of this **SUPPLEMENTARY INFORMATION**.

reviewed the final rule under the authority delegated to the Board by OMB. The Board did not receive any specific comments on the PRA.

The final rule contains reporting requirements subject to the PRA. To implement these requirements, the Board is revising the (1) Complex Institution Liquidity Monitoring Report (FR 2052a; OMB No. 7100–0361), (2) Annual Report of Foreign Banking Organizations (FR Y–7; OMB No. 7100–0297), (3) Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q; OMB No. 7100–0125), (4) Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), (5) Capital Assessments and Stress Testing (FR Y–14A/Q/M; OMB No. 7100–0341), and (6) Systemic Risk Report (FR Y–15; OMB No. 7100–0352).

The final rule also contains reporting and recordkeeping requirements subject to the PRA. To implement these requirements, the Board is revising the reporting and recordkeeping requirements associated with Regulations Y, LL and YY: (7) Reporting and Recordkeeping Requirements Associated with Regulation Y (Capital Plans) (FR Y–13; OMB No. 7100–0342), (8) Reporting Requirements Associated with Regulation LL (FR LL; OMB No. 7100–NEW), and (9) Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (FR YY; OMB No. 7100–0350). Foreign banking organizations do not yet report all of the data for the measure of cross-jurisdictional activity and, accordingly, the burden estimates rely on firm categorizations using best available data.

Adopted Revision, With Extension, of the Following Information Collections

(1) *Report title:* Complex Institution Liquidity Monitoring Report.

Agency form number: FR 2052a.

OMB control number: 7100–0361.

Effective Date: June 30, 2020 (October 1, 2020 for foreign banking organizations with U.S. assets).

Frequency: Monthly, each business day (daily).

Affected Public: Businesses or other for-profit.

Respondents: U.S. bank holding companies, U.S. savings and loan holding companies, and foreign banking organizations.

Estimated number of respondents: Monthly: 26; Daily: 16.

Estimated average hours per response: Monthly: 120; Daily: 220.

Estimated annual burden hours: 917,440.

General description of report: The FR 2052a is used to monitor the overall liquidity profile of institutions supervised by the Board. These data provide detailed information on the liquidity risks within different business lines (*e.g.,* financing of securities positions, prime brokerage activities). In particular, these data serve as part of the Board's supervisory surveillance program in its liquidity risk management area and provide timely information on firm-specific liquidity risks during periods of stress. Analyses of systemic and idiosyncratic liquidity risk issues are used to inform the Board's supervisory processes, including the preparation of analytical reports that detail funding vulnerabilities.

Legal authorization and confidentiality: The FR 2052a is authorized pursuant to section 5 of the Bank Holding Company Act (12 U.S.C. 1844), section 8 of the International Banking Act (12 U.S.C. 3106), section 10 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1467a), and section 165 of the Dodd-Frank Act (12 U.S.C. 5365) and is mandatory. Section 5(c) of the Bank Holding Company Act authorizes the Board to require bank holding companies (BHCs) to submit reports to the Board regarding their financial condition. Section 8(a) of the International Banking Act subjects foreign banking organizations to the provisions of the Bank Holding Company Act. Section 10(b)(2) of HOLA authorizes the Board to require savings and loan holding companies (SLHCs) to file reports with the Board concerning their operations. Section 165 of the Dodd-Frank Act requires the Board to establish prudential standards, including liquidity requirements, for certain BHCs and foreign banking organizations.

Financial institution information required by the FR 2052a is collected as part of the Board's supervisory process. Therefore, such information is entitled to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, the institution information provided by each respondent would not be otherwise available to the public and its disclosure could cause substantial competitive harm. Accordingly, it is entitled to confidential treatment under the authority of exemption 4 of the FOIA (5 U.S.C. 552(b)(4), which protects from disclosure trade secrets and commercial or financial information.

Current Actions: To implement the reporting requirements of the final rule, the Board is modifying the current FR 2052a reporting frequency. The Board revised the FR 2052a (1) so that BHCs and SLHCs with less than $100 billion in total consolidated assets would no longer have to report, (2) BHCs or SLHCs subject to Category II standards ($700 billion or more in total consolidated assets or $75 billion or more in cross jurisdictional activity) would have to report FR 2052a daily, and (3) BHCs or SLHCs subject to Category III standards with $75 billion or more in weighted short-term wholesale funding would have to report FR 2052a daily, rather than monthly. Consistent with EGRRCPA's changes, the revisions would remove foreign banking organizations with less than $100 billion in combined U.S. assets from the scope of FR 2052a reporting requirements. Additionally, the final rule would require foreign banking organizations with combined U.S. assets of $100 billion or more to report the FR 2052a on a daily basis if they are (1) subject to Category II standards or (2) are subject to Category III standards and have $75 billion or more in weighted short-term wholesale funding. All other foreign banking organizations with combined U.S. assets of $100 billion or more would be subject to monthly filing requirements. The Board estimates that the revisions to the FR 2052a would decrease the respondent count by 6. Specifically, the Board estimates that the number of monthly filers would decrease from 36 to 26, but the number of daily filers would increase from 12 to 16. The Board estimates that revisions to the FR 2052a would increase the estimated annual burden by 205,600 hours. The final reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

(2) *Report title:* Annual Report of Holding Companies; Annual Report of Foreign Banking Organizations; Report of Changes in Organizational Structure; Supplement to the Report of Changes in Organizational Structure.

Agency form number: FR Y–6; FR Y–7; FR Y–10; FR Y–10E.

OMB control number: 7100–0297.

Effective Date: For the amended FR Y–7, the next report after effective date of final rule (fiscal year-end 2020).

Frequency: Annual and event-generated.

Affected Public: Businesses or other for-profit.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies (SHCs), and intermediate holding companies (IHCs) (collectively, holding companies (HCs)), foreign banking organizations (FBOs), state member banks (SMBs) unaffiliated with a BHC, Edge Act and agreement corporations, and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only).

Estimated number of respondents: FR Y–6: 4,044; FR Y–7: 256; FR Y–10: 4,232; FR Y–10E: 4,232.

Estimated average hours per response: FR Y–6: 5.5; FR Y–7: 4.5; FR Y–10: 2.5; FR Y–10E: 0.5.

Estimated annual burden hours: FR Y–6: 22,242; FR Y–7: 1,152; FR Y–10: 43,233; FR Y–10E: 2,116.

General description of report: The FR Y–6 is an annual information collection submitted by top-tier domestic HCs and FBOs that are non-qualifying. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Federal Reserve uses the data to monitor HC operations and determine HC compliance with the provisions of the BHC Act, Regulation Y (12 CFR part 225), the Home Owners' Loan Act (HOLA), Regulation LL (12 CFR part 238), and Regulation YY (12 CFR part 252).

The FR Y–7 is an annual information collection submitted by FBOs that are qualifying to update their financial and organizational information with the Federal Reserve. The FR Y–7 collects financial, organizational, shareholder, and managerial information. The Federal Reserve uses the information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

The FR Y–10 is an event-generated information collection submitted by FBOs; top-tier HCs; securities holding companies as authorized under Section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)); state member banks unaffiliated with a BHC; Edge and agreement corporations that are not controlled by a member bank, a domestic BHC, or an FBO; and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only) to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities.

The FR Y–10E is an event-driven supplement that may be used to collect additional structural information deemed to be critical and needed in an expedited manner.

Legal authorization and confidentiality: These information collections are mandatory as follows:

FR Y–6: Section 5(c)(1)(A) of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1844(c)(1)(A)); sections 8(a) and 13(a) of the International Banking Act (IBA) (12 U.S.C. 3106(a) and 3108(a)); sections 11(a)(1), 25, and 25A of the Federal Reserve Act (FRA) (12 U.S.C. 248(a)(1), 602, and 611a); and sections 113, 165, 312, 618, and 809 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)).

FR Y–7: Sections 8(a) and 13(a) of the IBA (12 U.S.C. 3106(a) and 3108(a)); sections 113, 165, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)).

FR Y–10 and FR Y–10E: Sections 4(k) and 5(c)(1)(A) of the BHC Act (12 U.S.C. 1843(k), and 1844(c)(1)(A)); section 8(a) of the IBA (12 U.S.C. 3106(a)); sections 11(a)(1), 25(7), and 25A of the FRA (12 U.S.C. 248(a)(1), 321, 601, 602, 611a, 615, and 625); sections 113, 165, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)); and section 10(c)(2)(H) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1467a(c)(2)(H)).

Except as discussed below, the data collected in the FR Y–6, FR Y–7, FR Y–10, and FR Y–10E are generally not considered confidential. With regard to information that a banking organization may deem confidential, the institution may request confidential treatment of such information under one or more of the exemptions in the Freedom of Information Act (FOIA) (5 U.S.C. 552). The most likely case for confidential treatment will be based on FOIA exemption 4, which permits an agency to exempt from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged and confidential'' (5 U.S.C. 552(b)(4)). To the extent an institution can establish the potential for substantial competitive harm, such information would be protected from disclosure under the standards set forth in *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974). In particular, the disclosure of the responses to the certification questions on the FR Y–7 may interfere with home country regulators' administration, execution, and disclosure of their stress test regime and its results, and may cause substantial competitive harm to the FBO providing the information, and thus this information may be protected from disclosure under FOIA exemption 4. Exemption 6 of FOIA might also apply with regard to the respondents' submission of non-public personal information of owners, shareholders, directors, officers and employees of respondents. Exemption 6 covers ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)). All requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Current Actions: The Board revised item 5 on the FR Y–7, Regulation YY Compliance for the Foreign Banking Organization (FBO), to align the reporting form with the applicability thresholds set forth in the final rules and other regulatory changes that are consistent with the Board's July 2018 statement concerning EGRRCPA. The Board estimates that revisions to the FR Y–7 would not impact the respondent count, but the estimated average hours per response would decrease from 6 hours to 4.5 hours. The Board estimates that revisions to the FR Y–7 would decrease the estimated annual burden by 384 hours. The final reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

(3) *Report title:* Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, and Capital and Asset Report for Foreign Banking Organizations.

Agency form number: FR Y–7N, FR Y–7NS, and FR Y–7Q.

OMB control number: 7100–0125.

Effective Date: For the amended FR Y–7Q, the next report after effective date of final rule.

Frequency: Quarterly and annually.

Affected Public: Businesses or other for-profit.

Respondents: Foreign banking organizations (FBOs).

Estimated number of respondents: FR Y–7N (quarterly): 35; FR Y–7N (annual): 19; FR Y–7NS: 22; FR Y–7Q (quarterly): 130; FR Y–7Q (annual): 29.

Estimated average hours per response: FR Y–7N (quarterly): 7.6; FR Y–7N (annual): 7.6; FR Y–7NS: 1; FR Y–7Q (quarterly): 2.25; FR Y–7Q (annual): 1.5.

Estimated annual burden hours: FR Y–7N (quarterly): 1,064; FR Y–7N (annual): 144; FR Y–7NS: 22; FR Y–7Q (quarterly): 1,170; FR Y–7Q (annual): 44.

General description of report: The FR Y–7N and the FR Y–7NS are used to assess an FBO's ability to be a continuing source of strength to its U.S.

operations and to determine compliance with U.S. laws and regulations. FBOs file the FR Y–7N quarterly or annually or the FR Y–7NS annually predominantly based on asset size thresholds. The FR Y–7Q is used to assess consolidated regulatory capital and asset information from all FBOs. The FR Y–7Q is filed quarterly by FBOs that have effectively elected to become or be treated as a U.S. financial holding company (FHC) and by FBOs that have total consolidated assets of $50 billion or more, regardless of FHC status. All other FBOs file the FR Y–7Q annually.

Legal authorization and confidentiality: With respect to FBOs and their subsidiary IHCs, section 5(c) of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106), authorizes the board to require FBOs and any subsidiary thereof to file the FR Y–7N reports, and the FR Y–7Q.

Information collected in these reports generally is not considered confidential. However, because the information is collected as part of the Board's supervisory process, certain information may be afforded confidential treatment pursuant to exemption 8 of FOIA (5 U.S.C. 552(b)(8)). Individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of the FOIA if the data has not previously been publically disclosed and the release of the data would likely cause substantial harm to the competitive position of the respondent (5 U.S.C. 552(b)(4)). Additionally, individual respondents may request that personally identifiable information be afforded confidential treatment pursuant to exemption 6 of the FOIA if the release of the information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). The applicability of FOIA exemptions 4 and 6 would be determined on a case-by-case basis.

Current Actions: The final rule would amend the FR Y–7Q to align with revisions to the enhanced prudential standards rule. Previously, top-tier foreign banking organizations with $50 billion or more in total consolidated assets were required to report Part 1B—Capital and Asset Information for Top-tier Foreign Banking Organizations with Consolidated Assets of $50 billion or more. The final rule would now require top-tier foreign banking organizations that are subject to either sections 252.143 or 252.154 of the enhanced prudential standards rule to report Part 1B. The Board estimates that revisions to the FR Y–7Q would not impact the respondent count, but the estimated average hours per response would decrease from 3 hours to 2.25 hours for quarterly filers. The Board estimates that revisions to the FR Y–7Q would decrease the estimated annual burden by 390 hours. The final reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

(4) *Report title:* Consolidated Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Effective Date: For amended FR Y–9C and FR Y–9LP, next report after effective date of final rule.

Frequency: Quarterly, semiannually, and annually.

Affected Public: Businesses or other for-profit.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies (SHCs), and U.S. Intermediate Holding Companies (IHCs) (collectively, holding companies (HCs)).

Estimated number of respondents: FR Y–9C (non-advanced approaches holding companies): 344; FR Y–9C (advanced approached holding companies): 19; FR Y–9LP: 434; FR Y–9SP: 3,960; FR Y–9ES: 83; FR Y–9CS: 236.

Estimated average hours per response: FR Y–9C (non-advanced approaches holding companies): 46.34; FR Y–9C (advanced approached holding companies): 47.59; FR Y–9LP: 5.27; FR Y–9SP: 5.40; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Estimated annual burden hours: FR Y–9C (non advanced approaches holding companies): 63,764; FR Y–9C (advanced approached holding companies): 3,617; FR Y–9LP: 9,149; FR Y–9SP: 42,768; FR Y–9ES: 42; FR Y–9CS: 472.

General description of report: The FR Y–9 family of reporting forms continues to be the primary source of financial data on HCs on which examiners rely between on-site inspections. Financial data from these reporting forms is used to detect emerging financial problems, review performance, conduct pre-inspection analysis, monitor and evaluate capital adequacy, evaluate HC mergers and acquisitions, and analyze an HC's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C, FR Y–9LP, and FR Y–9SP serve as standardized financial statements for the consolidated holding company. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. The FR Y–9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the FR Y–9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FR Y–9C on a quarterly basis, the FR Y–9LP quarterly, the FR Y–9SP semiannually, the FR Y–9ES annually, and the FR Y–9CS on a schedule that is determined when this supplement is used.

Legal authorization and confidentiality: The FR Y–9 family of reports is authorized by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)), section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 1850a(c)(1)), and section 165 of the Dodd-Frank Act (12 U.S.C. 5365). The obligation of covered institutions to report this information is mandatory.

With respect to FR Y–9LP, FR Y–9SP, FR Y–ES, and FR Y–9CS, the information collected would generally not be accorded confidential treatment. If confidential treatment is requested by a respondent, the Board will review the request to determine if confidential treatment is appropriate.

With respect to FR Y–9C, Schedule HI's item 7(g) ''FDIC deposit insurance assessments,'' Schedule HC–P's item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies,'' and Schedule HC–P's item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties'' are considered confidential. Such treatment is appropriate because the data is not publicly available and the public release of this data is likely to impair the Board's ability to collect necessary information in the future and could cause substantial harm to the competitive position of the respondent. Thus, this information may be kept confidential under exemptions (b)(4) of the Freedom of Information Act, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' (5 U.S.C. 552(b)(4)), and (b)(8) of the Freedom of Information Act, which exempts from disclosure information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(8)).

Current Actions: To implement the reporting requirements of the final rule, the Board is amending the FR Y–9C to clarify requirements for holding companies subject to Category III capital standards. The final rule amends those instructions to further clarify that the supplementary leverage ratio and countercyclical buffer also apply to Category III bank holding companies, Category III savings and loan holding companies, and Category III U.S. intermediate holding companies. The FR Y–9LP is revised to require covered savings and loan holding companies with total consolidated assets of $100 billion or more to report total nonbank assets on Schedule PC–B, in order to determine whether the firm would be subject to Category III standards. The Board estimates that revisions to the FR Y–9C would increase the non AA HCs respondent count by 11 and decrease the AA HCs respondent count by 11. The Board estimates that revisions to the FR Y–9 would decrease the estimated annual burden by 55 hours. The final reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

(5) *Report title:* Capital Assessments and Stress Testing.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Effective Date: For U.S. bank holding companies and U.S. intermediate holding companies, the next reports (FR Y–14A, Q, and M) after the effective date of final rule. For U.S. covered savings and loan holding companies June 30, 2020 (FR Y–14Q and FR Y–14M), and December 31, 2021 (FR Y–14A).

Frequency: Annually, semiannually, quarterly, and monthly.

Affected Public: Businesses or other for-profit.

Respondents: The respondent panel consists of any top-tier bank holding company (BHC) that has $100 billion or more in total consolidated assets, as determined based on (1) the average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's FR Y–9C or (2) the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs, if the firm has not filed an FR Y–9C for each of the most recent four quarters. The respondent panel also consists of any U.S. intermediate holding company (IHC). Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: 38.

Estimated average hours per response: FR Y–14A: Summary, 887; Macro Scenario, 31; Operational Risk, 18; Regulatory Capital Instruments, 21; Business Plan Changes, 16; and Adjusted Capital Plan Submission, 100. FR Y–14Q: Retail, 15; Securities, 13; PPNR, 711; Wholesale, 151; Trading, 1,926; Regulatory Capital Transitions, 23; Regulatory Capital Instruments, 54; Operational Risk, 50; MSR Valuation, 23; Supplemental, 4; Retail FVO/HFS, 15; Counterparty, 514; and Balances, 16. FR Y–14M: 1st Lien Mortgage, 516; Home Equity, 516; and Credit Card, 512. FR Y–14: Implementation, 7,200; Ongoing Automation Revisions, 480. FR Y–14 Attestation—Implementation, 4,800; Attestation On-going Audit and Review, 2,560.

Estimated annual burden hours: FR Y–14A: Summary, 67,412; Macro Scenario, 2,232; Operational Risk, 684; Regulatory Capital Instruments, 756; Business Plan Changes, 608; and Adjusted Capital Plan Submission, 500. FR Y–14Q: Retail, 2,280; Securities, 1,976; Pre-Provision Net Revenue (PPNR), 108,072; Wholesale, 22,952; Trading, 92,448; Regulatory Capital Transitions, 3,212; Regulatory Capital Instruments, 7,776; Operational risk, 7,600; Mortgage Servicing Rights (MSR) Valuation, 1,564; Supplemental, 608; Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,620; Counterparty, 24,672; and Balances, 2,432. FR Y–14M: 1st Lien Mortgage, 222,912; Home Equity, 185,760; and Credit Card, 98,304. FR Y–14: Implementation, 14,400 and On-going Automation Revisions, 18,240. FR Y–14 Attestation On-going Audit and Review, 33,280.

General description of report: These collections of information are applicable to top-tier BHCs with total consolidated assets of $100 billion or more and U.S. IHCs. This family of information collections is composed of the following three reports:

1. The FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios either annually or semi-annually.

2. The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, and trading assets, and PPNR for the reporting period.

3. The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports provide the Board with the information and perspective needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual CCAR exercise complements other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. To fully evaluate the data submissions, the Board may conduct follow-up discussions with, or request responses to follow up questions from, respondents. Respondent firms are currently required to complete and submit up to 18 filings each year: Two semi-annual FR Y–14A filings, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with the information collection is mandatory.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y–14A/Q/M reports pursuant to section 5 of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1844), and to require the U.S. IHCs of FBOs to file the FR Y–14 A/Q/M reports pursuant to section 5 of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106). The Board has authority to require SLHCs to file the FR Y–14A/Q/M reports pursuant to section 10 of HOLA (12 U.S.C. 1467a).

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

Current Actions: To implement the reporting requirements of the final rule, the Board revised the FR Y–14 so that (1) BHCs with less than $100 billion in total consolidated assets would no longer have to report and (2) covered SLHCs with $100 billion or more in total consolidated assets are included in the reporting panel for certain FR Y–14 schedules. The Board revised the FR Y–14 threshold for U.S. intermediate holding companies that would be required to submit these forms, by increasing it to apply only U.S. intermediate holding companies with $100 billion or more in total consolidated assets. U.S. intermediate holding companies below this size threshold would no longer be required to submit these forms. The Board has also made certain revisions to the FR Y–14 forms to eliminate references to the adverse scenario, consistent with other changes in this final rule. The Board estimates that revisions to the FR Y–14 would increase the reporting panel by 2 respondents. The Board estimates that revisions to the FR Y–14 would increase the estimated annual burden by 64,016 hours. The final reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

(6) *Report title:* Systemic Risk Report.

Agency form number: FR Y–15.

OMB control number: 7100–0352.

Effective Date: June 30, 2020.

Frequency: Quarterly.

Affected Public: Businesses or other for-profit.

Respondents: U.S. bank holding companies (BHCs) and covered savings and loan holding companies (SLHCs) with $100 billion or more in total consolidated assets, foreign banking organizations with $100 billion or more in combined U.S. assets, and any BHC designated as a global systemically important bank holding company (GSIB) that does not otherwise meet the consolidated assets threshold for BHCs.

Estimated number of respondents: 43.

Estimated average hours per response: 403.

Estimated annual burden hours: 69,316.

General description of report: The FR Y–15 quarterly report collects systemic risk data from U.S. bank holding companies (BHCs), and covered savings and loan holding companies (SLHCs) with total consolidated assets of $100 billion or more, any BHC identified as a global systemically important banking organization (GSIB) based on its method 1 score calculated as of December 31 of the previous calendar year, and foreign banking organizations with $100 billion or more in combined U.S. assets. The Board uses the FR Y–15 data to monitor, on an ongoing basis, the systemic risk profile of subject institutions. In addition, the FR Y–15 is used to (1) facilitate the implementation of the GSIB surcharge rule, (2) identify other institutions that may present significant systemic risk, and (3) analyze the systemic risk implications of proposed mergers and acquisitions.

Legal authorization and confidentiality: The mandatory FR Y–15 is authorized by sections 163 and 165 of the Dodd-Frank Act (12 U.S.C. 5463 and 5365), the International Banking Act (12 U.S.C. 3106 and 3108), the Bank Holding Company Act (12 U.S.C. 1844), and HOLA (12 U.S.C. 1467a).

Most of the data collected on the FR Y–15 is made public unless a specific request for confidentiality is submitted by the reporting entity, either on the FR Y–15 or on the form from which the data item is obtained. Such information will be accorded confidential treatment under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) if the submitter substantiates its assertion that disclosure would likely cause substantial competitive harm. In addition, items 1 through 4 of Schedules G and N of the FR Y–15, which contain granular information regarding the reporting entity's short-term funding, will be accorded confidential treatment under exemption 4 for observation dates that occur prior to the liquidity coverage ratio disclosure standard being implemented. To the extent confidential data collected under the FR Y–15 will be used for supervisory purposes, it may be exempt from disclosure under Exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

Current Actions: Consistent with the final rule, the FR Y–15 has been amended to require U.S. bank holding companies and U.S. covered savings and loan holding companies with $100 billion or more in total consolidated assets to file the form, as well as foreign banking organizations with $100 billion or more in combined U.S. assets. These foreign banking organizations will file all schedules of the FR Y–15 on behalf of their U.S. intermediate holding companies (Column A) and combined U.S. operations (Column B). The final form includes others edits described further in the **SUPPLEMENTARY INFORMATION** sections.

The Board estimates that the changes to the FR Y–15 would increase the respondent count by 6 respondents. The Board also estimates that the revisions to the FR Y–15 would increase the estimated average hours per response by 2 hours and would increase the estimated annual burden by 9,968 hours. The final reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

(7) *Report title:* Reporting and Recordkeeping Requirements Associated with Regulation Y (Capital Plans).

Agency form number: FR Y–13.

OMB control number: 7100–0342.

Effective Date: Effective date of final rule.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Respondents: BHCs and IHCs.

Estimated number of respondents: 34.

Estimated average hours per response: Annual capital planning reporting (225.8(e)(1)(ii)), 80 hours; data collections reporting (225.8(e)(3)), 1,005 hours; data collections reporting (225.8(e)(4)), 100 hours; review of capital plans by the Federal Reserve reporting (225.8(f)(3)(i)), 16 hours; prior approval request requirements reporting (225.8(g)(1), (3), & (4)), 100 hours; prior approval request requirements exceptions (225.8(g)(3)(iii)(A)), 16 hours; prior approval request requirements reports (225.8(g)(6)), 16 hours; annual capital planning recordkeeping (225.8(e)(1)(i)), 8,920 hours; annual capital planning recordkeeping (225.8(e)(1)(iii)), 100 hours.

Estimated annual burden hours: Annual capital planning reporting (225.8(e)(1)(ii)), 2,720 hours; data collections reporting (225.8(e)(3)), 25,125 hours; data collections reporting (225.8(e)(4)), 1,000 hours; review of capital plans by the Federal Reserve reporting (225.8(f)(3)(i)), 32 hours; prior approval request requirements reporting (225.8(g)(1), (3), & (4)), 2,300 hours; prior approval request requirements exceptions (225.8(g)(3)(iii)(A)), 32 hours; prior approval request requirements reports (225.8(g)(6)), 32 hours; annual capital planning recordkeeping (225.8(e)(1)(i)), 303,280 hours; annual capital planning recordkeeping (225.8(e)(1)(iii)), 3,400 hours.

General description of report: Regulation Y (12 CFR part 225) requires large bank holding companies (BHCs) to submit capital plans to the Federal Reserve on an annual basis and to require such BHCs to request prior approval from the Federal Reserve under certain circumstances before making a capital distribution.

Current Actions: The final rule raises the threshold for application of § 225.8 from bank holding companies with $50 billion or more in total consolidated assets to bank holding companies with $100 billion or more in total consolidated assets. This change would reduce the panels for various provisions in § 225.8. The Board estimates that the revisions to the FR Y–13 would decrease the estimated annual burden by 28,115 hours.

(8) *Report title:* Reporting and Disclosure Requirements Associated with Regulation LL.

Agency Form Number: FR LL.

OMB control number: 7100–NEW.

Effective Date: Effective date of final rule.

Frequency: Biennial.

Affected Public: Businesses or other for-profit.

Respondents: Savings and loan holding companies.

Estimated number of respondents: 1.[138]

Estimated average hours per response: Reporting section 238.162b1ii, 80; Disclosure section 238.146 (initial setup), 150; Disclosure section 238.146, 60.

Estimated annual burden hours: Reporting section 238.162b1ii, 40; Disclosure section 238.146 (initial setup), 75; Disclosure section 238.146, 30.

Description of the Information Collection: Section 252.122(b)(1)(iii) of the Board's Regulation YY currently requires, unless the Board otherwise determines in writing, a foreign savings and loan holding company with more than $10 billion in total consolidated assets that does not meet applicable home-country stress testing standards to report on an annual basis a summary of the results of the stress test to the Board.

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

Current Actions: The Board is moving the requirement for foreign savings and loan holding companies currently in § 252.122(b)(1)(iii) of Regulation YY into § 238.162(b)(1)(ii) of Regulation LL. In doing so, the Board is amending the frequency of the reporting requirement in proposed § 238.162(b)(1)(ii) from annual to at least biennial. The Board is also raising the threshold for applicability of section 238.162 from more than $10 billion in total consolidated assets to more than $250 billion in total consolidated assets.

(9) *Report title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (Enhanced Prudential Standards).

Agency Form Number: FR YY.

OMB Control Number: 7100–0350.

Effective Date: Effective date of final rule.

Frequency: Annual, semiannual, quarterly.

Affected Public: Businesses or other for-profit.

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

Estimated number of respondents: 23 U.S. bank holding companies with total consolidated assets of $100 billion or more, 4 U.S. bank holding companies with total consolidated assets of $50 billion or more but less than $100 billion, 1 state member bank with total consolidated assets over $250 billion, 11 U.S. intermediate holding companies with $100 billion or more in total assets, 23 foreign banking organizations with total consolidated assets of more than $50 billion but less than $100 billion; 23 foreign banking organizations with total consolidated assets of $100 billion or more but combined U.S. operations of at least $50 billion but less than $100 billion; 17 foreign banking organizations with total consolidated assets of $100 billion or more and combined U.S. operations of $100 billion or more.

Current estimated annual burden: 41,619 hours.

Proposed revisions estimated annual burden: (13,868) hours.

Total estimated annual burden: 27,751 hours.

General description of report: Section 165 of the Dodd-Frank Act, as amended by EGRRCPA, requires the Board to implement enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $250 billion or more, and provides the Board with discretion to apply enhanced prudential standards to certain bank holding companies and foreign banking organizations with $100 billion or more, but less than $250 billion, in total consolidated assets. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

Current Actions: As described in this **SUPPLEMENTARY INFORMATION**, the Board is amending reporting, recordkeeping and disclosure requirements in Regulation YY to generally raise the thresholds for application of these requirements to state member banks, U.S. bank holding companies, U.S. intermediate holding companies, and foreign banking organizations, consistent with EGRRCPA's changes to section 165 of the Dodd-Frank.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.[139] However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[140] For the reasons described below and under section 605(b) of the RFA, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities. As of June 30, 2019, there were 2,976 bank holding companies, 133 savings and loan holding companies, and 537 state member banks that would fit the SBA's current definition of ''small entity'' for purposes of the RFA.

[138] Currently, there are no foreign savings and loan holding companies in existence. For PRA purposes, ''1'' is used as a placeholder.

[139] 5 U.S.C. 601 *et seq.*

[140] *See* 13 CFR 121.201. Effective August 19, 2019, the Small Business Administration revised the size standards for banking organizations to $600 million in assets from $550 million in assets. *See* 84 FR 34261 (July 18, 2019). Consistent with the General Principles of Affiliation in 13 CFR 121.103, the Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity.

The Board is finalizing amendments to Regulations Q,[141] Y,[142] LL,[143] PP,[144] and YY [145] that would affect the regulatory requirements that apply to state member banks, U.S. bank holding companies, U.S. covered savings and loan holding companies, U.S. intermediate holding companies, foreign banking organizations, and foreign savings and loan holding companies with $10 billion or more in total consolidated assets. These changes are consistent with EGRRCPA, which amended section 165 of the Dodd-Frank Act. The reasons and justification for the final rule are described above in more detail in this SUPPLEMENTARY INFORMATION.

The assets of institutions subject to this final rule substantially exceed the $600 million asset threshold under which a banking organization is considered a ''small entity'' under SBA regulations. Because the final rule is not likely to apply to any depository institution or company with assets of $600 million or less, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[146] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[147]

The final rule imposes no additional reporting, disclosure, or other requirements on insured depository institutions, including small depository institutions, nor on the customers of depository institutions. The final rule would raise the minimum asset threshold for state member banks that would be required to conduct a stress test from $10 billion to $250 billion, would revise the frequency with which state member banks with assets greater than $250 billion would be required to conduct stress tests, and would reduce the number of required stress test scenarios from three to two. The requirement to conduct, report, and publish a company-run stress testing is a previously existing requirement imposed by section 165 of the Dodd-Frank Act. Accordingly, the RCDRIA does not apply to the final rule.

[141] 12 CFR part 217.
[142] 12 CFR part 225.
[143] 12 CFR part 238.
[144] 12 CFR part 242.
[145] 12 CFR part 252.
[146] 12 U.S.C. 4802(a).
[147] 12 U.S.C. 4802.

List of Subjects

12 CFR Part 217

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

12 CFR Part 225

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

12 CFR Part 238

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

12 CFR Part 242

Administrative practice and procedure, Holding companies, Nonbank financial companies.

12 CFR Part 252

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

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION, chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

Subpart H—Risk-Based Capital Surcharge for Global Systemically Important Bank Holding Companies

■ 2. In § 217.400:
■ a. Revise paragraphs (b)(1), (b)(2 introductory text, and (b)(2)(i); and
■ b. Remove paragraph (b)(3).
The revisions read as follows:

§ 217.400 Purpose and applicability.

* * * * *

(b) * * *

(1) *General.* This subpart applies to a bank holding company that:

(i) Is an advanced approaches Board-regulated institution or a Category III Board-regulated institution;

(ii) Is not a consolidated subsidiary of a bank holding company; and

(iii) Is not a consolidated subsidiary of a foreign banking organization.

(2) *Effective date of calculation and surcharge requirements.* (i) A bank holding company identified in § 217.400(b)(1) is subject to § 217.402 of this part and must determine whether it qualifies as a global systemically important BHC by December 31 of the year immediately following the year in which the bank holding company becomes an advanced approaches Board-regulated institution or a Category III Board-regulated institution; and

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

■ 4. In § 225.8, revise paragraphs (b)(1)(i), (b)(2) and (3), and (c) to read as follows:

§ 225.8 Capital planning.

* * * * *

(b) * * *

(1) * * *

(i) Any top-tier bank holding company domiciled in the United States with average total consolidated assets of $100 billion or more ($100 billion asset threshold);

* * * * *

(2) *Average total consolidated assets.* For purposes of this section, average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(3) *Ongoing applicability.* A bank holding company (including any successor bank holding company) that is subject to any requirement in this section shall remain subject to such requirements unless and until its total consolidated assets fall below $100 billion for each of four consecutive quarters, as reported on the FR Y–9C and effective on the as-of date of the fourth consecutive FR Y–9C.

* * * * *

(c) *Transition periods for certain bank holding companies.* (1) A bank holding company that meets the $100 billion asset threshold (as measured under paragraph (b) of this section) on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing.

(2) A bank holding company that meets the $100 billion asset threshold after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the bank holding company meets the $100 billion asset threshold, unless that time is extended by the Board in writing.

(3) The Board or the appropriate Reserve Bank with the concurrence of the Board, may require a bank holding company described in paragraph (c)(1) or (2) of this section to comply with any or all of the requirements in paragraph (e)(1), (e)(3), (f), or (g) of this section if the Board or appropriate Reserve Bank with concurrence of the Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

* * * * *

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

■ 5. The authority citation for part 238 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 5365; 1813, 1817, 1829e, 1831i, 1972, 15 U.S.C. 78 *l.*

Subpart A—General Provisions

■ 6. In § 238.2, add paragraphs (v) through (ss) to read as follows:

§ 238.2 Definitions.

* * * * *

(v) *Applicable accounting standards* means GAAP, international financial reporting standards, or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial statements.

(w) *Average cross-jurisdictional activity* means the average of cross-jurisdictional activity for the four most recent calendar quarters or, if the banking organization has not reported cross-jurisdictional activity for each of the four most recent calendar quarters, the cross-jurisdictional activity for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

(x) *Average off-balance sheet exposure* means the average of off-balance sheet exposure for the four most recent calendar quarters or, if the banking organization has not reported total exposure and total consolidated assets for each of the four most recent calendar quarters, the off-balance sheet exposure for the most recent calendar quarter or average of the most recent quarters, as applicable.

(y) *Average total consolidated assets* means the average of total consolidated assets for the four most recent calendar quarters or, if the banking organization has not reported total consolidated assets for each of the four most recent calendar quarters, the total consolidated assets for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

(z) *Average total nonbank assets* means the average of total nonbank assets for the four most recent calendar quarters or, if the banking organization has not reported total nonbank assets for each of the four most recent calendar quarters, the total nonbank assets for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

(aa) *Average weighted short-term wholesale funding* means the average of weighted short-term wholesale funding for each of the four most recent calendar quarters or, if the banking organization has not reported weighted short-term wholesale funding for each of the four most recent calendar quarters, the weighted short-term wholesale funding for the most recent quarter or average of the most recent calendar quarters, as applicable.

(bb) *Banking organization.* Banking organization means a covered savings and loan holding company that is:

(1) Incorporated in or organized under the laws of the United States or any State; and

(2) Not a consolidated subsidiary of a covered savings and loan holding company that is incorporated in or organized under the laws of the United States or any State.

(cc) *Category II savings and loan holding company* means a covered savings and loan holding company identified as a Category II banking organization pursuant to § 238.10.

(dd) *Category III savings and loan holding company* means a covered savings and loan holding company identified as a Category III banking organization pursuant to § 238.10.

(ee) *Category IV savings and loan holding company* means a covered savings and loan holding company identified as a Category IV banking organization pursuant to § 238.10.

(ff) *Covered savings and loan holding company* means a savings and loan holding company other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(C) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company; or

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (ff)(3)(i) of this section, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System.

(gg) *Cross-jurisdictional activity.* The cross-jurisdictional activity of a banking organization is equal to the cross-jurisdictional activity of the banking organization as reported on the FR Y–15.

(hh) *Foreign banking organization* has the same meaning as in § 211.21(o) of this chapter.

(ii) *FR Y–9C* means the Consolidated Financial Statements for Holding Companies reporting form.

(jj) *FR Y–9LP* means the Parent Company Only Financial Statements of Large Holding Companies.

(kk) *FR Y–15* means the Systemic Risk Report.

(ll) *GAAP* means generally accepted accounting principles as used in the United States.

(mm) *Off-balance sheet exposure.* The off-balance sheet exposure of a banking organization is equal to:

(1) The total exposure of the banking organization, as reported by the banking organization on the FR Y–15; minus

(2) The total consolidated assets of the banking organization for the same calendar quarter.

(nn) *State* means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(oo) *Total consolidated assets.* Total consolidated assets of a banking organization are equal to its total consolidated assets calculated based on the average of the balances as of the close of business for each day for the calendar quarter or an average of the balances as of the close of business on each Wednesday during the calendar quarter, as reported on the FR Y–9C.

(pp) *Total nonbank assets.* Total nonbank assets of a banking organization is equal to the total nonbank assets of such banking organization, as reported on the FR Y–9LP.

(qq) *U.S. government agency* means an agency or instrumentality of the United States whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States.

(rr) *U.S. government-sponsored enterprise* means an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States.

(ss) *Weighted short-term wholesale funding* is equal to the weighted short-term wholesale funding of a banking organization, as reported on the FR Y–15.

■ 7. Add § 238.10 to subpart A to read as follows:

§ 238.10 Categorization of banking organizations.

(a) *General.* A banking organization with average total consolidated assets of $100 billion or more must determine its category among the three categories described in paragraphs (b) through (d) of this section at least quarterly.

(b) *Category II.* (1) A banking organization is a Category II banking organization if the banking organization has:

(i) $700 billion or more in average total consolidated assets; or

(ii)(A) $75 billion or more in average cross-jurisdictional activity; and

(B) $100 billion or more in average total consolidated assets.

(2) After meeting the criteria in paragraph (b)(1) of this section, a banking organization continues to be a Category II banking organization until the banking organization has:

(i)(A) Less than $700 billion in total consolidated assets for each of the four most recent calendar quarters; and

(B) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters; or

(ii) Less than $100 billion in total consolidated assets for each of the four most recent calendar quarters.

(c) *Category III.* (1) A banking organization is a Category III banking organization if the banking organization:

(i) Has:

(A) $250 billion or more in average total consolidated assets; or

(B) $100 billion or more in average total consolidated assets and at least:

(*1*) $75 billion in average total nonbank assets;

(*2*) $75 billion in average weighted short-term wholesale funding; or

(*3*) $75 billion in average off-balance sheet exposure; and

(ii) Is not a Category II banking organization.

(2) After meeting the criteria in paragraph (c)(1) of this section, a banking organization continues to be a Category III banking organization until the banking organization:

(i) Has:

(A) Less than $250 billion in total consolidated assets for each of the four most recent calendar quarters;

(B) Less than $75 billion in total nonbank assets for each of the four most recent calendar quarters;

(C) Less than $75 billion in weighted short-term wholesale funding for each of the four most recent calendar quarters; and

(D) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters; or

(ii) Has less than $100 billion in total consolidated assets for each of the four most recent calendar quarters; or

(iii) Meets the criteria in paragraph (b)(1) of this section to be a Category II banking organization.

(d) *Category IV.* (1) A banking organization with average total consolidated assets of $100 billion or more is a Category IV banking organization if the banking organization:

(i) Is not a Category II banking organization; and

(ii) Is not a Category III banking organization.

(2) After meeting the criteria in paragraph (d)(1) of this section, a banking organization continues to be a Category IV banking organization until the banking organization:

(i) Has less than $100 billion in total consolidated assets for each of the four most recent calendar quarters;

(ii) Meets the criteria in paragraph (b)(1) of this section to be a Category II banking organization; or

(iii) Meets the criteria in paragraph (c)(1) of this section to be a Category III banking organization.

■ 8. Add subpart M, consisting of §§ 238.118 and 238.119, to read as follows:

Subpart M—Risk Committee Requirement for Covered Savings and Loan Holding Companies With Total Consolidated Assets of $50 Billion or More and Less Than $100 Billion

§238.118 Applicability.

(a) *General applicability.* A covered savings and loan bank holding company must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the date on which its average total consolidated assets equal or exceed $50 billion.

(b) *Cessation of requirements.* A covered savings and loan holding company will remain subject to the requirements of this subpart until the earlier of the date on which:

(1) Its total consolidated assets are below $50 billion for each of four consecutive calendar quarters; and

(2) It becomes subject to the requirements of subpart N of this part.

§ 238.119 Risk committee requirement for covered savings and loan holding companies with total consolidated assets of $50 billion or more.

(a) *Risk committee*—(1) *General.* A covered savings and loan holding company subject to this subpart must maintain a risk committee that approves and periodically reviews the risk-management policies of the covered savings and loan holding company's global operations and oversees the operation of the company's global risk-management framework.

(2) *Risk-management framework.* The covered savings and loan holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(B) Processes and systems for establishing managerial and employee responsibility for risk management;

(C) Processes and systems for ensuring the independence of the risk-management function; and

(D) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

(i) Have a formal, written charter that is approved by the covered savings and loan holding company's board of directors;

(ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the covered savings and loan holding company's global operations and oversight of the operation of the company's global risk-management framework;

(iii) Report directly to the covered savings and loan holding company's board of directors;

(iv) Receive and review regular reports on a not less than a quarterly basis from the covered savings and loan holding company's chief risk officer provided pursuant to paragraph (b)(3)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the covered savings and loan holding company and has not been an officer or employee of the covered savings and loan holding company during the previous three years;

(B) Is not a member of the immediate family, as defined in § 238.31(b)(3), of a person who is, or has been within the last three years, an executive officer of the covered savings and loan holding company, as defined in § 215.2(e)(1) of this chapter; and

(C)(*1*) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K (17 CFR 229.407(a)), if the covered savings and loan holding company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(*2*) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the covered savings and loan holding company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer*—(1) *General.* A covered savings and loan holding company subject to this subpart must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.* (i) The covered savings and loan holding company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

■ 9. Add subpart N to read as follows:

Subpart N—Risk Committee, Liquidity Risk Management, and Liquidity Buffer Requirements for Covered Savings and Loan Holding Companies With Total Consolidated Assets of $100 Billion or More

Sec.
238.120 Scope.
238.121 Applicability.
238.122 Risk-management and risk committee requirements.
238.123 Liquidity risk-management requirements.

§ 238.120 Scope.

This subpart applies to covered savings and loan holding companies with average total consolidated assets of $100 billion or more.

§ 238.121 Applicability.

(a) *Applicability*—(1) Initial applicability. A covered savings and loan holding company must comply with the risk-management and risk-committee requirements set forth in § 238.122 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 238.123 and 238.124 no later than the first day of the fifth quarter following the date on which its average total consolidated assets equal or exceed $100 billion.

(2) *Changes in requirements following a change in category.* A covered savings and loan holding company with average total consolidated assets of $100 billion or more that changes from one category of covered savings and loan holding company described in § 238.10(b) through (d) to another such category must comply with the requirements applicable to the new category no later than on the first day of the second calendar quarter following the change in the covered savings and loan holding company's category.

(b) *Cessation of requirements.* A covered savings and loan holding company is subject to the risk-management and risk committee requirements set forth in § 238.122 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 238.123 and 238.124 until its total consolidated assets are below $100 billion for each of four consecutive calendar quarters.

§ 238.122 Risk-management and risk committee requirements.

(a) *Risk committee*—(1) *General.* A covered savings and loan holding subject to this subpart must maintain a risk committee that approves and periodically reviews the risk-management policies of the covered savings and loan holding company's global operations and oversees the operation of the covered savings and loan holding company's global risk-management framework. The risk committee's responsibilities include liquidity risk-management as set forth in § 238.123(b).

(2) *Risk-management framework.* The covered savings and loan holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(B) Processes and systems for establishing managerial and employee responsibility for risk management;

(C) Processes and systems for ensuring the independence of the risk-management function; and

(D) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

(i) Have a formal, written charter that is approved by the covered savings and loan holding company's board of directors;

(ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the covered savings and loan holding company's global operations and oversight of the operation of the covered savings and loan holding company's global risk-management framework;

(iii) Report directly to the covered savings and loan holding company's board of directors;

(iv) Receive and review regular reports on not less than a quarterly basis from the covered savings and loan holding company's chief risk officer provided pursuant to paragraph (b)(3)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the covered savings and loan holding company and has not been an officer or employee of the covered savings and loan holding company during the previous three years;

(B) Is not a member of the immediate family, as defined in § 238.31(b)(3), of a person who is, or has been within the last three years, an executive officer of the covered savings and loan holding company, as defined in § 215.2(e)(1) of this chapter; and

(C)(*1*) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K (17 CFR 229.407(a)), if the covered savings and loan holding company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(*2*) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the covered savings and loan holding company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer*—(1) *General.* A covered savings and loan holding company subject to this subpart must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.* (i) The covered savings and loan holding company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the covered savings and loan holding company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

§ 238.123 Liquidity risk-management requirements.

(a) *Responsibilities of the board of directors*—(1) *Liquidity risk tolerance.* The board of directors of a covered savings and loan holding company subject to this subpart must:

(i) Approve the acceptable level of liquidity risk that the covered savings and loan holding company may assume in connection with its operating strategies (liquidity risk tolerance) at least annually, taking into account the covered savings and loan holding company's capital structure, risk profile, complexity, activities, and size; and

(ii) Receive and review at least semi-annually information provided by senior management to determine whether the covered savings and loan holding company is operating in accordance with its established liquidity risk tolerance.

(2) *Liquidity risk-management strategies, policies, and procedures.* The board of directors must approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior management pursuant to paragraph (c)(1) of this section.

(b) *Responsibilities of the risk committee.* The risk committee (or a designated subcommittee of such committee composed of members of the board of directors) must approve the contingency funding plan described in paragraph (f) of this section at least annually, and must approve any material revisions to the plan prior to the implementation of such revisions.

(c) *Responsibilities of senior management*—(1) *Liquidity risk.* (i) Senior management of a covered savings and loan holding company subject to this subpart must establish and implement strategies, policies, and procedures designed to effectively manage the risk that the covered savings and loan holding company's financial condition or safety and soundness would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk). The board of directors must approve the strategies, policies, and procedures pursuant to paragraph (a)(2) of this section.

(ii) Senior management must oversee the development and implementation of liquidity risk measurement and reporting systems, including those required by this section and § 238.124.

(iii) Senior management must determine at least quarterly whether the covered savings and loan holding company is operating in accordance with such policies and procedures and whether the covered savings and loan holding company is in compliance with this section and § 238.124 (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition warrant), and establish procedures regarding the preparation of such information.

(2) *Liquidity risk tolerance.* Senior management must report to the board of directors or the risk committee regarding the covered savings and loan holding company's liquidity risk profile and liquidity risk tolerance at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(3) *Business lines or products.* (i) Senior management must approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product that could have a significant effect on the company's liquidity risk profile. The approval is required before the company implements the business line or offers the product. In determining whether to approve the new business line or product, senior management must consider whether the liquidity risk of the new business line or product (under both current and stressed conditions) is within the company's established liquidity risk tolerance.

(ii) Senior management must review at least annually significant business lines and products to determine whether any line or product creates or has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product is within the company's established liquidity risk tolerance.

(4) *Cash-flow projections.* Senior management must review the cash-flow projections produced under paragraph (e) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the covered savings and loan holding company warrant) to ensure that the liquidity risk is within the established liquidity risk tolerance.

(5) *Liquidity risk limits.* Senior management must establish liquidity risk limits as set forth in paragraph (g) of this section and review the company's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(6) *Liquidity stress testing.* Senior management must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 238.124(a) at least quarterly, and whenever the covered savings and loan holding company materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 238.124(a) at least quarterly;

(iii) Review the independent review of the liquidity stress tests under § 238.123(d) periodically; and

(iv) Approve the size and composition of the liquidity buffer established under § 238.124(b) at least quarterly.

(d) *Independent review function.* (1) A covered savings and loan holding company subject to this subpart must establish and maintain a review function that is independent of management functions that execute funding to evaluate its liquidity risk management.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the company's liquidity risk management processes, including its liquidity stress test processes and assumptions;

(ii) Assess whether the company's liquidity risk-management function complies with applicable laws and regulations, and sound business practices; and

(iii) Report material liquidity risk management issues to the board of directors or the risk committee in writing for corrective action, to the extent permitted by applicable law.

(e) *Cash-flow projections.* (1) A covered savings and loan holding company subject to this subpart must produce comprehensive cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The covered savings and loan holding company must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The covered savings and loan holding company must establish a methodology for making cash-flow projections that results in projections that:

(i) Include cash flows arising from contractual maturities, intercompany transactions, new business, funding renewals, customer options, and other potential events that may impact liquidity;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the covered savings and loan holding company and include analyses by business line, currency, or legal entity as appropriate.

(3) The covered savings and loan holding company must adequately

document its methodology for making cash flow projections and the included assumptions and submit such documentation to the risk committee.

(f) *Contingency funding plan*—(1) *General.* A covered savings and loan holding company subject to this subpart must establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) *Components of the contingency funding plan*—(i) *Quantitative assessment.* The contingency funding plan must:

(A) Identify liquidity stress events that could have a significant impact on the covered savings and loan holding company's liquidity;

(B) Assess the level and nature of the impact on the covered savings and loan holding company's liquidity that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the covered savings and loan holding company would implement its action plan described in paragraph (f)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 238.124(a).

(ii) *Liquidity event management process.* The contingency funding plan must include an event management process that sets out the covered savings and loan holding company's procedures for managing liquidity during identified liquidity stress events. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies the company will use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company will use to access alternative funding sources;

(B) Identify a liquidity stress event management team that would execute the action plan described in paragraph (f)(2)(ii)(A) of this section;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) Provide a mechanism that ensures effective reporting and communication within the covered savings and loan holding company and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(iii) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

(iv) *Testing.* The covered savings and loan holding company must periodically test:

(A) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(B) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(C) The methods the covered savings and loan holding company will use to access alternative funding sources to determine whether these funding sources will be readily available when needed.

(g) *Liquidity risk limits*—(1) *General.* A covered savings and loan holding company subject to this subpart must monitor sources of liquidity risk and establish limits on liquidity risk that are consistent with the company's established liquidity risk tolerance and that reflect the company's capital structure, risk profile, complexity, activities, and size.

(2) *Liquidity risk limits established by a Category II savings and loan holding company, or Category III savings and loan holding company.* If the covered savings and loan holding company is a Category II savings and loan holding company or Category III savings and loan holding company, liquidity risk limits established under paragraph (g)(1) of this section by must include limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(h) *Collateral, legal entity, and intraday liquidity risk monitoring.* A covered savings and loan holding company subject to this subpart must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) *Collateral.* The covered savings and loan holding company must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. These policies and procedures must provide that the covered savings and loan holding company:

(i) Calculates all of its collateral positions according to the frequency specified in paragraphs (h)(1)(i)(A) and (B) of this section or as directed by the Board, specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged:

(A) If the covered savings and loan holding company is not a Category IV savings and loan holding company, on at least a weekly basis;

(B) If the covered savings and loan holding company is a Category IV savings and loan holding company, on at least a monthly basis;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the covered savings and loan holding company's funding patterns, such as shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies and business lines.* The covered savings and loan holding company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposures.* The covered savings and loan holding company must establish and maintain procedures for monitoring intraday liquidity risk exposures that are consistent with the covered savings and loan holding company's capital structure, risk profile, complexity, activities, and size. If the covered savings and loan holding company is a Category II savings and loan holding company or a Category III savings and loan holding company, these procedures must address how the management of the covered savings and loan holding company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the covered savings and loan holding company can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Manage the issuance of credit to customers where necessary; and

(v) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the covered savings and loan holding company's overall liquidity needs.

§ 238.124 Liquidity stress testing and buffer requirements.

(a) *Liquidity stress testing requirement*—(1) *General.* A covered savings and loan holding company subject to this subpart must conduct stress tests to assess the potential impact of the liquidity stress scenarios set forth in paragraph (a)(3) of this section on its cash flows, liquidity position, profitability, and solvency, taking into account its current liquidity condition, risks, exposures, strategies, and activities.

(i) The covered savings and loan holding company must take into consideration its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics of the covered savings and loan holding company that affect its liquidity risk profile in conducting its stress test.

(ii) In conducting a liquidity stress test using the scenarios described in paragraphs (a)(3)(i) and (ii) of this section, the covered savings and loan holding company must address the potential direct adverse impact of associated market disruptions on the covered savings and loan holding company and incorporate the potential actions of other market participants experiencing liquidity stresses under the market disruptions that would adversely affect the covered savings and loan holding company.

(2) *Frequency.* The covered savings and loan holding company must perform the liquidity stress tests required under paragraph (a)(1) of this section according to the frequency specified in paragraph (a)(2)(i) or (ii) of this section or as directed by the Board:

(i) If the covered savings and loan holding company is not a Category IV savings and loan holding company, at least monthly; or

(ii) If the covered savings and loan holding company is a Category IV savings and loan holding company, at least quarterly.

(3) *Stress scenarios.* (i) Each stress test conducted under paragraph (a)(1) of this section must include, at a minimum:

(A) A scenario reflecting adverse market conditions;

(B) A scenario reflecting an idiosyncratic stress event for the covered savings and loan holding company; and

(C) A scenario reflecting combined market and idiosyncratic stresses.

(ii) The covered savings and loan holding company must incorporate additional liquidity stress scenarios into its liquidity stress test, as appropriate, based on its financial condition, size, complexity, risk profile, scope of operations, or activities. The Board may require the covered savings and loan holding company to vary the underlying assumptions and stress scenarios.

(4) *Planning horizon.* Each stress test conducted under paragraph (a)(1) of this section must include an overnight planning horizon, a 30-day planning horizon, a 90-day planning horizon, a one-year planning horizon, and any other planning horizons that are relevant to the covered savings and loan holding company's liquidity risk profile. For purposes of this section, a ''planning horizon'' is the period over which the relevant stressed projections extend. The covered savings and loan holding company must use the results of the stress test over the 30-day planning horizon to calculate the size of the liquidity buffer under paragraph (b) of this section.

(5) *Requirements for assets used as cash-flow sources in a stress test.* (i) To the extent an asset is used as a cash flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(ii) Assets used as cash-flow sources during a planning horizon must be diversified by collateral, counterparty, borrowing capacity, and other factors associated with the liquidity risk of the assets.

(iii) A line of credit does not qualify as a cash flow source for purposes of a stress test with a planning horizon of 30 days or less. A line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days.

(6) *Tailoring.* Stress testing must be tailored to, and provide sufficient detail to reflect, a covered savings and loan holding company's capital structure, risk profile, complexity, activities, and size.

(7) *Governance*—(i) *Policies and procedures.* A covered savings and loan holding company subject to this subpart must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) *Controls and oversight.* A covered savings and loan holding subject to this subpart must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress test process, taking into consideration the covered savings and loan holding company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors. The assumptions must be approved by the chief risk officer and be subject to the independent review under § 238.123(d).

(iii) *Management information systems.* The covered savings and loan holding company must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

(8) *Notice and response.* If the Board determines that a covered savings and loan holding company must conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section, the Board will notify the covered savings and loan holding company before the change in frequency takes effect, and describe the basis for its determination. Within 14 calendar days of receipt of a notification under

this paragraph, the covered savings and loan holding company may request in writing that the Board reconsider the requirement. The Board will respond in writing to the company's request for reconsideration prior to requiring that the company conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Liquidity buffer requirement.* (1) A covered savings and loan holding company subject to this subpart must maintain a liquidity buffer that is sufficient to meet the projected net stressed cash-flow need over the 30-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraph (a)(3)(i) through (ii) of this section.

(2) *Net stressed cash-flow need.* The net stressed cash-flow need for a covered savings and loan holding company is the difference between the amount of its cash-flow need and the amount of its cash flow sources over the 30-day planning horizon.

(3) *Asset requirements.* The liquidity buffer must consist of highly liquid assets that are unencumbered, as defined in paragraph (b)(3)(ii) of this section:

(i) *Highly liquid asset.* A highly liquid asset includes:

(A) Cash;

(B) Assets that meet the criteria for high quality liquid assets as defined in 12 CFR 249.20; or

(C) Any other asset that the covered savings and loan holding company demonstrates to the satisfaction of the Board:

(*1*) Has low credit risk and low market risk;

(*2*) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(*3*) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* An asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and

(B) Is either:

(*1*) Not pledged or used to secure or provide credit enhancement to any transaction; or

(*2*) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the covered savings and loan holding company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) *Operational requirements.* With respect to the liquidity buffer, the bank holding company must:

(A) Establish and implement policies and procedures that require highly liquid assets comprising the liquidity buffer to be under the control of the management function in the covered savings and loan holding company that is charged with managing liquidity risk; and

(B) Demonstrate the capability to monetize a highly liquid asset under each scenario required under § 238.124(a)(3).

(v) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the covered savings and loan holding company's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

■ 10. Add subpart O to read as follows:

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

Sec.
238.130 Definitions.
238.131 Applicability.
238.132 Analysis conducted by the Board.
238.133 Data and information required to be submitted in support of the Board's analyses.
238.134 Review of the Board's analysis; publication of summary results.
238.135 Corporate use of stress test results.

§ 238.130 Definitions.

For purposes of this subpart, the following definitions apply:

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

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

Covered company means a covered savings and loan holding company (other than a foreign banking organization) subject to this subpart.

Planning horizon means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

Provision for credit losses means:

(1) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y–9C in the current stress test cycle; and,

(2) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y–9C in the current stress test cycle.

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

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

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

Stress test cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

Subsidiary has the same meaning as in § 225.2(o) of this chapter.

§ 238.131 Applicability.

(a) *Scope*—(1) *Applicability.* Except as provided in paragraph (b) of this section, this subpart applies to any covered savings and loan holding company with average total consolidated assets of $100 billion or more.

(2) *Ongoing applicability.* A covered savings and loan holding company (including any successor company) that is subject to any requirement in this subpart shall remain subject to any such requirement unless and until its total consolidated assets fall below $100 billion for each of four consecutive quarters, effective on the as-of date of the fourth consecutive FR Y–9C.

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

(2) A covered savings and loan holding company that becomes a covered company after September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third calendar year after the covered savings and loan holding company becomes a covered company, unless that time is extended by the Board in writing.

§ 238.132 Analysis conducted by the Board.

(a) *In general.* (1) The Board will conduct an analysis of each covered company's capital, on a total consolidated basis, taking into account all relevant exposures and activities of that covered company, to evaluate the ability of the covered company to absorb losses in specified economic and financial conditions.

(2) The analysis will include an assessment of the projected losses, net income, and pro forma capital levels and regulatory capital ratios and other capital ratios for the covered company and use such analytical techniques that the Board determines are appropriate to identify, measure, and monitor risks of the covered company.

(3) In conducting the analyses, the Board will coordinate with the appropriate primary financial regulatory agencies and the Federal Insurance Office, as appropriate.

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

(c) *Frequency of analysis conducted by the Board*—(1) *General.* Except as provided in paragraph (c)(2) of this section, the Board will conduct its analysis of a covered company according to the frequency in Table 1 to § 238.132(c)(1).

TABLE 1 TO § 238.132(c)(1)

If the covered company is a	Then the Board will conduct its analysis
Category II savings and loan holding company	Annually.
Category III savings and loan holding company	Annually.
Category IV savings and loan holding company	Biennially, occurring in each year ending in an even number.

(2) *Change in frequency.* The Board may conduct a stress test of a covered company on a more or less frequent basis than would be required under paragraph (c)(1) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Notice and response*—(i) *Notification of change in frequency.* If the Board determines to change the frequency of the stress test under paragraph (c)(2), the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under paragraph (c)(2) of this section, a covered company may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (c)(1) of this section. A covered company's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

§ 238.133 Data and information required to be submitted in support of the Board's analyses.

(a) *Regular submissions.* Each covered company must submit to the Board such data, on a consolidated basis, that the Board determines is necessary in order for the Board to derive the relevant pro forma estimates of the covered company over the planning horizon under the scenarios described in § 238.132(b).

(b) *Additional submissions required by the Board.* The Board may require a covered company to submit any other information on a consolidated basis that the Board deems necessary in order to:

(1) Ensure that the Board has sufficient information to conduct its analysis under this subpart; and

(2) Project a company's pre-provision net revenue, losses, provision for credit losses, and net income; and pro forma capital levels, regulatory capital ratios, and any other capital ratio specified by the Board under the scenarios described in § 238.132(b).

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

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

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

(b) *Publication of results by the Board.* (1) The Board will publicly disclose a summary of the results of the Board's analyses of a covered company by June 30 of the calendar year in which the stress test was conducted pursuant to § 238.132.

(2) The Board will notify companies of the date on which it expects to publicly disclose a summary of the Board's analyses pursuant to paragraph (b)(1) of this section at least 14 calendar days prior to the expected disclosure date.

§ 238.135 Corporate use of stress test results.

The board of directors and senior management of each covered company must consider the results of the analysis conducted by the Board under this subpart, as appropriate:

(a) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital); and

(b) When assessing the covered company's exposures, concentrations, and risk positions.

■ 11. Add subpart P to read as follows:

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

Sec.
238.140 Authority and purpose.
238.141 Definitions.
238.142 Applicability.
238.143 Stress test.
238.144 Methodologies and practices.
238.145 Reports of stress test results.
238.146 Disclosure of stress test results.

§ 238.140 Authority and purpose.

(a) *Authority.* 12 U.S.C. 1467; 1467a, 1818, 5361, 5365.

(b) *Purpose.* This subpart establishes the requirement for a covered company to conduct stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

§ 238.141 Definitions.

For purposes of this subpart, the following definitions apply:

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

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

Capital action means any issuance or redemption of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a savings and loan holding company's consolidated capital.

Covered company means:

(1) A Category II savings and loan holding company;

(2) A Category III savings and loan holding company; or

(3) A savings and loan holding company with average total consolidated assets of greater than $250 billion.

Planning horizon means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

Provision for credit losses means:

(1) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y–9C in the current stress test cycle; and

(2) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y–9C in the current stress test cycle.

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

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

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

Stress test means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered company over the planning horizon, taking into account its current condition, risks, exposures, strategies, and activities.

Stress test cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

§ 238.142 Applicability.

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

(i) Any Category II savings and loan holding company;

(ii) Any Category III savings and loan holding company; and

(iii) Any savings and loan holding company with average total consolidated assets of greater than $250 billion.

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

(i) Is not a Category II savings and loan holding company;

(ii) Is not a Category III savings and loan holding company; and

(iii) Has $250 billion or less in total consolidated assets in each of four consecutive calendar quarters.

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

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

§ 238.143 Stress test.

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

(2) *Frequency.* (i) *General.* Except as provided in paragraph (a)(2)(ii) of this section, a covered company must conduct a stress test according to the frequency in Table 1 of § 238.143(a)(2)(i).

TABLE 1 OF § 238.143(a)(2)(i)

If the covered company is a	Then the stress test must be conducted
Category II savings and loan holding company	Annually, by April 5 of each calendar year based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Category III savings and loan holding company	Biennially, by April 5 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Savings and loan holding company that is not: (A) A Category II savings and loan holding company; or (B) A Category III savings and loan holding company.	Periodically, as determined by rule or order.

(ii) *Change in frequency.* The Board may require a covered company to conduct a stress test on a more or less frequent basis than would be required under paragraphs (a)(2)(i) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Notice and response*—(i) *Notification of change in frequency.* If the Board requires a covered company to change the frequency of the stress test under paragraph (a)(2)(ii) of this section, the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under this paragraph (a)(3), a covered company may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (a)(2)(i) of this section. A covered company's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

(b) *Scenarios provided by the Board*—(1) *In general.* In conducting a stress test under this section, a covered company must, at a minimum, use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios to each covered company no later than February 15 of the calendar year in which the stress test is performed pursuant to this section.

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

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

(3) *Additional scenarios.* The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

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

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

(iii) *Description of component.* The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by March 1 of the calendar year in which the stress test is performed pursuant to this section.

§ 238.144 Methodologies and practices.

(a) *Potential impact on capital.* In conducting a stress test under § 238.143, for each quarter of the planning horizon, a covered company must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for credit losses, and net income; and

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios and any other capital ratios specified by the Board), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for credit losses appropriate for credit exposures throughout the planning horizon.

(b) *Assumptions regarding capital actions.* In conducting a stress test under § 238.143, a covered company is required to make the following assumptions regarding its capital actions over the planning horizon:

(1) For the first quarter of the planning horizon, the covered company must take into account its actual capital actions as of the end of that quarter; and

(2) For each of the second through ninth quarters of the planning horizon, the covered company must include in the projections of capital:

(i) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters) plus common stock dividends attributable to issuances related to expensed employee compensation or in connection with a planned merger or acquisition to the extent that the merger or acquisition is reflected in the covered company's pro forma balance sheet estimates;

(ii) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter;

(iii) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(iv) An assumption of no issuances of common stock or preferred stock, except for issuances related to expensed employee compensation or in connection with a planned merger or acquisition to the extent that the merger or acquisition is reflected in the covered company's pro forma balance sheet estimates.

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

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

(3) *Role of stress testing results.* The board of directors and senior management of each covered company must consider the results of the analysis it conducts under this subpart, as appropriate:

(i) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital); and

(ii) When assessing the covered company's exposures, concentrations, and risk positions.

§ 238.145 Reports of stress test results.

(a) *Reports to the Board of stress test results.* A covered company must report the results of the stress test required under § 238.143 to the Board in the manner and form prescribed by the Board. Such results must be submitted by April 5 of the calendar year in which the stress test is performed pursuant to § 238.143, unless that time is extended by the Board in writing.

(b) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 238.146 Disclosure of stress test results.

(a) *Public disclosure of results*—(1) *In general.* A covered company must publicly disclose a summary of the results of the stress test required under § 238.143 within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 238.134, unless that time is extended by the Board in writing.

(2) *Disclosure method.* The summary required under this section may be disclosed on the website of a covered company, or in any other forum that is reasonably accessible to the public.

(b) *Summary of results.* The summary results must, at a minimum, contain the following information regarding the severely adverse scenario:

(1) A description of the types of risks included in the stress test;

(2) A general description of the methodologies used in the stress test, including those employed to estimate losses, revenues, provision for credit losses, and changes in capital positions over the planning horizon;

(3) Estimates of—

(i) Pre-provision net revenue and other revenue;

(ii) Provision for credit losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes;

(iv) Loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by subportfolio, including: Domestic closed-end first-lien mortgages; domestic junior lien mortgages and home equity lines of credit; commercial and industrial loans; commercial real estate loans; credit card exposures; other consumer loans; and all other loans; and

(v) Pro forma regulatory capital ratios and any other capital ratios specified by the Board; and

(4) An explanation of the most significant causes for the changes in regulatory capital ratios; and

(5) With respect to any depository institution subsidiary that is subject to stress testing requirements pursuant to 12 U.S.C. 5365(i)(2), 12 CFR part 46 (OCC), or 12 CFR part 325, subpart C (FDIC), changes over the planning horizon in regulatory capital ratios and any other capital ratios specified by the Board and an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Content of results.* (1) The following disclosures required under paragraph (b) of this section must be on a cumulative basis over the planning horizon:

(i) Pre-provision net revenue and other revenue;

(ii) Provision for credit losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes; and

(iv) Loan losses in the aggregate and by subportfolio.

(2) The disclosure of pro forma regulatory capital ratios and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

■ 12. Add subpart Q to read as follows:

Subpart Q—Single Counterparty Credit Limits for Covered Savings and Loan Holding Companies

Sec.

238.150 Applicability and general provisions.
238.151 Definitions.
238.152 Credit exposure limits.
238.153 Gross credit exposure.
238.154 Net credit exposure.
238.155 Investments in and exposures to securitization vehicles, investment funds, and other special purpose vehicles that are not subsidiaries of the covered company.
238.156 Aggregation of exposures to more than one counterparty due to economic interdependence or control relationships.
238.157 Exemptions.
238.158 Compliance.

§ 238.150 Applicability and general provisions.

(a) *In general.* This subpart establishes single counterparty credit limits for a covered company. For purposes of this subpart, covered company means:

(i) A Category II savings and loan holding company; or

(ii) A Category III savings and loan holding company.

(b) *Credit exposure limits.* (1) Section 238.152 establishes credit exposure limits for a covered company.

(2) A covered company is required to calculate its aggregate net credit exposure, gross credit exposure, and net credit exposure to a counterparty using the methods in this subpart.

(c) *Applicability of this subpart.* (1) A covered company that becomes subject to this subpart must comply with the requirements of this subpart beginning on the first day of the ninth calendar quarter after it becomes a covered company, unless that time is accelerated or extended by the Board in writing.

(d) *Cessation of requirements.* Any company that becomes a covered company will remain subject to the requirements of this subpart unless and until it is not a Category II savings and loan holding company or a Category III savings and loan holding company.

§ 238.151 Definitions.

Unless defined in this section, terms that are set forth in § 238.2 and used in this subpart have the definitions assigned in § 238.2. For purposes of this subpart:

(a) *Adjusted market value* means:

(1) With respect to the value of cash, securities, or other eligible collateral transferred by the covered company to a counterparty, the sum of:

(i) The market value of the cash, securities, or other eligible collateral; and

(ii) The product of the market value of the securities or other eligible collateral multiplied by the applicable collateral haircut in Table 1 to § 217.132 of this chapter; and

(2) With respect to cash, securities, or other eligible collateral received by the covered company from a counterparty:

(i) The market value of the cash, securities, or other eligible collateral; minus

(ii) The market value of the securities or other eligible collateral multiplied by the applicable collateral haircut in Table 1 to § 217.132 of this chapter.

(3) Prior to calculating the adjusted market value pursuant to paragraphs (a)(1) and (2) of this section, with regard to a transaction that meets the definition of ''repo-style transaction'' in § 217.2 of this chapter, the covered company would first multiply the applicable collateral haircuts in Table 1 to § 217.132 of this chapter by the square root of 1/2.

(b) *Affiliate* means, with respect to a company:

(1) Any subsidiary of the company and any other company that is consolidated with the company under applicable accounting standards; or

(2) For a company that is not subject to principles or standards referenced in paragraph (b)(1) of this section, any subsidiary of the company and any other company that would be consolidated with the company, if consolidation would have occurred if such principles or standards had applied.

(c) *Aggregate net credit exposure* means the sum of all net credit exposures of a covered company and all of its subsidiaries to a single counterparty as calculated under this subpart.

(d) *Bank-eligible investments* means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(e) *Counterparty* means, with respect to a credit transaction:

(1) With respect to a natural person, the natural person, and, if the credit exposure of the covered company to such natural person exceeds 5 percent of the covered company's tier 1 capital, the natural person and members of the person's immediate family collectively;

(2) With respect to any company that is not a subsidiary of the covered company, the company and its affiliates collectively;

(3) With respect to a State, the State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively;

(4) With respect to a foreign sovereign entity that is not assigned a zero percent risk weight under the standardized approach in 12 CFR part 217, subpart D, the foreign sovereign entity and all of its agencies and instrumentalities (but not including any political subdivision) collectively; and

(5) With respect to a political subdivision of a foreign sovereign entity such as a state, province, or municipality, any political subdivision of the foreign sovereign entity and all of such political subdivision's agencies and instrumentalities, collectively.[1]

(f) *Covered company* is defined in § 238.150(a)

(g) *Credit derivative* has the same meaning as in § 217.2 of this chapter.

(h) *Credit transaction* means, with respect to a counterparty:

(1) Any extension of credit to the counterparty, including loans, deposits, and lines of credit, but excluding uncommitted lines of credit;

(2) Any repurchase agreement or reverse repurchase agreement with the counterparty;

(3) Any securities lending or securities borrowing transaction with the counterparty;

(4) Any guarantee, acceptance, or letter of credit (including any endorsement, confirmed letter of credit, or standby letter of credit) issued on behalf of the counterparty;

(5) Any purchase of securities issued by or other investment in the counterparty;

(6) Any credit exposure to the counterparty in connection with a derivative transaction between the covered company and the counterparty;

(7) Any credit exposure to the counterparty in connection with a credit derivative or equity derivative between the covered company and a third party, the reference asset of which is an obligation or equity security of, or equity investment in, the counterparty; and

(8) Any transaction that is the functional equivalent of the above, and any other similar transaction that the Board, by regulation or order, determines to be a credit transaction for purposes of this subpart.

(i) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(j) *Derivative transaction* means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(k) *Eligible collateral* means collateral in which, notwithstanding the prior security interest of any custodial agent, the covered company has a perfected, first priority security interest (or the legal equivalent thereof, if outside of the United States), with the exception of cash on deposit, and is in the form of:

(1) Cash on deposit with the covered company or a subsidiary of the covered company (including cash in foreign currency or U.S. dollars held for the covered company by a custodian or trustee, whether inside or outside of the United States);

[1] In addition, under § 238.156, under certain circumstances, a covered company is required to aggregate its net credit exposure to one or more counterparties for all purposes under this subpart.

(2) Debt securities (other than mortgage- or asset-backed securities and resecuritization securities, unless those securities are issued by a U.S. government-sponsored enterprise) that are bank-eligible investments and that are investment grade, except for any debt securities issued by the covered company or any subsidiary of the covered company;

(3) Equity securities that are publicly traded, except for any equity securities issued by the covered company or any subsidiary of the covered company;

(4) Convertible bonds that are publicly traded, except for any convertible bonds issued by the covered company or any subsidiary of the covered company; or

(5) Gold bullion.

(l) *Eligible credit derivative* means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship, or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(m) *Eligible equity derivative* means an equity derivative, provided that:

(1) The derivative contract has been confirmed by all relevant parties;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties; and

(3) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract.

(n) *Eligible guarantee* has the same meaning as in § 217.2 of this chapter.

(o) *Eligible guarantor* has the same meaning as in § 217.2 of this chapter.

(p) *Equity derivative* has the same meaning as ‘‘equity derivative contract’’ in § 217.2 of this chapter.

(q) *Exempt counterparty* means an entity that is identified as exempt from the requirements of this subpart under § 238.157, or that is otherwise excluded from this subpart, including any sovereign entity assigned a zero percent risk weight under the standardized approach in 12 CFR part 217, subpart D.

(r) *Financial entity* means:

(1)(i) A bank holding company or an affiliate thereof; a savings and loan holding company; a U.S. intermediate holding company established or designated pursuant to 12 CFR 252.153; or a nonbank financial company supervised by the Board;

(ii) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States; a federal credit union or state credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) and (6)); a national association, state member bank, or state nonmember bank that is not a depository institution; an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) Any person registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*), or an entity that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(v) A securities holding company as defined in section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a); a broker or dealer as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)–(5)); an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53(a));

(vi) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 (17 CFR 270.3a–7) of the U.S. Securities and Exchange Commission;

(vii) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in sections 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in section 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28));

(viii) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(ix) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(x) Any designated financial market utility, as defined in section 803 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5462); and

(xi) An entity that would be a financial entity described in paragraphs (r)(1)(i) through (x) of this section, if it were organized under the laws of the United States or any State thereof; and

(2) Provided that, for purposes of this subpart, ''financial entity'' does not include any counterparty that is a foreign sovereign entity or multilateral development bank.

(s) *Foreign sovereign entity* means a sovereign entity other than the United States government and the entity's agencies, departments, ministries, and central bank collectively.

(t) *Gross credit exposure* means, with respect to any credit transaction, the credit exposure of the covered company before adjusting, pursuant to § 238.154, for the effect of any eligible collateral, eligible guarantee, eligible credit derivative, eligible equity derivative, other eligible hedge, and any unused portion of certain extensions of credit.

(u) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(v) *Intraday credit exposure* means credit exposure of a covered company to a counterparty that by its terms is to be repaid, sold, or terminated by the end of its business day in the United States.

(w) *Investment grade* has the same meaning as in § 217.2 of this chapter.

(x) *Multilateral development bank* has the same meaning as in § 217.2 of this chapter.

(y) *Net credit exposure* means, with respect to any credit transaction, the gross credit exposure of a covered company and all of its subsidiaries calculated under § 238.153, as adjusted in accordance with § 238.154.

(z) *Qualifying central counterparty* has the same meaning as in § 217.2 of this chapter.

(aa) *Qualifying master netting agreement* has the same meaning as in § 217.2 of this chapter.

(bb) *Securities financing transaction* means any repurchase agreement, reverse repurchase agreement, securities borrowing transaction, or securities lending transaction.

(cc) *Short sale* means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(dd) *Sovereign entity* means a central national government (including the U.S. government) or an agency, department, ministry, or central bank, but not including any political subdivision such as a state, province, or municipality.

(ee) *Subsidiary.* A company is a *subsidiary* of another company if:

(1) The company is consolidated by the other company under applicable accounting standards; or

(2) For a company that is not subject to principles or standards referenced in paragraph (ee)(1) of this section, consolidation would have occurred if such principles or standards had applied.

(ff) *Tier 1 capital* means common equity tier 1 capital and additional tier 1 capital, as defined in 12 CFR part 217 and as reported by the covered savings and loan holding company on the most recent FR Y–9C report on a consolidated basis.

(gg) *Total consolidated assets.* A company's total consolidated assets are determined based on:

(1) The average of the company's total consolidated assets in the four most recent consecutive quarters as reported quarterly on the FR Y–9C; or

(2) If the company has not filed an FR Y–9C for each of the four most recent consecutive quarters, the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters, as applicable.

§ 238.152 Credit exposure limits.

General limit on aggregate net credit exposure. No covered company may have an aggregate net credit exposure to any counterparty that exceeds 25 percent of the tier 1 capital of the covered company.

§ 238.153 Gross credit exposure.

(a) *Calculation of gross credit exposure.* The amount of gross credit exposure of a covered company to a counterparty with respect to a credit transaction is, in the case of:

(1) A deposit of the covered company held by the counterparty, loan by a covered company to the counterparty, and lease in which the covered company is the lessor and the counterparty is the lessee, equal to the amount owed by the counterparty to the covered company under the transaction.

(2) A debt security or debt investment held by the covered company that is issued by the counterparty, equal to:

(i) The market value of the securities, for trading and available-for-sale securities; and

(ii) The amortized purchase price of the securities or investments, for securities or investments held to maturity.

(3) An equity security held by the covered company that is issued by the counterparty, equity investment in a counterparty, and other direct investments in a counterparty, equal to the market value.

(4) A securities financing transaction must be valued using any of the methods that the covered company is authorized to use under 12 CFR part 217, subparts D and E to value such transactions:

(i)(A) As calculated for each transaction, in the case of a securities financing transaction between the covered company and the counterparty that is not subject to a bilateral netting agreement or does not meet the definition of ''repo-style transaction'' in § 217.2 of this chapter; or

(B) As calculated for a netting set, in the case of a securities financing transaction between the covered company and the counterparty that is subject to a bilateral netting agreement with that counterparty and meets the definition of ''repo-style transaction'' in § 217.2 of this chapter;

(ii) For purposes of paragraph (a)(4)(i) of this section, the covered company must:

(A) Assign a value of zero to any security received from the counterparty that does not meet the definition of ''eligible collateral'' in § 238.151; and

(B) Include the value of securities that are eligible collateral received by the covered company from the counterparty (including any exempt counterparty), calculated in accordance with paragraphs (a)(4)(i) through (iv) of this section, when calculating its gross credit exposure to the issuer of those securities;

(iii) Notwithstanding paragraphs (a)(4)(i) and (ii) of this section and with respect to each credit transaction, a covered company's gross credit exposure to a collateral issuer under this paragraph (a)(4) is limited to the covered company's gross credit exposure to the counterparty on the credit transaction; and

(iv) In cases where the covered company receives eligible collateral from a counterparty in addition to the cash or securities received from that counterparty, the counterparty may reduce its gross credit exposure to that counterparty in accordance with § 238.154(b).

(5) A committed credit line extended by a covered company to a counterparty, equal to the face amount of the committed credit line.

(6) A guarantee or letter of credit issued by a covered company on behalf of a counterparty, equal to the maximum potential loss to the covered company on the transaction.

(7) A derivative transaction must be valued using any of the methods that the covered company is authorized to use under 12 CFR part 217, subparts D and E to value such transactions:

(i)(A) As calculated for each transaction, in the case of a derivative transaction between the covered company and the counterparty, including an equity derivative but excluding a credit derivative described in paragraph (a)(8) of this section, that is not subject to a qualifying master netting agreement; or

(B) As calculated for a netting set, in the case of a derivative transaction between the covered company and the counterparty, including an equity derivative but excluding a credit derivative described in paragraph (a)(8) of this section, that is subject to a qualifying master netting agreement.

(ii) In cases where a covered company is required to recognize an exposure to an eligible guarantor pursuant to § 238.154(d), the covered company must exclude the relevant derivative transaction when calculating its gross exposure to the original counterparty under this section.

(8) A credit derivative between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or debt security of the counterparty, equal to the maximum potential loss to the covered company on the transaction.

(b) *Investments in and exposures to securitization vehicles, investment funds, and other special purpose vehicles that are not subsidiaries.* Notwithstanding paragraph (a) of this section, a covered company must calculate pursuant to § 238.155 its gross credit exposure due to any investment in the debt or equity of, and any credit derivative or equity derivative between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or equity security of, or equity investment in, a securitization vehicle, investment fund, and other special purpose vehicle that is not a subsidiary of the covered company.

(c) *Attribution rule.* Notwithstanding any other requirement in this subpart, a covered company must treat any transaction with any natural person or entity as a credit transaction with another party, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, the other party.

§ 238.154 Net credit exposure.

(a) *In general.* For purposes of this subpart, a covered company must calculate its net credit exposure to a counterparty by adjusting its gross credit exposure to that counterparty in accordance with the rules set forth in this section.

(b) *Eligible collateral.* (1) In computing its net credit exposure to a counterparty for any credit transaction other than a securities financing transaction, a covered company must reduce its gross credit exposure on the transaction by the adjusted market value of any eligible collateral.

(2) A covered company that reduces its gross credit exposure to a counterparty as required under paragraph (b)(1) of this section must include the adjusted market value of the eligible collateral, when calculating its gross credit exposure to the collateral issuer.

(3) Notwithstanding paragraph (b)(2) of this section, a covered company's gross credit exposure to a collateral issuer under this paragraph (b) is limited to:

(i) Its gross credit exposure to the counterparty on the credit transaction, or

(ii) In the case of an exempt counterparty, the gross credit exposure that would have been attributable to that exempt counterparty on the credit transaction if valued in accordance with § 238.153(a).

(c) *Eligible guarantees.* (1) In calculating net credit exposure to a counterparty for any credit transaction, a covered company must reduce its gross credit exposure to the counterparty by the amount of any eligible guarantee from an eligible guarantor that covers the transaction.

(2) A covered company that reduces its gross credit exposure to a counterparty as required under paragraph (c)(1) of this section must include the amount of eligible guarantees when calculating its gross credit exposure to the eligible guarantor.

(3) Notwithstanding paragraph (c)(2) of this section, a covered company's gross credit exposure to an eligible guarantor with respect to an eligible guarantee under this paragraph (c) is limited to:

(i) Its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible guarantee, or

(ii) In the case of an exempt counterparty, the gross credit exposure that would have been attributable to that exempt counterparty on the credit transaction prior to recognition of the eligible guarantee if valued in accordance with § 238.153(a).

(d) *Eligible credit and equity derivatives.* (1) In calculating net credit exposure to a counterparty for a credit transaction under this section, a covered company must reduce its gross credit exposure to the counterparty by:

(i) In the case of any eligible credit derivative from an eligible guarantor, the notional amount of the eligible credit derivative; or

(ii) In the case of any eligible equity derivative from an eligible guarantor, the gross credit exposure amount to the counterparty (calculated in accordance with § 238.153(a)(7)).

(2)(i) A covered company that reduces its gross credit exposure to a counterparty as provided under paragraph (d)(1) of this section must include, when calculating its net credit exposure to the eligible guarantor, including in instances where the underlying credit transaction would not be subject to the credit limits of § 238.152 (for example, due to an exempt counterparty), either

(A) In the case of any eligible credit derivative from an eligible guarantor, the notional amount of the eligible credit derivative; or

(B) In the case of any eligible equity derivative from an eligible guarantor, the gross credit exposure amount to the counterparty (calculated in accordance with § 238.153(a)(7)).

(ii) Notwithstanding paragraph (d)(2)(i) of this section, in cases where the eligible credit derivative or eligible equity derivative is used to hedge covered positions that are subject to the Board's market risk rule (12 CFR part 217, subpart F) and the counterparty on the hedged transaction is not a financial entity, the amount of credit exposure that a company must recognize to the eligible guarantor is the amount that would be calculated pursuant to § 238.153(a).

(3) Notwithstanding paragraph (d)(2) of this section, a covered company's

gross credit exposure to an eligible guarantor with respect to an eligible credit derivative or an eligible equity derivative this paragraph (d) is limited to:

(i) Its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible credit derivative or the eligible equity derivative, or

(ii) In the case of an exempt counterparty, the gross credit exposure that would have been attributable to that exempt counterparty on the credit transaction prior to recognition of the eligible credit derivative or the eligible equity derivative if valued in accordance with § 238.153(a).

(e) *Other eligible hedges.* In calculating net credit exposure to a counterparty for a credit transaction under this section, a covered company may reduce its gross credit exposure to the counterparty by the face amount of a short sale of the counterparty's debt security or equity security, provided that:

(1) The instrument in which the covered company has a short position is junior to, or *pari passu* with, the instrument in which the covered company has the long position; and

(2) The instrument in which the covered company has a short position and the instrument in which the covered company has the long position are either both treated as trading or available-for-sale exposures or both treated as held-to-maturity exposures.

(f) *Unused portion of certain extensions of credit.* (1) In computing its net credit exposure to a counterparty for a committed credit line or revolving credit facility under this section, a covered company may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the covered company does not have any legal obligation to advance additional funds under the extension of credit and the used portion of the credit extension has been fully secured by eligible collateral.

(2) To the extent that the used portion of a credit extension has been secured by eligible collateral, the covered company may reduce its gross credit exposure by the adjusted market value of any eligible collateral received from the counterparty, even if the used portion has not been fully secured by eligible collateral.

(3) To qualify for the reduction in net credit exposure under this paragraph, the credit contract must specify that any used portion of the credit extension must be fully secured by the adjusted market value of any eligible collateral.

(g) *Credit transactions involving exempt counterparties.* (1) A covered company's credit transactions with an exempt counterparty are not subject to the requirements of this subpart, including but not limited to § 238.152.

(2) Notwithstanding paragraph (g)(1) of this section, in cases where a covered company has a credit transaction with an exempt counterparty and the covered company has obtained eligible collateral from that exempt counterparty or an eligible guarantee or eligible credit or equity derivative from an eligible guarantor, the covered company must include (for purposes of this subpart) such exposure to the issuer of such eligible collateral or the eligible guarantor, as calculated in accordance with the rules set forth in this section, when calculating its gross credit exposure to that issuer of eligible collateral or eligible guarantor.

(h) *Currency mismatch adjustments.* For purposes of calculating its net credit exposure to a counterparty under this section, a covered company must apply, as applicable:

(1) When reducing its gross credit exposure to a counterparty resulting from any credit transaction due to any eligible collateral and calculating its gross credit exposure to an issuer of eligible collateral, pursuant to paragraph (b) of this section, the currency mismatch adjustment approach of § 217.37(c)(3)(ii) of this chapter; and

(2) When reducing its gross credit exposure to a counterparty resulting from any credit transaction due to any eligible guarantee, eligible equity derivative, or eligible credit derivative from an eligible guarantor and calculating its gross credit exposure to an eligible guarantor, pursuant to paragraphs (c) and (d) of this section, the currency mismatch adjustment approach of § 217.36(f) of this chapter.

(i) *Maturity mismatch adjustments.* For purposes of calculating its net credit exposure to a counterparty under this section, a covered company must apply, as applicable, the maturity mismatch adjustment approach of § 217.36(d) of this chapter:

(1) When reducing its gross credit exposure to a counterparty resulting from any credit transaction due to any eligible collateral or any eligible guarantees, eligible equity derivatives, or eligible credit derivatives from an eligible guarantor, pursuant to paragraphs (b) through (d) of this section, and

(2) In calculating its gross credit exposure to an issuer of eligible collateral, pursuant to paragraph (b) of this section, or to an eligible guarantor, pursuant to paragraphs (c) and (d) of this section; provided that

(3) The eligible collateral, eligible guarantee, eligible equity derivative, or eligible credit derivative subject to paragraph (i)(1) of this section:

(i) Has a shorter maturity than the credit transaction;

(ii) Has an original maturity equal to or greater than one year;

(iii) Has a residual maturity of not less than three months; and

(iv) The adjustment approach is otherwise applicable.

§ 238.155 Investments in and exposures to securitization vehicles, investment funds, and other special purpose vehicles that are not subsidiaries of the covered company.

(a) *In general.* (1) For purposes of this section, the following definitions apply:

(i) *SPV* means a securitization vehicle, investment fund, or other special purpose vehicle that is not a subsidiary of the covered company.

(ii) *SPV exposure* means an investment in the debt or equity of an SPV, or a credit derivative or equity derivative between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or equity security of, or equity investment in, an SPV.

(2)(i) A covered company must determine whether the amount of its gross credit exposure to an issuer of assets in an SPV, due to an SPV exposure, is equal to or greater than 0.25 percent of the covered company's tier 1 capital using one of the following two methods:

(A) The sum of all of the issuer's assets (with each asset valued in accordance with § 238.153(a)) in the SPV; or

(B) The application of the look-through approach described in paragraph (b) of this section.

(ii) With respect to the determination required under paragraph (a)(2)(i) of this section, a covered company must use the same method to calculate gross credit exposure to each issuer of assets in a particular SPV.

(iii) In making a determination under paragraph (a)(2)(i) of this section, the covered company must consider only the credit exposure to the issuer arising from the covered company's SPV exposure.

(iv) For purposes of this paragraph (a)(2), a covered company that is unable to identify each issuer of assets in an SPV must attribute to a single unknown counterparty the amount of its gross credit exposure to all unidentified issuers and calculate such gross credit exposure using one method in either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this section.

(3)(i) If a covered company determines pursuant to paragraph (a)(2) of this section that the amount of its gross credit exposure to an issuer of assets in an SPV is less than 0.25 percent of the covered company's tier 1 capital, the amount of the covered company's gross credit exposure to that issuer may be attributed to either that issuer of assets or the SPV:

(A) If attributed to the issuer of assets, the issuer of assets must be identified as a counterparty, and the gross credit exposure calculated under paragraph (a)(2)(i)(A) of this section to that issuer of assets must be aggregated with any other gross credit exposures (valued in accordance with § 238.153) to that same counterparty; and

(B) If attributed to the SPV, the covered company's gross credit exposure is equal to the covered company's SPV exposure, valued in accordance with § 238.153(a).

(ii) If a covered company determines pursuant to paragraph (a)(2) of this section that the amount of its gross credit exposure to an issuer of assets in an SPV is equal to or greater than 0.25 percent of the covered company's tier 1 capital or the covered company is unable to determine that the amount of the gross credit exposure is less than 0.25 percent of the covered company's tier 1 capital:

(A) The covered company must calculate the amount of its gross credit exposure to the issuer of assets in the SPV using the look-through approach in paragraph (b) of this section;

(B) The issuer of assets in the SPV must be identified as a counterparty, and the gross credit exposure calculated in accordance with paragraph (b) of this section must be aggregated with any other gross credit exposures (valued in accordance with § 238.153) to that same counterparty; and

(C) When applying the look-through approach in paragraph (b) of this section, a covered company that is unable to identify each issuer of assets in an SPV must attribute to a single unknown counterparty the amount of its gross credit exposure, calculated in accordance with paragraph (b) of this section, to all unidentified issuers.

(iii) For purposes of this section, a covered company must aggregate all gross credit exposures to unknown counterparties for all SPVs as if the exposures related to a single unknown counterparty; this single unknown counterparty is subject to the limits of § 238.152 as if it were a single counterparty.

(b) *Look-through approach.* A covered company that is required to calculate the amount of its gross credit exposure with respect to an issuer of assets in accordance with this paragraph (b) must calculate the amount as follows:

(1) Where all investors in the SPV rank *pari passu,* the amount of the gross credit exposure to the issuer of assets is equal to the covered company's pro rata share of the SPV multiplied by the value of the underlying asset in the SPV, valued in accordance with § 238.153(a); and

(2) Where all investors in the SPV do not rank *pari passu,* the amount of the gross credit exposure to the issuer of assets is equal to:

(i) The pro rata share of the covered company's investment in the tranche of the SPV; multiplied by

(ii) The lesser of:

(A) The market value of the tranche in which the covered company has invested, except in the case of a debt security that is held to maturity, in which case the tranche must be valued at the amortized purchase price of the securities; and

(B) The value of each underlying asset attributed to the issuer in the SPV, each as calculated pursuant to § 238.153(a).

(c) *Exposures to third parties.* (1) Notwithstanding any other requirement in this section, a covered company must recognize, for purposes of this subpart, a gross credit exposure to each third party that has a contractual obligation to provide credit or liquidity support to an SPV whose failure or material financial distress would cause a loss in the value of the covered company's SPV exposure.

(2) The amount of any gross credit exposure that is required to be recognized to a third party under paragraph (c)(1) of this section is equal to the covered company's SPV exposure, up to the maximum contractual obligation of that third party to the SPV, valued in accordance with § 238.153(a). (This gross credit exposure is in addition to the covered company's gross credit exposure to the SPV or the issuers of assets of the SPV, calculated in accordance with paragraphs (a) and (b) of this section.)

(3) A covered company must aggregate the gross credit exposure to a third party recognized in accordance with paragraphs (c)(1) and (2) of this section with its other gross credit exposures to that third party (that are unrelated to the SPV) for purposes of compliance with the limits of § 238.152.

§ 238.156 Aggregation of exposures to more than one counterparty due to economic interdependence or control relationships.

(a) *In general.* (1) If a covered company has an aggregate net credit exposure to any counterparty that exceeds 5 percent of its tier 1 capital, the covered company must assess its relationship with the counterparty under paragraph (b)(2) of this section to determine whether the counterparty is economically interdependent with one or more other counterparties of the covered company and under paragraph (c)(1) of this section to determine whether the counterparty is connected by a control relationship with one or more other counterparties.

(2) If, pursuant to an assessment required under paragraph (a)(1) of this section, the covered company determines that one or more of the factors of paragraph (b)(2) or (c)(1) of this section are met with respect to one or more counterparties, or the Board determines pursuant to paragraph (d) of this section that one or more other counterparties of a covered company are economically interdependent or that one or more other counterparties of a covered company are connected by a control relationship, the covered company must aggregate its net credit exposure to the counterparties for all purposes under this subpart, including, but not limited to, § 238.152.

(3) In connection with any request pursuant to paragraph (b)(3) or (c)(2) of this section, the Board may require the covered company to provide additional information.

(b) *Aggregation of exposures to more than one counterparty due to economic interdependence.* (1) For purposes of this paragraph, two counterparties are economically interdependent if the failure, default, insolvency, or material financial distress of one counterparty would cause the failure, default, insolvency, or material financial distress of the other counterparty, taking into account the factors in paragraph (b)(2) of this section.

(2) A covered company must assess whether the financial distress of one counterparty (counterparty A) would prevent the ability of the other counterparty (counterparty B) to fully and timely repay counterparty B's liabilities and whether the insolvency or default of counterparty A is likely to be associated with the insolvency or default of counterparty B and, therefore, these counterparties are economically interdependent, by evaluating the following:

(i) Whether 50 percent or more of one counterparty's gross revenue is derived from, or gross expenditures are directed to, transactions with the other counterparty;

(ii) Whether counterparty A has fully or partly guaranteed the credit exposure of counterparty B, or is liable by other means, in an amount that is 50 percent or more of the covered company's net credit exposure to counterparty A;

(iii) Whether 25 percent or more of one counterparty's production or output is sold to the other counterparty, which cannot easily be replaced by other customers;

(iv) Whether the expected source of funds to repay the loans of both counterparties is the same and neither counterparty has another independent source of income from which the loans may be serviced and fully repaid; [1] and

(v) Whether two or more counterparties rely on the same source for the majority of their funding and, in the event of the common provider's default, an alternative provider cannot be found.

(3)(i) Notwithstanding paragraph (b)(2) of this section, if a covered company determines that one or more of the factors in paragraph (b)(2) is met, the covered company may request in writing a determination from the Board that those counterparties are not economically interdependent and that the covered company is not required to aggregate those counterparties.

(ii) Upon a request by a covered company pursuant to paragraph (b)(3) of this section, the Board may grant temporary relief to the covered company and not require the covered company to aggregate one counterparty with another counterparty provided that the counterparty could promptly modify its business relationships, such as by reducing its reliance on the other counterparty, to address any economic interdependence concerns, and provided that such relief is in the public interest and is consistent with the purpose of this subpart.

(c) *Aggregation of exposures to more than one counterparty due to certain control relationships.* (1) For purposes of this subpart, one counterparty (counterparty A) is deemed to control the other counterparty (counterparty B) if:

(i) Counterparty A owns, controls, or holds with the power to vote 25 percent or more of any class of voting securities of counterparty B; or

(ii) Counterparty A controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of counterparty B.

(2)(i) Notwithstanding paragraph (c)(1) of this section, if a covered company determines that one or more of the factors in paragraph (c)(1) is met, the covered company may request in writing a determination from the Board that counterparty A does not control counterparty B and that the covered company is not required to aggregate those counterparties.

(ii) Upon a request by a covered company pursuant to paragraph (c)(2) of this section, the Board may grant temporary relief to the covered company and not require the covered company to aggregate counterparty A with counterparty B provided that, taking into account the specific facts and circumstances, such indicia of control does not result in the entities being connected by control relationships for purposes of this subpart, and provided that such relief is in the public interest and is consistent with the purpose of this subpart.

(d) *Board determinations for aggregation of counterparties due to economic interdependence or control relationships.* The Board may determine, after notice to the covered company and opportunity for hearing, that one or more counterparties of a covered company are:

(1) Economically interdependent for purposes of this subpart, considering the factors in paragraph (b)(2) of this section, as well as any other indicia of economic interdependence that the Board determines in its discretion to be relevant; or

(2) Connected by control relationships for purposes of this subpart, considering the factors in paragraph (c)(1) of this section and whether counterparty A:

(i) Controls the power to vote 25 percent or more of any class of voting securities of Counterparty B pursuant to a voting agreement;

(ii) Has significant influence on the appointment or dismissal of counterparty B's administrative, management, or governing body, or the fact that a majority of members of such body have been appointed solely as a result of the exercise of counterparty A's voting rights; or

(iii) Has the power to exercise a controlling influence over the management or policies of counterparty B.

(e) *Board determinations for aggregation of counterparties to prevent evasion.* Notwithstanding paragraphs (b) and (c) of this section, a covered company must aggregate its exposures to a counterparty with the covered company's exposures to another counterparty if the Board determines in writing after notice and opportunity for hearing, that the exposures to the two counterparties must be aggregated to prevent evasions of the purposes of this subpart, including, but not limited to § 238.156.

§ 238.157 Exemptions.

(a) *Exempted exposure categories.* The following categories of credit transactions are exempt from the limits on credit exposure under this subpart:

(1) Any direct claim on, and the portion of a claim that is directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligation issued by a U.S. government-sponsored entity as determined by the Board;

(2) Intraday credit exposure to a counterparty;

(3) Any trade exposure to a qualifying central counterparty related to the covered company's clearing activity, including potential future exposure arising from transactions cleared by the qualifying central counterparty and pre-funded default fund contributions;

(4) Any credit transaction with the Bank for International Settlements, the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Multilateral Investment Guarantee Agency, or the International Centre for Settlement of Investment Disputes;

(5) Any credit transaction with the European Commission or the European Central Bank; and

(6) Any transaction that the Board exempts if the Board finds that such exemption is in the public interest and is consistent with the purpose of this subpart.

(b) *Exemption for Federal Home Loan Banks.* For purposes of this subpart, a covered company does not include any Federal Home Loan Bank.

(c) *Additional exemptions by the Board.* The Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term ''credit exposure,'' if the Board finds that the exemption is in the public interest.

§ 238.158 Compliance.

(a) *Scope of compliance.* (1) Using all available data, including any data required to be maintained or reported to the Federal Reserve under this subpart,

[1] An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee.

a covered company must comply with the requirements of this subpart on a daily basis at the end of each business day.

(2) A covered company must report its compliance to the Federal Reserve as of the end of the quarter, unless the Board determines and notifies that company in writing that more frequent reporting is required.

(3) In reporting its compliance, a covered company must calculate and include in its gross credit exposure to an issuer of eligible collateral or eligible guarantor the amounts of eligible collateral, eligible guarantees, eligible equity derivatives, and eligible credit derivatives that were provided to the covered company in connection with credit transactions with exempt counterparties, valued in accordance with and as required by § 238.154(b) through (d) and § 238.154 (g).

(b) *Qualifying master netting agreement.* With respect to any qualifying master netting agreement, a covered company must establish and maintain procedures that meet or exceed the requirements of § 217.3(d) of this chapter to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy these requirements.

(c) *Noncompliance.* (1) Except as otherwise provided in this section, if a covered company is not in compliance with this subpart with respect to a counterparty solely due to the circumstances listed in paragraphs (c)(2)(i) through (v) of this section, the covered company will not be subject to enforcement actions for a period of 90 days (or, with prior notice to the company, such shorter or longer period determined by the Board, in its sole discretion, to be appropriate to preserve the safety and soundness of the covered company), if the covered company uses reasonable efforts to return to compliance with this subpart during this period. The covered company may not engage in any additional credit transactions with such a counterparty in contravention of this rule during the period of noncompliance, except as provided in paragraph (c)(2) of this section.

(2) A covered company may request a special temporary credit exposure limit exemption from the Board. The Board may grant approval for such exemption in cases where the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the covered company. In acting on a request for an exemption, the Board will consider the following:

(i) A decrease in the covered company's capital stock and surplus;

(ii) The merger of the covered company with another covered company;

(iii) A merger of two counterparties; or

(iv) An unforeseen and abrupt change in the status of a counterparty as a result of which the covered company's credit exposure to the counterparty becomes limited by the requirements of this section; or

(v) Any other factor(s) the Board determines, in its discretion, is appropriate.

(d) *Other measures.* The Board may impose supervisory oversight and additional reporting measures that it determines are appropriate to monitor compliance with this subpart. Covered companies must furnish, in the manner and form prescribed by the Board, such information to monitor compliance with this subpart and the limits therein as the Board may require.

■ 13. Add subpart R to read as follows:

Subpart R—Company-Run Stress Test Requirements for Foreign Savings and Loan Holding Companies With Total Consolidated Assets Over $250 Billion

Sec.

238.160 Definitions.
238.161 Applicability.
238.162 Capital stress testing requirements.

Subpart R—Company-Run Stress Test Requirements for Foreign Savings and Loan Holding Companies With Total Consolidated Assets Over $250 Billion

§ 238.160 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Foreign savings and loan holding company* means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)) that is incorporated or organized under the laws of a country other than the United States.

(b) *Pre-provision net revenue* means revenue less expenses before adjusting for total loan loss provisions.

(c) *Stress test cycle* has the same meaning as in subpart O of this part.

(d) *Total loan loss provisions* means the amount needed to make reserves adequate to absorb estimated credit losses, based upon management's evaluation of the loans and leases that the company has the intent and ability to hold for the foreseeable future or until maturity or payoff, as determined under applicable accounting standards.

§ 238.161 Applicability.

(a) *Applicability for foreign savings and loan holding companies with total consolidated assets of more than $250 billion*—(1) *General.* A foreign savings and loan holding company must comply with the stress test requirements set forth in this section beginning on the first day of the ninth quarter following the date on which its average total consolidated assets exceed $250 billion.

(2) *Cessation of requirements.* A foreign savings and loan holding company will remain subject to requirements of this subpart until the date on which the foreign savings and loan holding company's total consolidated assets are below $250 billion for each of four most recent calendar quarters.

(b) [Reserved]

§ 238.162 Capital stress testing requirements.

(a) *In general.* (1) A foreign savings and loan holding company subject to this subpart must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (a)(2) of this section; and

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

(2) The capital stress testing regime of a foreign savings and loan holding company's home-country supervisor must include:

(i) A supervisory capital stress test conducted by the relevant home-country supervisor or an evaluation and review by the home-country supervisor of an internal capital adequacy stress test conducted by the foreign savings and loan holding company, conducted on at least a biennial basis; and

(ii) Requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof).

(b) *Additional standards.* (1) Unless the Board otherwise determines in writing, a foreign savings and loan holding company that does not meet each of the requirements in paragraphs (a)(1) and (2) of this section must:

(i) Conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and

(ii) Report on at least a biennial basis a summary of the results of the stress test to the Board that includes a description of the types of risks included in the stress test, a description of the conditions or scenarios used in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign savings and loan holding company and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (b)(1)(ii) of this section.

PART 242—DEFINITIONS RELATING TO TITLE I OF THE DODD-FRANK ACT (REGULATION PP)

■ 14. The authority citation for part 242 continues to read as follows:

Authority: 12 U.S.C. 5311.

■ 15. In § 242.1, paragraph (b)(2)(ii)(B) is revised to read as follows:

§ 242.1 Authority and purpose

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) A bank holding company or foreign bank subject to the Bank Holding Company Act (BHC Act) (12 U.S.C. 1841 *et seq.*) that is a bank holding company described in section 165(a) of the Dodd-Frank Act (12 U.S.C. 5365(a)).

■ 16. Section 242.4 is revised to read as follows:

§ 242.4 Significant nonbank financial companies and significant bank holding companies

For purposes of Title I of the Dodd-Frank Act, the following definitions shall apply:

(a) *Significant nonbank financial company.* A ''significant nonbank financial company'' means—

(1) Any nonbank financial company supervised by the Board; and

(2) Any other nonbank financial company that had $100 billion or more in total consolidated assets (as determined in accordance with applicable accounting standards) as of the end of its most recently completed fiscal year.

(b) *Significant bank holding company.* A ''significant bank holding company'' means any bank holding company or company that is, or is treated in the United States as, a bank holding company, that had $100 billion or more in total consolidated assets as of the end of the most recently completed calendar year, as reported on either the Federal Reserve's FR Y–9C (Consolidated Financial Statement for Holding Companies), or any successor form thereto, or the Federal Reserve's Form FR Y–7Q (Capital and Asset Report for Foreign Banking Organizations), or any successor form thereto.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 17. The authority citation for part 252 is revised to read as follows:

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

Subpart A—General Provisions

■ 18. Revise § 252.1 to read as follows:

§ 252.1 Authority and purpose.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) under sections 162, 165, 167, and 168 of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376, 1423–1432, 12 U.S.C. 5362, 5365, 5367, and 5368); section 9 of the Federal Reserve Act (12 U.S.C. 321–338a); section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)); sections 8 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b) and 1831p–1); the International Banking Act (12 U.S.C. 3101*et seq.*); the Foreign Bank Supervision Enhancement Act (12 U.S.C. 3101 note); and 12 U.S.C. 3904, 3906–3909, and 4808.

(b) *Purpose.* This part implements certain provisions of section 165 of the Dodd-Frank Act (12 U.S.C. 5365), which require the Board to establish enhanced prudential standards for certain bank holding companies, foreign banking organizations, nonbank financial companies supervised by the Board, and certain other companies.

■ 19. Revise § 252.2 to read as follows:

§ 252.2 Definitions.

Unless otherwise specified, the following definitions apply for purposes of this part:

Affiliate has the same meaning as in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)) and 12 CFR 225.2(a).

Applicable accounting standards means GAAP, international financial reporting standards, or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial statements.

Average combined U.S. assets means the average of combined U.S. assets for the four most recent calendar quarters or, if the banking organization has not reported combined U.S. assets for each of the four most recent calendar quarters, the combined U.S. assets for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

Average cross-jurisdictional activity means the average of cross-jurisdictional activity for the four most recent calendar quarters or, if the banking organization has not reported cross-jurisdictional activity for each of the four most recent calendar quarters, the cross-jurisdictional activity for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

Average off-balance sheet exposure means the average of off-balance sheet exposure for the four most recent calendar quarters or, if the banking organization has not reported total exposure and total consolidated assets or combined U.S. assets, as applicable, for each of the four most recent calendar quarters, the off-balance sheet exposure for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

Average total consolidated assets means the average of total consolidated assets for the four most recent calendar quarters or, if the banking organization has not reported total consolidated assets for each of the four most recent calendar quarters, the total consolidated assets for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

Average total nonbank assets means the average of total nonbank assets for the four most recent calendar quarters or, if the banking organization has not reported or calculated total nonbank assets for each of the four most recent calendar quarters, the total nonbank assets for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

Average U.S. non-branch assets means the average of U.S. non-branch assets for the four most recent calendar quarters or, if the banking organization has not reported the total consolidated assets of its top-tier U.S. subsidiaries for each of the four most recent calendar quarters, the U.S. non-branch assets for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

Average weighted short-term wholesale funding means the average of weighted short-term wholesale funding for each of the four most recent calendar quarters or, if the banking organization has not reported weighted short-term wholesale funding for each of the four most recent calendar quarters, the weighted short-term wholesale funding for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

Bank holding company has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)) and 12 CFR 225.2(c).

Banking organization means:

(1) A bank holding company that is a U.S. bank holding company;

(2) A U.S. intermediate holding company; or

(3) A foreign banking organization.

Board means the Board of Governors of the Federal Reserve System.

Category II bank holding company means a U.S. bank holding company identified as a Category II banking organization pursuant to § 252.5.

Category II foreign banking organization means a foreign banking organization identified as a Category II banking organization pursuant to § 252.5.

Category II U.S. intermediate holding company means a U.S. intermediate holding company identified as a Category II banking organization pursuant to § 252.5.

Category III bank holding company means a U.S. bank holding company identified as a Category III banking organization pursuant to § 252.5.

Category III foreign banking organization means a foreign banking organization identified as a Category III banking organization pursuant to § 252.5.

Category III U.S. intermediate holding company means a U.S. intermediate holding company identified as a Category III banking organization pursuant to § 252.5.

Category IV bank holding company means a U.S. bank holding company identified as a Category IV banking organization pursuant to § 252.5.

Category IV foreign banking organization means a foreign banking organization identified as a Category IV banking organization pursuant to § 252.5.

Category IV U.S. intermediate holding company means a U.S. intermediate holding company identified as a Category IV banking organization pursuant to § 252.5.

Combined U.S. assets means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on the FR Y–15 or FR Y–7Q.

Combined U.S. operations means:

(1) The U.S. branches and agencies of the foreign banking organization; and

(2) The U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and subsidiaries of such U.S. subsidiaries.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Control has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)), and the terms controlled and controlling shall be construed consistently with the term control.

Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

Credit enhancement means a qualified financial contract of the type set forth in section 210(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI) of Title II of the Dodd-Frank Act (12 U.S.C. 5390(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI)) or a credit enhancement that the Federal Deposit Insurance Corporation determines by regulation is a qualified financial contract pursuant to section 210(c)(8)(D)(i) of Title II of the Act (12 U.S.C. 5390(c)(8)(D)(i)).

Cross-jurisdictional activity. The cross-jurisdictional activity of a banking organization is equal to the cross-jurisdictional activity of the banking organization as reported on the FR Y–15.

Depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

DPC branch subsidiary means any subsidiary of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency.

Foreign banking organization has the same meaning as in 12 CFR 211.21(o), provided that if the top-tier foreign banking organization is incorporated in or organized under the laws of any State, the foreign banking organization shall not be treated as a foreign banking organization for purposes of this part.

FR Y–7 means the Annual Report of Foreign Banking Organizations reporting form.

FR Y–7Q means the Capital and Asset Report for Foreign Banking Organizations reporting form.

FR Y–9C means the Consolidated Financial Statements for Holding Companies reporting form.

FR Y–9LP means the Parent Company Only Financial Statements of Large Holding Companies.

FR Y–15 means the Systemic Risk Report.

Global methodology means the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time.

Global systemically important banking organization means a global systemically important bank, as such term is defined in the global methodology.

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

Global systemically important foreign banking organization means a top-tier foreign banking organization that is identified as a global systemically important foreign banking organization under § 252.147(b)(4) or § 252.153(b)(4) of this part.

GAAP means generally accepted accounting principles as used in the United States.

Home country, with respect to a foreign banking organization, means the country in which the foreign banking organization is chartered or incorporated.

Home country resolution authority, with respect to a foreign banking organization, means the governmental entity or entities that under the laws of the foreign banking organization's home county has responsibility for the resolution of the top-tier foreign banking organization.

Home-country supervisor, with respect to a foreign banking organization, means the governmental entity or entities that under the laws of the foreign banking organization's home county has responsibility for the supervision and regulation of the top-tier foreign banking organization.

Nonbank financial company supervised by the Board means a company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

Non-U.S. affiliate means any affiliate of a foreign banking organization that is incorporated or organized in a country other than the United States.

Off-balance sheet exposure. (1) The off-balance sheet exposure of a U.S. bank holding company or U.S. intermediate holding company is equal to:

(i) The total exposure of such banking organization, as reported by the banking organization on the FR Y–15; minus

(ii) The total consolidated assets of such banking organization for the same calendar quarter.

(2) The off-balance sheet exposure of a foreign banking organization is equal to:

(i) The total exposure of the combined U.S. operations of the foreign banking organization, as reported by the foreign banking organization on the FR Y–15; minus

(ii) The combined U.S. assets of the foreign banking organization for the same calendar quarter.

Publicly traded means an instrument that is traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a non-U.S. national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such price within a reasonable time period conforming with trade custom.

(3) A company can rely on its determination that a particular non-U.S.-based securities exchange provides a liquid two-way market unless the Board determines that the exchange does not provide a liquid two-way market.

Section 2(h)(2) company has the same meaning as in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

State member bank has the same meaning as in 12 CFR 208.2(g).

Subsidiary has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Top-tier foreign banking organization, with respect to a foreign bank, means the top-tier foreign banking organization or, alternatively, a subsidiary of the top-tier foreign banking organization designated by the Board.

Total consolidated assets. (1) Total consolidated assets of a U.S. bank holding company or a U.S. intermediate holding company is equal to the total consolidated assets of such banking organization calculated based on the average of the balances as of the close of business for each day for the calendar quarter or an average of the balances as of the close of business on each Wednesday during the calendar quarter, as reported on the FR Y–9C.

(2) Total consolidated assets of a foreign banking organization is equal to the total consolidated assets of the foreign banking organization, as reported on the FR Y–7Q.

(3) Total consolidated assets of a state member bank is equal to the total consolidated assets as reported by a state member bank on its Consolidated Report of Condition and Income (Call Report).

Total nonbank assets. (1) Total nonbank assets of a U.S. bank holding company or U.S. intermediate holding company is equal to the total nonbank assets of such banking organization, as reported on the FR Y–9LP.

(2) Total nonbank assets of a foreign banking organization is equal to:

(i) The sum of the total nonbank assets of any U.S. intermediate holding company, if any, as reported on the FR Y–9LP; plus

(ii) The assets of the foreign banking organization's nonbank U.S. subsidiaries excluding the U.S. intermediate holding company, if any; plus

(iii) The sum of the foreign banking organization's equity investments in unconsolidated U.S. subsidiaries, excluding equity investments in any section 2(h)(2) company; minus

(iv) The assets of any section 2(h)(2) company.

U.S. agency has the same meaning as the term ''agency'' in § 211.21(b) of this chapter.

U.S. bank holding company means a bank holding company that is:

(1) Incorporated in or organized under the laws of the United States or any State; and

(2) Not a consolidated subsidiary of a bank holding company that is incorporated in or organized under the laws of the United States or any State.

U.S. branch has the same meaning as the term ''branch'' in § 211.21(e) of this chapter.

U.S. branches and agencies means the U.S. branches and U.S. agencies of a foreign banking organization.

U.S. government agency means an agency or instrumentality of the United States whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States.

U.S. government-sponsored enterprise means an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States.

U.S. intermediate holding company means a top-tier U.S. company that is required to be established pursuant to § 252.147 or § 252.153.

U.S. non-branch assets. U.S. non-branch assets are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary, if applicable) as reported on the FR Y–7Q. In calculating U.S. non-branch assets, a foreign banking organization must reduce its U.S. non-branch assets by the amount corresponding to balances and transactions between a top-tier U.S. subsidiary and any other top-tier U.S. subsidiary (excluding any 2(h)(2) company or DPC branch subsidiary) to the extent such items are not already eliminated in consolidation.

U.S. subsidiary means any subsidiary that is incorporated in or organized under the laws of the United States or any State, commonwealth, territory, or possession of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the North Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

Weighted short-term wholesale funding is equal to the weighted short-term wholesale funding of a banking organization, as reported on the FR Y–15.

■ 19. In § 252.3, add paragraph (c) to read as follows:

§ 252.3 Reservation of authority.

* * * * *

(c) *Reservation of authority for certain foreign banking organizations.* The Board may permit a foreign banking organization to comply with the requirements of this part through a subsidiary. In making this determination, the Board shall consider:

(1) The ownership structure of the foreign banking organization, including

whether the foreign banking organization is owned or controlled by a foreign government;

(2) Whether the action would be consistent with the purposes of this part; and

(3) Any other factors that the Board determines are relevant.

■ 20. Section 252.5 is added to read as follows:

§ 252.5 Categorization of banking organizations.

(a) *General.* (1) A U.S. bank holding company with average total consolidated assets of $100 billion or more must determine its category among the four categories described in paragraphs (b) through (e) of this section at least quarterly.

(2) A U.S. intermediate holding company with average total consolidated assets of $100 billion or more must determine its category among the three categories described in paragraphs (c) through (e) of this section at least quarterly.

(3) A foreign banking organization with average total consolidated assets of $100 billion or more and average combined U.S. assets of $100 billion or more must determine its category among the three categories described in paragraphs (c) through (e) of this section at least quarterly.

(b) *Global systemically important BHC.* A banking organization is a global systemically important BHC if it is identified as a global systemically important BHC pursuant to 12 CFR 217.402.

(c) *Category II.* (1) A banking organization is a Category II banking organization if the banking organization:

(i) Has:

(A)(*1*) For a U.S. bank holding company or a U.S. intermediate holding company, $700 billion or more in average total consolidated assets;

(*2*) For a foreign banking organization, $700 billion or more in average combined U.S. assets; or

(B)(*1*) $75 billion or more in average cross-jurisdictional activity; and

(*2*)(*i*) For a U.S. bank holding company or a U.S. intermediate holding company, $100 billion or more in average total consolidated assets; or

(*ii*) For a foreign banking organization, $100 billion or more in average combined U.S. assets; and

(ii) Is not a global systemically important BHC.

(2) After meeting the criteria in paragraph (c)(1) of this section, a banking organization continues to be a Category II banking organization until the banking organization:

(i) Has:

(A)(*1*) For a U.S. bank holding company or a U.S. intermediate holding company, less than $700 billion in total consolidated assets for each of the four most recent calendar quarters; or

(*2*) For a foreign banking organization, less than $700 billion in combined U.S. assets for each of the four most recent calendar quarters; and

(B) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters;

(ii) Has:

(A) For a U.S. bank holding company or a U.S. intermediate holding company, less than $100 billion in total consolidated assets for each of the four most recent calendar quarters;

(B) For a foreign banking organization, less than $100 billion in combined U.S. assets for each of the four most recent calendar quarters; or

(iii) Meets the criteria in paragraph (b) to be a global systemically important BHC.

(d) *Category III.* (1) A banking organization is a Category III banking organization if the banking organization:

(i) Has:

(A)(*1*) For a U.S. bank holding company or a U.S. intermediate holding company, $250 billion or more in average total consolidated assets; or

(*2*) For a foreign banking organization, $250 billion or more in average combined U.S. assets; or

(B)(*1*)(*i*) For a U.S. bank holding company or a U.S. intermediate holding company, $100 billion or more in average total consolidated assets; or

(*ii*) For a foreign banking organization, $100 billion or more in average combined U.S. assets; and

(*2*) At least:

(*i*) $75 billion in average total nonbank assets;

(*ii*) $75 billion in average weighted short-term wholesale funding; or

(*iii*) $75 billion in average off-balance sheet exposure;

(ii) Is not a global systemically important BHC; and

(iii) Is not a Category II banking organization.

(2) After meeting the criteria in paragraph (d)(1) of this section, a banking organization continues to be a Category III banking organization until the banking organization:

(i) Has:

(A)(*1*) For a U.S. bank holding company or a U.S. intermediate holding company, less than $250 billion in total consolidated assets for each of the four most recent calendar quarters; or

(*2*) For a foreign banking organization, less than $250 billion in combined U.S. assets for each of the four most recent calendar quarters;

(B) Less than $75 billion in total nonbank assets for each of the four most recent calendar quarters;

(C) Less than $75 billion in weighted short-term wholesale funding for each of the four most recent calendar quarters; and

(D) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters; or

(ii) Has:

(A) For a U.S. bank holding company or a U.S. intermediate holding company, less than $100 billion in total consolidated assets for each of the four most recent calendar quarters; or

(B) For a foreign banking organization, less than $100 billion in combined U.S. assets for each of the four most recent calendar quarters;

(iii) Meets the criteria in paragraph (b) of this section to be a global systemically important BHC; or

(iv) Meets the criteria in paragraph (c)(1) of this section to be a Category II banking organization.

(e) *Category IV.* (1) A banking organization is a Category IV banking organization if the banking organization:

(i) Is not global systemically important BHC;

(ii) Is not a Category II banking organization;

(iii) Is not a Category III banking organization; and

(iv) Has:

(A) For a U.S. bank holding company or a U.S. intermediate holding company, average total consolidated assets of $100 billion or more; or

(B) For a foreign banking organization, average combined U.S. assets of $100 billion or more.

(2) After meeting the criteria in paragraph (e)(1), a banking organization continues to be a Category IV banking organization until the banking organization:

(i) Has:

(A) For a U.S. bank holding company or a U.S. intermediate holding company, less than $100 billion in total consolidated assets for each of the four most recent calendar quarters;

(B) For a foreign banking organization, less than $100 billion in combined U.S. assets for each of the four most recent calendar quarters;

(ii) Meets the criteria in paragraph (b) of this section to be a global systemically important BHC;

(iii) Meets the criteria in paragraph (c)(1) of this section to be a Category II banking organization; or

(iv) Meets the criteria in paragraph (d)(1) of this section to be a Category III banking organization.

■ 21. Revise the heading of subpart B to read as follows:

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

■ 22. Section 252.11 is revised to read as follows:

§ 252.11 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1818, 1831p–1, 3906–3909, 5365.

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

■ 23. Section 252.12 is revised to read as follows:

§ 252.12 Definitions.

For purposes of this subpart, the following definitions apply:

Advanced approaches means the regulatory capital requirements at 12 CFR 217, subpart E, as applicable, and any successor regulation.

Asset threshold means average total consolidated assets of greater than $250 billion.

Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a state member bank, and that reflect the consensus views of the economic and financial outlook.

Capital action has the same meaning as in 12 CFR 225.8(d)).

Covered company subsidiary means a state member bank that is a subsidiary of a covered company as defined in subpart F of this part.

Planning horizon means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

Provision for credit losses means:

(1) With respect to a state member bank that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the state member bank on the Call Report in the current stress test cycle; and

(2) With respect to a state member bank that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the state member bank on the Call Report in the current stress test cycle.

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

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

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

Stress test means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a state member bank over the planning horizon, taking into account the current condition, risks, exposures, strategies, and activities.

Stress test cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

Subsidiary has the same meaning as in 12 CFR 225.2(o).

■ 24. Section 252.13 is revised to read as follows:

§ 252.13 Applicability.

(a) *Scope*—(1) *Applicability.* Except as provided in paragraph (b) of this section, this subpart applies to any state member bank with average total consolidated assets of greater than $250 billion.

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

(b) *Transition period.* (1) A state member bank that exceeds the asset threshold for the first time on or before September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the second calendar year after the state member bank becomes subject to this subpart, unless that time is extended by the Board in writing.

(2) A state member bank that exceeds the asset threshold for the first time after September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third year after the state member bank becomes subject to this subpart, unless that time is extended by the Board in writing.

■ 25. Section 252.14 is revised to read as follows:

§ 252.14 Stress test.

(a) *In general.* (1) A state member bank must conduct a stress test as required under this subpart.

(2) *Frequency*—(i) *General.* Except as provided in paragraph (a)(2)(ii) of this section, a state member bank must conduct a stress test according to the frequency in table 1 to § 252.14(a)(2)(i).

TABLE 1 TO § 252.14(a)(2)(i)

If the state member bank is a	Then the stress test must be conducted
Subsidiary of a global systemically important BHC	Annually, by April 5 of each calendar year, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Subsidiary of a Category II bank holding company	Annually, by April 5 of each calendar year, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Subsidiary of a Category II U.S. intermediate holding company	Annually, by April 5 of each calendar year, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

TABLE 1 TO § 252.14(a)(2)(i)—Continued

If the state member bank is a	Then the stress test must be conducted
Not a subsidiary of a: (A) Global systemically important BHC; (B) Category II bank holding company; or (C) Category II U.S. intermediate holding company.	Biennially, by April 5 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(ii) *Change in frequency.* The Board may require a state member bank to conduct a stress test on a more or less frequent basis than would be required under paragraph (a)(2)(i) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Notice and response*—(i) *Notification of change in frequency.* If the Board requires a state member bank to change the frequency of the stress test under paragraph (a)(2)(ii) of this section, the Board will notify the state member bank in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under paragraph (a)(3)(i) of this section, a state member bank may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (a)(2)(i) of this section. A state member bank's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

(b) *Scenarios provided by the Board*—(1) *In general.* In conducting a stress test under this section, a state member bank must, at a minimum, use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios no later than February 15 of each calendar year.

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

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

(3) *Additional scenarios.* The Board may require a state member bank to include one or more additional scenarios in the stress test required by this section based on the state member bank's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

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

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

(iii) *Description of component.* The Board will provide the state member bank with a description of any additional component(s) or additional scenario(s) by March 1.

■ 26. In § 252.15, paragraphs (a) introductory text and (b) are revised and paragraph (c) is removed.

The revisions read as follows:

§ 252.15 Methodologies and practices.

(a) *Potential impact on capital.* In conducting a stress test under § 252.14, for each quarter of the planning horizon, a state member bank must estimate the following for each scenario required to be used:

* * * * *

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

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

(3) *Role of stress testing results.* The board of directors and senior management of a state member bank must consider the results of the stress test in the normal course of business, including but not limited to, the state member bank's capital planning, assessment of capital adequacy, and risk management practices.

■ 27. In § 252.16, paragraphs (a) and (b) are revised to read as follows:

§ 252.16 Reports of stress test results.

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

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

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

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

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

* * * * *

■ 28. In § 252.17, paragraphs (a) and (b) are revised to read as follows:

§ 252.17 Disclosure of stress test results.

(a) *Public disclosure of results*—(1) *General.* A state member bank must publicly disclose a summary of the results of the stress test required under this subpart.

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

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

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

(3) *Disclosure method.* The summary required under this section may be disclosed on the website of a state member bank, or in any other forum that is reasonably accessible to the public.

(b) *Summary of results*—(1) *State member banks that are subsidiaries of bank holding companies.* A state member bank that is a subsidiary of a bank holding company satisfies the public disclosure requirements under this subpart if the bank holding company publicly discloses summary results of its stress test pursuant to this section or § 252.58, unless the Board determines that the disclosures at the holding company level do not adequately capture the potential impact of the scenarios on the capital of the state member bank and requires the state member bank to make public disclosures.

(2) *State member banks that are not subsidiaries of bank holding companies.* A state member bank that is not a subsidiary of a bank holding company or that is required to make disclosures under paragraph (b)(1) of this section must publicly disclose, at a minimum, the following information regarding the severely adverse scenario:

(i) A description of the types of risks being included in the stress test;

(ii) A summary description of the methodologies used in the stress test;

(iii) Estimates of—

(A) Aggregate losses;

(B) Pre-provision net revenue

(C) Provision for credit losses;

(D) Net income; and

(E) Pro forma regulatory capital ratios and any other capital ratios specified by the Board; and

(iv) An explanation of the most significant causes for the changes in regulatory capital ratios.

* * * * *

■ 29. The heading of subpart C is revised to read as follows:

Subpart C—Risk Committee Requirement for Bank Holding Companies With Total Consolidated Assets of $50 Billion or More and Less Than $100 Billion

■ 30. Section 252.21 is revised to read as follows:

§ 252.21 Applicability.

(a) *General applicability.* A bank holding company must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the date on which its average total consolidated assets equal or exceed $50 billion.

(b) *Cessation of requirements.* A bank holding company will remain subject to the requirements of this subpart until the earlier of the date on which:

(1) Its total consolidated assets are below $50 billion for each of four consecutive calendar quarters; and

(2) It becomes subject to the requirements of subpart D of this part.

■ 31. Section 252.22 is revised to read as follows:

§ 252.22 Risk committee requirement for bank holding companies with total consolidated assets of $50 billion or more.

(a) *Risk committee*—(1) *General.* A bank holding company subject to this subpart must maintain a risk committee that approves and periodically reviews the risk-management policies of the bank holding company's global operations and oversees the operation of the bank holding company's global risk-management framework.

(2) *Risk-management framework.* The bank holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size, and must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(B) Processes and systems for establishing managerial and employee responsibility for risk management;

(C) Processes and systems for ensuring the independence of the risk-management function; and

(D) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

(i) Have a formal, written charter that is approved by the bank holding company's board of directors;

(ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the bank holding company's global operations and oversight of the operation of the bank holding company's global risk-management framework;

(iii) Report directly to the bank holding company's board of directors;

(iv) Receive and review regular reports on a not less than a quarterly basis from the bank holding company's chief risk officer provided pursuant to paragraph (b)(3)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the bank holding company and has not been an officer or employee of the bank holding company during the previous three years;

(B) Is not a member of the immediate family, as defined in 12 CFR 225.41(b)(3), of a person who is, or has been within the last three years, an executive officer of the bank holding company, as defined in 12 CFR 215.2(e)(1); and

(C)(*1*) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K (17 CFR 229.407(a)), if the bank holding company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(*2*) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the bank holding company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer*—(1) *General.* A bank holding company subject to this subpart must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the company's risk-control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.* (i) The bank holding company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the bank holding company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

■ 32. Revise the heading of subpart D to read as follows:

Subpart D—Enhanced Prudential Standards for Bank Holding Companies With Total Consolidated Assets of $100 Billion or More

■ 33. Section 252.30 is revised to read as follows:

§ 252.30 Scope.

This subpart applies to bank holding companies with average total consolidated assets of $100 billion or more.

■ 34. Section 252.31 is revised to read as follows:

§ 252.31 Applicability.

(a) *Applicability*—(1) *Initial applicability.* Subject to paragraph (c) of this section, a bank holding company must comply with the risk-management and risk-committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.34 and 252.35 no later than the first day of the fifth quarter following the date on which its average total consolidated assets equal or exceed $100 billion.

(2) *Changes in requirements following a change in category.* A bank holding company with average total consolidated assets of $100 billion or more that changes from one category of banking organization described in § 252.5(b) through (e) to another of such categories must comply with the requirements applicable to the new category no later than on the first day of the second quarter following the change in the bank holding company's category.

(b) *Cessation of requirements.* Except as provided in paragraph (c) of this section, a bank holding company is subject to the risk-management and risk committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.34 and 252.35 until its total consolidated assets are below $100 billion for each of four consecutive calendar quarters.

(c) *Applicability for bank holding companies that are subsidiaries of foreign banking organizations.* If a bank holding company that has average total consolidated assets of $100 billion or more is controlled by a foreign banking organization, the U.S. intermediate holding company established or designated by the foreign banking organization must comply with the risk-management and risk committee requirements set forth in § 252.153(e)(3) and the liquidity risk-management and liquidity stress test requirements set forth in § 252.153(e)(4).

■ 35. Section 252.32 is revised to read as follows:

§ 252.32 Risk-based and leverage capital and stress test requirements.

A bank holding company subject to this subpart must comply with, and hold capital commensurate with the requirements of, any regulations adopted by the Board relating to capital planning and stress tests, in accordance with the applicability provisions set forth therein.

■ 36. In § 252.33, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 252.33 Risk-management and risk committee requirements.

(a) *Risk committee*—(1) *General.* A bank holding company subject to this subpart must maintain a risk committee that approves and periodically reviews the risk-management policies of the bank holding company's global operations and oversees the operation of the bank holding company's global risk-management framework. The risk committee's responsibilities include liquidity risk-management as set forth in § 252.34(b).

* * * * *

(b) *Chief risk officer*—(1) *General.* A bank holding company subject to this subpart must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

* * * * *

■ 37. In § 252.34, paragraphs (a)(1) introductory text, (c)(1)(i), (d), (e)(1), (f)(1), (f)(2)(i), (g), and (h) are revised to read as follows:

§ 252.34 Liquidity risk-management requirements.

(a) * * *

(1) *Liquidity risk tolerance.* The board of directors of a bank holding company that is subject to this subpart must:

* * * * *

(c) * * *

(1) * * *

(i) Senior management of a bank holding company subject to this subpart must establish and implement strategies, policies, and procedures designed to effectively manage the risk that the bank holding company's financial condition or safety and soundness would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk). The board of directors must approve the strategies, policies, and procedures pursuant to paragraph (a)(2) of this section.

* * * * *

(d) *Independent review function.* (1) A bank holding company subject to this subpart must establish and maintain a review function that is independent of management functions that execute funding to evaluate its liquidity risk management.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the company's liquidity risk-management processes, including its liquidity stress test processes and assumptions;

(ii) Assess whether the company's liquidity risk-management function complies with applicable laws and regulations, and sound business practices; and

(iii) Report material liquidity risk-management issues to the board of directors or the risk committee in writing for corrective action, to the extent permitted by applicable law.

(e) * * *

(1) A bank holding company subject to this subpart must produce comprehensive cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The bank holding company must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

* * * * *

(f) * * *

(1) *General.* A bank holding company subject to this subpart must establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) * * *

(i) *Quantitative assessment.* The contingency funding plan must:

(A) Identify liquidity stress events that could have a significant impact on the bank holding company's liquidity;

(B) Assess the level and nature of the impact on the bank holding company's liquidity that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the bank holding company would implement its action plan described in paragraph (f)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 252.35(a).

* * * * *

(g) *Liquidity risk limits*—(1) *General.* A bank holding company must monitor sources of liquidity risk and establish limits on liquidity risk that are consistent with the company's established liquidity risk tolerance and that reflect the company's capital structure, risk profile, complexity, activities, and size.

(2) *Liquidity risk limits established by a global systemically important BHC, Category II bank holding company, or Category III bank holding company.* If the bank holding company is a global systemically important BHC, Category II bank holding company, or Category III bank holding company, liquidity risk limits established under paragraph (g)(1) of this section must include limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(h) *Collateral, legal entity, and intraday liquidity risk monitoring.* A bank holding company subject to this subpart must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) *Collateral.* The bank holding company must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. These policies and procedures must provide that the bank holding company:

(i) Calculates all of its collateral positions according to the frequency specified in paragraph (h)(1)(i)(A) or (B) of this section, or as directed by the Board, specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged;

(A) If the bank holding company is not a Category IV bank holding company, on at least a weekly basis; or

(B) If the bank holding company is a Category IV bank holding company, on at least a monthly basis;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the bank holding company's funding patterns, such as shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies, and business lines.* The bank holding company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposures.* The bank holding company must establish and maintain procedures for monitoring intraday liquidity risk exposures that are consistent with the bank holding company's capital structure, risk profile, complexity, activities, and size. If the bank holding company is a global systemically important BHC, Category II bank holding company, or a Category III bank holding company, these procedures must address how the management of the bank holding company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the bank holding company can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Manage the issuance of credit to customers where necessary; and

(v) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the bank holding company's overall liquidity needs.

■ 38. In § 252.35:

■ a. Paragraphs (a)(1) introductory text, (a)(2), and (a)(7)(i) and (ii) are revised;

■ b. Paragraph (a)(8) is added; and

■ c. Paragraphs (b)(1) and (3) are revised.

The revisions and addition read as follows:

§ 252.35 Liquidity stress testing and buffer requirements.

(a) * * *

(1) *General.* A bank holding company subject to this subpart must conduct stress tests to assess the potential impact of the liquidity stress scenarios set forth in paragraph (a)(3) of this section on its cash flows, liquidity position, profitability, and solvency, taking into account its current liquidity condition, risks, exposures, strategies, and activities.

* * * * *

(2) *Frequency.* The bank holding company must perform the liquidity stress tests required under paragraph (a)(1) of this section according to the frequency specified in paragraph (a)(2)(i) or (ii), or as directed by the Board:

(i) If the bank holding company is not a Category IV bank holding company, at least monthly; or

(ii) If the bank holding company is a Category IV bank holding company, at least quarterly.

* * * * *

(7) * * *

(i) *Policies and procedures.* A bank holding company subject to this subpart must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) *Controls and oversight.* A bank holding company subject to this subpart must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress test process, taking into consideration the bank holding company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors. The assumptions must be approved by the chief risk officer and be subject to the independent review under § 252.34(d) of this subpart.

* * * * *

(8) *Notice and response.* If the Board determines that a bank holding company must conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section, the Board will notify the bank holding company before the change in frequency takes effect, and describe the basis for its determination. Within 14 calendar days of receipt of a notification under this paragraph, the bank holding company may request in writing that the Board reconsider the requirement. The Board will respond in writing to the company's request for reconsideration prior to requiring the company conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Liquidity buffer requirement.* (1) A bank holding company subject to this subpart must maintain a liquidity buffer that is sufficient to meet the projected net stressed cash-flow need over the 30-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraph (a)(3)(i) through (iii) of this section.

* * * * *

(3) *Asset requirements.* The liquidity buffer must consist of highly liquid assets that are unencumbered, as defined in paragraph (b)(3)(ii) of this section:

(i) *Highly liquid asset.* A highly liquid asset includes:

(A) Cash;

(B) Assets that meet the criteria for high quality liquid assets as defined in 12 CFR 249.20; or

(C) Any other asset that the bank holding company demonstrates to the satisfaction of the Board:

(*1*) Has low credit risk and low market risk;

(*2*) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(*3*) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* An asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and

(B) Is either:

(*1*) Not pledged or used to secure or provide credit enhancement to any transaction; or

(*2*) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the bank holding company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) *Operational requirements.* With respect to the liquidity buffer, the bank holding company must:

(A) Establish and implement policies and procedures that require highly liquid assets comprising the liquidity buffer to be under the control of the management function in the bank holding company that is charged with managing liquidity risk; and

(B) Demonstrate the capability to monetize a highly liquid asset under each scenario required under § 252.35(a)(3).

(v) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the bank holding company's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

■ 39. The heading of subpart E is revised to read as follows:

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

■ 40. Section 252.41 is revised to read as follows

§ 252.41 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366, sec. 401(e), Pub. L. 115–174, 132 Stat. 1296.

(b) *Purpose.* This subpart implements section 165 of the Dodd-Frank Act (12 U.S.C. 5365) and section 401(e) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which requires the Board to conduct annual analyses of nonbank financial companies supervised by the Board and bank holding companies with $100 billion or more in total consolidated assets to evaluate whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

■ 41. Section 252.42 is revised to read as follows:

§ 252.42 Definitions

For purposes of this subpart E, the following definitions apply:

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

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

Covered company means:

(1) A U.S. bank holding company with average total consolidated assets of $100 billion or more;

(2) A U.S. intermediate holding company subject to this section pursuant to § 252.153; and

(3) A nonbank financial company supervised by the Board.

Foreign banking organization has the same meaning as in 12 CFR 211.21(o).

Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

Planning horizon means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

Provision for credit losses means:

(1) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y–9C in the current stress test cycle; and,

(2) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y–9C in the current stress test cycle.

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

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

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

Stress test cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

Subsidiary has the same meaning as in 12 CFR 225.2.

■ 42. In § 252.43, paragraph (a) is revised to read as follows:

§ 252.43 Applicability.

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

(i) Any U.S. bank holding company with average total consolidated assets of $100 billion or more;

(ii) Any U.S. intermediate holding company subject to this section pursuant to § 252.153; and

(iii) Any nonbank financial company supervised by the Board that is made subject to this section pursuant to a rule or order of the Board.

(2) *Ongoing applicability.* A bank holding company or U.S. intermediate holding company (including any successor company) that is subject to any requirement in this subpart shall remain subject to any such requirement unless and until its total consolidated assets fall below $100 billion for each of four consecutive quarters.

* * * * *

■ 43. In § 252.44, the section heading and paragraphs (a)(1) and (b) are revised and paragraph (c) is added to read as follows:

§ 252.44 Analysis conducted by the Board.

(a) *In general.* (1) The Board will conduct an analysis of each covered company's capital, on a total consolidated basis, taking into account all relevant exposures and activities of that covered company, to evaluate the ability of the covered company to absorb losses in specified economic and financial conditions.

* * * * *

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

(c) *Frequency of analysis conducted by the Board*—(1) *General.* Except as provided in paragraph (c)(2) of this section, the Board will conduct its analysis of a covered company according to the frequency in Table 1 to § 252.44(c)(1).

TABLE 1 TO § 252.44(c)(1)

If the covered company is a	Then the Board will conduct its analysis
Global systemically important BHC	Annually.
Category II bank holding company	Annually.
Category II U.S. intermediate holding company	Annually.
Category III bank holding company	Annually.
Category III U.S. intermediate holding company	Annually.
Category IV bank holding company	Biennially, occurring in each year ending in an even number.
Category IV U.S. intermediate holding company	Biennially, occurring in each year ending in an even number.

TABLE 1 TO § 252.44(c)(1)—Continued

If the covered company is a	Then the Board will conduct its analysis
Nonbank financial company supervised by the Board	Annually.

(2) *Change in frequency.* The Board may conduct a stress test of a covered company on a more or less frequent basis than would be required under paragraph (c)(1) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Notice and response*—(i) *Notification of change in frequency.* If the Board determines to change the frequency of the stress test under paragraph (c)(2) of this section, the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under paragraph (c)(3)(i) of this section, a covered company may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (c)(1) of this section. A covered company's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

■ 44. The heading of subpart F is revised to read as follows:

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

■ 45. Section 252.51 is revised to read as follows:

§ 252.51 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

(b) *Purpose.* This subpart establishes the requirement for a covered company to conduct stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

■ 46. Section 252.52 is revised as follows:

§ 252.52 Definitions.

For purposes of this subpart, the following definitions apply:

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

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

Capital action has the same meaning as in 12 CFR 225.8(d).

Covered company means:

(1) A global systemically important BHC;

(2) A Category II bank holding company;

(3) A Category III bank holding company;

(4) A Category II U.S. intermediate holding company subject to this section pursuant to § 252.153;

(5) A Category III U.S. intermediate holding company subject to this section pursuant to § 252.153; and

(6) A nonbank financial company supervised by the Board that is made subject to this section pursuant to a rule or order of the Board.

Foreign banking organization has the same meaning as in 12 CFR 211.21(o).

Planning horizon means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

Provision for credit losses means:

(1) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y–9C in the current stress test cycle; and

(2) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y–9C in the current stress test cycle.

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

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

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

Stress test means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered company over the planning horizon, taking into account its current condition, risks, exposures, strategies, and activities.

Stress test cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

Subsidiary has the same meaning as in 12 CFR 225.2.

■ 47. Section 252.53 is revised to read as follows:

§ 252.53 Applicability.

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

(i) Any global systemically important BHC;

(ii) Any Category II bank holding company;

(iii) Any Category III bank holding company;

(iv) Any Category II U.S. intermediate holding company subject to this section pursuant to § 252.153;

(v) Any Category III U.S. intermediate holding company subject to this section pursuant to § 252.153; and

(vi) Any nonbank financial company supervised by the Board that is made subject to this section pursuant to a rule or order of the Board.

(2) *Ongoing applicability.* (i) A bank holding company (including any successor company) that is subject to any requirement in this subpart shall

remain subject to any such requirement unless and until the bank holding company:

(A) Is not a global systemically important BHC;

(B) Is not a Category II bank holding company; and

(C) Is not a Category III bank holding company.

(ii) A U.S. intermediate holding company (including any successor company) that is subject to any requirement in this subpart shall remain subject to any such requirement unless and until the U.S. intermediate holding company:

(A) Is not a Category II U.S. intermediate holding company; and

(B) Is not a Category III U.S. intermediate holding company.

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

(2) A company that becomes a covered company after September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third calendar year after the company becomes a covered company, unless that time is extended by the Board in writing.

■ 48. In § 252.54 the section heading, paragraphs (a), (b)(2)(i), and (b)(4)(ii) and (iii) are revised to read as follows:

§ 252.54 Stress test.

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

(2) *Frequency*—(i) *General.* Except as provided in paragraph (a)(2)(ii) of this section, a covered company must conduct a stress test according to the frequency in Table 1 to § 252.54(a)(2)(i).

TABLE 1 TO § 252.54(a)(2)(i)

If the covered company is a	Then the stress test must be conducted
Global systemically important BHC	Annually, by April 5 of each calendar year based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Category II bank holding company	Annually, by April 5 of each calendar year based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Category II U.S. intermediate holding company	Annually, by April 5 of each calendar year based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Category III bank holding company	Biennially, by April 5 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Category III U.S. intermediate holding company	Biennially, by April 5 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Nonbank financial company supervised by the Board	Periodically, as determined by rule or order.

(ii) *Change in frequency.* The Board may require a covered company to conduct a stress test on a more or less frequent basis than would be required under paragraph (a)(2)(i) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Notice and response*—(i) *Notification of change in frequency.* If the Board requires a covered company to change the frequency of the stress test under paragraph (a)(2)(ii) of this section, the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under paragraph (a)(3)(i) of this section, a covered company may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (a)(2)(i) of this section. A covered company's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

(b) * * *

(2) * * *

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

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

* * * * *

(4) * * *

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

(iii) *Description of component.* The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by March 1 of the calendar year in which the stress test is performed pursuant to this section.

§ 252.55 [Removed and Reserved]

■ 49. Section 252.55 is removed and reserved.

■ 50. Section 252.56, paragraphs (a) introductory text, (b) introductory text, and (c)(1) and (2) are revised to read as follows:

§ 252.56 Methodologies and practices.

(a) *Potential impact on capital.* In conducting a stress test under § 252.54, for each quarter of the planning horizon, a covered company must estimate the following for each scenario required to be used:

* * * * *

(b) *Assumptions regarding capital actions.* In conducting a stress test under § 252.54, a covered company is required to make the following assumptions regarding its capital actions over the planning horizon:

* * * * *

(c) * * *

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

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

* * * * *

■ 51. In § 252.57, paragraph (a) is revised to read as follows:

§ 252.57 Reports of stress test results.

(a) *Reports to the Board of stress test results.* A covered company must report the results of the stress test required under § 252.54 to the Board in the manner and form prescribed by the Board. Such results must be submitted by April 5 of the calendar year in which the stress test is conducted pursuant to § 252.54, unless that time is extended by the Board in writing.

* * * * *

■ 52. In § 252.58, paragraph (a)(1) is revised to read as follows:

§ 252.58 Disclosure of stress test results.

(a) * * *

(1) *In general.* A covered company must publicly disclose a summary of the results of the stress test required under § 252.54 within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 252.46(c), unless that time is extended by the Board in writing.

* * * * *

Subpart H—Single-Counterparty Credit Limits

■ 53. In § 252.70, paragraphs (a) and (d)(1) are revised to read as follows:

§ 252.70 Applicability and general provisions.

(a) *In general.* (1) This subpart establishes single counterparty credit limits for a covered company.

(2) For purposes of this subpart:

(i) *Covered company* means:

(A) A global systemically important BHC;

(B) A Category II bank holding company; and

(C) A Category III bank holding company;

(ii) *Major covered company* means any covered company that is a global systemically important BHC.

* * * * *

(d) * * *

(1) Any company that becomes a covered company will remain subject to the requirements of this subpart unless and until:

(i) The covered company is not a global systemically important BHC;

(ii) The covered company is not a Category II bank holding company; and

(iii) The covered company is not a Category III bank holding company.

* * * * *

Subpart L—[Removed and Reserved]

■ 54. Subpart L, consisting of §§ 252.120 through 252.122, is removed.

■ 55. Revise the heading for subpart M to read as follows.

Subpart M—Risk Committee Requirement for Foreign Banking Organizations With Total Consolidated Assets of at Least $50 Billion but Less Than $100 Billion

■ 56. Section 252.131 is revised to read as follows:

§ 252.131 Applicability.

(a) *General applicability.* A foreign banking organization with average total consolidated assets of at least $50 billion but less than $100 billion must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the date on which its average total consolidated assets equal or exceed $50 billion.

(b) *Cessation of requirements.* A foreign banking organization will remain subject to the risk-committee requirements of this section until the earlier of the date on which:

(1) Its total consolidated assets are below $50 billion for each of four consecutive calendar quarters; and

(2) It becomes subject to the requirements of subpart N or subpart O of this part.

■ 57. In § 252.132, the section heading and paragraphs (a) introductory text and (d) are revised to read as follows:

§ 252.132 Risk-committee requirements for foreign banking organizations with total consolidated assets of $50 billion or more but less than $100 billion.

(a) *U.S. risk committee certification.* A foreign banking organization subject to this subpart, must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that:

* * * * *

(d) *Noncompliance with this section.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the organization before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the organization's request for reconsideration prior to applying the requirement, condition, or restriction.

■ 58. The heading of subpart N is revised as follows:

Subpart N—Enhanced Prudential Standards for Foreign Banking Organizations With Total Consolidated Assets of $100 Billion or More and Combined U.S. Assets of Less Than $100 Billion

■ 59. Section 252.140 is revised to read as follows:

§ 252.140 Scope.

This subpart applies to foreign banking organizations with average total consolidated assets of $100 billion or more, but average combined U.S. assets of less than $100 billion.

■ 60. Section 252.142 is revised to read as follows:

§ 252.142 Applicability.

(a) *General applicability.* A foreign banking organization with average total consolidated assets of $100 billion or more and average combined U.S. assets of less than $100 billion must:

(1) Comply with the capital stress testing, risk-management and risk-committee requirements set forth in this subpart beginning no later than on the first day of the ninth quarter the date on which its average total consolidated assets equal or exceed $100 billion; and

(2) Comply with the risk-based and leverage capital requirements and liquidity risk-management requirements set forth in this subpart beginning no later than on the first day of the ninth quarter following the date on which its total consolidated assets equal or exceed $250 billion; and

(3) Comply with the U.S. intermediate holding company requirement set forth in § 252.147 beginning no later than on the first day of the ninth quarter following the date on which its average U.S. non-branch assets equal or exceed $50 billion.

(b) *Cessation of requirements*—(1) *Enhanced prudential standards applicable to the foreign banking organization.* (i) A foreign banking organization will remain subject to the requirements set forth in §§ 252.144 and 252.146 until its total consolidated assets are below $100 billion for each of four consecutive calendar quarters, or it becomes subject to the requirements of subpart O of this part.

(ii) A foreign banking organization will remain subject to the requirements set forth in §§ 252.143 and 252.145 until its total consolidated assets are below $250 billion for each of four consecutive calendar quarters, or it becomes subject to the requirements of subpart O of this part.

(2) *Intermediate holding company requirement.* A foreign banking organization will remain subject to the U.S. intermediate holding company requirement set forth in § 252.147 until the sum of the total consolidated assets of the top-tier U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary) is below $50 billion for each of four consecutive calendar quarters, or it becomes subject to the U.S. intermediate holding company requirements of subpart O of this part.

■ 61. In § 252.143, the section heading and paragraphs (a)(1) introductory text, (b), and (c) are revised to read as follows:

§ 252.143 Risk-based and leverage capital requirements for foreign banking organizations with total consolidated assets of $250 billion or more and combined U.S. assets of less than $100 billion.

(a) * * *

(1) A foreign banking organization subject to this subpart and with average total consolidated assets of $250 billion or more must certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework).

* * * * *

(b) *Reporting.* A foreign banking organization subject to this subpart and with average total consolidated assets of $250 billion or more must provide to the Board reports relating to its compliance with the capital adequacy measures described in paragraph (a) of this section concurrently with filing the FR Y–7Q.

(c) *Noncompliance with the Basel Capital Framework.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions, including risk-based or leverage capital requirements, relating to the activities or business operations of the U.S. operations of the organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the organization before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the organization may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the organization's request for reconsideration prior to applying the requirement, condition, or restriction.

■ 62. Section 252.144 is revised to read as follows:

§ 252.144 Risk-management and risk-committee requirements for foreign banking organizations with total consolidated assets of $100 billion or more but combined U.S. assets of less than $100 billion.

(a) *Risk-management and risk-committee requirements for foreign banking organizations with combined U.S. assets of less than $50 billion*—(1) *U.S. risk committee certification.* A foreign banking organization with average combined U.S. assets of less than $50 billion must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that:

(i) Oversees the risk-management policies of the combined U.S. operations of the foreign banking organization; and

(ii) Includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(2) *Timing of certification.* The certification required under paragraph (a) of this section must be filed on an annual basis with the Board concurrently with the FR Y–7.

(b) *Risk-management and risk-committee requirements for foreign banking organizations with combined U.S. assets of $50 billion or more but less than $100 billion*—(1) *U.S. risk committee*—(i) *General.* A foreign banking organization subject to this this subpart and with average combined U.S. assets of $50 billion or more must maintain a U.S. risk committee that approves and periodically reviews the risk-management policies of the combined U.S. operations of the foreign banking organization and oversees the risk-management framework of such combined U.S. operations.

(ii) *Risk-management framework.* The foreign banking organization's risk-management framework for its combined U.S. operations must be commensurate with the structure, risk profile, complexity, activities, and size of its combined U.S. operations and consistent with its enterprise-wide risk management policies. The framework must include:

(A) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for the combined U.S. operations of the foreign banking organization; and

(B) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(*1*) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, on a combined U.S. operations basis and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

(*2*) Processes and systems for establishing managerial and employee responsibility for risk management of the combined U.S. operations;

(*3*) Processes and systems for ensuring the independence of the risk-management function of the combined U.S. operations; and

(*4*) Processes and systems to integrate risk management and associated controls with management goals and the compensation structure of the combined U.S. operations.

(iii) *Placement of the U.S. risk committee.* (A) A foreign banking organization that conducts its operations in the United States solely through a U.S. intermediate holding company must maintain its U.S. risk committee as a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof).

(B) A foreign banking organization that conducts its operations through U.S. branches or U.S. agencies (in addition to through its U.S. intermediate holding company, if any) may maintain its U.S. risk committee either:

(*1*) As a committee of the global board of directors (or equivalent thereof), on a standalone basis or as a joint committee with its enterprise-wide risk committee (or equivalent thereof); or

(*2*) As a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof), on a standalone basis or as a joint committee with the risk committee of its U.S. intermediate holding company required pursuant to § 252.147(e)(3).

(iv) *Corporate governance requirements.* The U.S. risk committee must meet at least quarterly and otherwise as needed, and must fully document and maintain records of its proceedings, including risk-management decisions.

(v) *Minimum member requirements.* The U.S. risk committee must:

(A) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(B) Have at least one member who:

(*1*) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the foreign banking organization or its affiliates during the previous three years; and

(*2*) Is not a member of the immediate family, as defined in 12 CFR 225.41(b)(3), of a person who is, or has been within the last three years, an executive officer, as defined in 12 CFR 215.2(e)(1) of the foreign banking organization or its affiliates.

(2) [Reserved]

(c) *U.S. chief risk officer*—(1) *General.* A foreign banking organization with average combined U.S. assets of $50 billion or more but less than $100 billion or its U.S. intermediate holding company, if any, must appoint a U.S. chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The U.S. chief risk officer is responsible for overseeing:

(A) The measurement, aggregation, and monitoring of risks undertaken by the combined U.S. operations;

(B) The implementation of and ongoing compliance with the policies and procedures for the foreign banking organization's combined U.S. operations set forth in paragraph (b)(1)(ii)(A) of this section and the development and implementation of processes and systems set forth in paragraph (b)(1)(ii)(B) of this section; and

(C) The management of risks and risk controls within the parameters of the risk-control framework for the combined U.S. operations, and the monitoring and testing of such risk controls.

(ii) The U.S. chief risk officer is responsible for reporting risks and risk-management deficiencies of the combined U.S. operations, and resolving such risk-management deficiencies in a timely manner.

(3) *Corporate governance and reporting.* The U.S. chief risk officer must:

(i) Receive compensation and other incentives consistent with providing an objective assessment of the risks taken by the combined U.S. operations of the foreign banking organization;

(ii) Be employed by and located in the U.S. branch, U.S. agency, U.S. intermediate holding company, if any, or another U.S. subsidiary;

(iii) Report directly to the U.S. risk committee and the global chief risk officer or equivalent management official (or officials) of the foreign banking organization who is responsible for overseeing, on an enterprise-wide basis, the implementation of and compliance with policies and procedures relating to risk-management governance, practices, and risk controls of the foreign banking organization unless the Board approves an alternative reporting structure based on circumstances specific to the foreign banking organization;

(iv) Regularly provide information to the U.S. risk committee, global chief risk officer, and the Board regarding the nature of and changes to material risks undertaken by the foreign banking organization's combined U.S. operations, including risk-management deficiencies and emerging risks, and how such risks relate to the global operations of the foreign banking organization; and

(v) Meet regularly and as needed with the Board to assess compliance with the requirements of this section.

(d) *Responsibilities of the foreign banking organization.* The foreign banking organization must take appropriate measures to ensure that its combined U.S. operations implement the risk-management policies overseen by the U.S. risk committee described in paragraph (a) or (b) of this section, and its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(e) *Noncompliance with this section.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the organization before it applies any requirement, condition, or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the organization may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the organization's request for reconsideration prior to applying the requirement, condition, or restriction.

■ 63. In § 252.145, the section heading and paragraph (a) are revised to read as follows:

§ 252.145 Liquidity risk-management requirements for foreign banking organizations with total consolidated assets of $250 billion or more and combined U.S. assets of less than $100 billion.

(a) A foreign banking organization subject to this subpart with average total consolidated assets of $250 billion or more must report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the foreign banking organization or the combined U.S. operations of the foreign banking organization. Such liquidity stress test must be conducted consistent with the Basel Committee principles for liquidity risk management and must incorporate 30-day, 90-day, and one-year stress-test horizons. The ''Basel Committee principles for liquidity risk management'' means the document titled ''Principles for Sound Liquidity Risk Management and Supervision'' (September 2008) as published by the Basel Committee on Banking Supervision, as supplemented and revised from time to time.

* * * * *

■ 64. In § 252.146, the section heading and paragraphs (b)(1) introductory text, (b)(2)(i), and (c)(1)(ii) and (iii) are revised to read as follows:

§ 252.146 Capital stress testing requirements for foreign banking organizations with total consolidated assets of $100 billion or more and combined U.S. assets of less than $100 billion.

* * * * *

(b) * * *

(1) A foreign banking organization subject to this subpart must:

* * * * *

(2) * * *

(i) A supervisory capital stress test conducted by the foreign banking organization's home-country supervisor or an evaluation and review by the foreign banking organization's home-country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization, according to the frequency specified in the following paragraph (b)(2)(i)(A) or (B) of this section:

(A) If the foreign banking organization has average total consolidated assets of $250 billion or more, on at least an annual basis; or

(B) If the foreign banking organization has average total consolidated assets of less than $250 billion, at least biennially; and

* * * * *

(c) * * *

(1) * * *

(ii) Conduct a stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions, according to the frequency specified in paragraph (c)(1)(ii)(A) or (B) of this section:

(A) If the foreign banking organization has average total consolidated assets of $250 billion or more, on at least an annual basis; or

(B) If the foreign banking organization has average total consolidated assets of less than $250 billion, at least biennially; and

(iii) Report a summary of the results of the stress test to the Board that includes a description of the types of risks included in the stress test, a description of the conditions or scenarios used in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

* * * * *

■ 65. Section 252.147 is added to read as follows:

§ 252.147 U.S. intermediate holding company requirement for foreign banking organizations with combined U.S. assets of less than $100 billion and U.S. non-branch assets of $50 billion or more.

(a) *Requirement to form a U.S. intermediate holding company*—(1) *Formation.* A foreign banking organization with average U.S. non-branch assets of $50 billion or more must establish a U.S. intermediate holding company, or designate an existing subsidiary that meets the requirements of paragraph (a)(2) of this section, as its U.S. intermediate holding company.

(2) *Structure.* The U.S. intermediate holding company must be:

(i) Organized under the laws of the United States, any one of the fifty states of the United States, or the District of Columbia; and

(ii) Be governed by a board of directors or managers that is elected or appointed by the owners and that operates in an equivalent manner, and has equivalent rights, powers, privileges, duties, and responsibilities, to a board of directors of a company chartered as a corporation under the laws of the United States, any one of the fifty states of the United States, or the District of Columbia.

(3) *Notice.* Within 30 days of establishing or designating a U.S. intermediate holding company under this section, a foreign banking organization must provide to the Board:

(i) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure;

(ii) A certification that the U.S. intermediate holding company meets the requirements of this section; and

(iii) Any other information that the Board determines is appropriate.

(b) *Holdings and regulation of the U.S. intermediate holding company*—(1) *General.* Subject to paragraph (c) of this section, a foreign banking organization that is required to form a U.S. intermediate holding company under paragraph (a) of this section must hold its entire ownership interest in any U.S. subsidiary (excluding each section 2(h)(2) company or DPC branch subsidiary, if any) through its U.S. intermediate holding company.

(2) *Reporting.* Each U.S. intermediate holding company shall submit information in the manner and form prescribed by the Board.

(3) *Examinations and inspections.* The Board may examine or inspect any U.S. intermediate holding company and each of its subsidiaries and prepare a report of their operations and activities.

(4) *Global systemically important banking organizations.* For purposes of this part, a top-tier foreign banking organization with average U.S. non-branch assets that equal or exceed $50 billion is a global systemically important foreign banking organization if any of the following conditions are met:

(i) The top-tier foreign banking organization determines, pursuant to paragraph (b)(6) of this section, that the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; or

(ii) The Board, using information available to the Board, determines:

(A) That the top-tier foreign banking organization would be a global systemically important banking organization under the global methodology;

(B) That the top-tier foreign banking organization, if it were subject to the Board's Regulation Q, would be identified as a global systemically important BHC under 12 CFR 217.402; or

(C) That the U.S. intermediate holding company, if it were subject to 12 CFR 217.402, would be identified as a global systemically important BHC.

(5) *Notice.* Each top-tier foreign banking organization that controls a U.S. intermediate holding company shall submit to the Board by January 1 of each calendar year through the U.S. intermediate holding company:

(i) Notice of whether the home-country supervisor (or other appropriate home country regulatory authority) of the top-tier foreign banking organization of the U.S. intermediate holding company has adopted standards consistent with the global methodology; and

(ii) Notice of whether the top-tier foreign banking organization prepares or reports the indicators used by the global methodology to identify a banking organization as a global systemically important banking organization and, if it does, whether the top-tier foreign banking organization has determined that it has the characteristics of a global systemically important banking organization under the global methodology pursuant to paragraph (b)(6) of this section.

(6) *Global systemically important banking organization under the global methodology.* A top-tier foreign banking organization that controls a U.S. intermediate holding company and prepares or reports for any purpose the indicator amounts necessary to determine whether the top-tier foreign banking organization is a global systemically important banking organization under the global methodology must use the data to determine whether the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology.

(c) *Alternative organizational structure*—(1) *General.* Upon a written request by a foreign banking organization, the Board may permit the foreign banking organization to: Establish or designate multiple U.S. intermediate holding companies; not transfer its ownership interests in certain subsidiaries to a U.S. intermediate holding company; or use an alternative organizational structure to hold its combined U.S. operations.

(2) *Factors.* In making a determination under paragraph (c)(1) of this section, the Board may consider whether applicable law would prohibit the foreign banking organization from owning or controlling one or more of its U.S. subsidiaries through a single U.S. intermediate holding company, or whether circumstances otherwise warrant an exception based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

(3) *Request*—(i) *Contents.* A request submitted under this section must include an explanation of why the request should be granted and any other information required by the Board.

(ii) *Timing.* The Board shall act on a request for an alternative organizational structure within 90 days of receipt of a complete request, unless the Board provides notice to the organization that it is extending the period for action.

(4) *Conditions.* The Board may grant relief under this section upon such conditions as the Board deems appropriate, including, but not limited to, requiring the U.S. operations of the foreign banking organization to comply with additional enhanced prudential standards, or requiring the foreign banking organization to enter into supervisory agreements governing such alternative organizational structure.

(d) *Modifications.* The Board may modify the application of any section of this subpart to a foreign banking organization that is required to form a U.S. intermediate holding company or to such U.S. intermediate holding company if appropriate to accommodate the organizational structure of the foreign banking organization or characteristics specific to such foreign banking organization and such modification is appropriate and consistent with the capital structure, size, complexity, risk profile, scope of operations, or financial condition of each U.S. intermediate holding company, safety and soundness, and the financial stability mandate of section 165 of the Dodd-Frank Act.

(e) *Enhanced prudential standards for U.S. intermediate holding companies*—(1) *Capital requirements for a U.S. intermediate holding company.* (i)(A) A U.S. intermediate holding company must comply with 12 CFR part 217, other than subpart E of 12 CFR part 217, in the same manner as a bank holding company.

(B) A U.S. intermediate holding company may choose to comply with subpart E of 12 CFR part 217.

(ii) A U.S. intermediate holding company must comply with capital adequacy standards beginning on the date it is required to established under this subpart, or if the U.S. intermediate holding company is subject to capital adequacy standards on the date that the foreign banking organization becomes subject to § 252.142(a)(3), on the date that the foreign banking organization becomes subject to this subpart.

(2) *Risk-management and risk-committee requirements*—(i) *General.* A U.S. intermediate holding company must establish and maintain a risk committee that approves and periodically reviews the risk-management policies and oversees the risk-management framework of the U.S. intermediate holding company. The risk committee must be a committee of the board of directors of the U.S. intermediate holding company (or equivalent thereof). The risk committee may also serve as the U.S. risk committee for the combined U.S. operations required pursuant to § 252.144(b).

(ii) *Risk-management framework.* The U.S. intermediate holding company's risk-management framework must be commensurate with the structure, risk profile, complexity, activities, and size of the U.S. intermediate holding company and consistent with the risk management policies for the combined U.S. operations of the foreign banking organization. The framework must include:

(A) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for the U.S. intermediate holding company; and

(B) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(*1*) Processes and systems for identifying and reporting risks and risk-management deficiencies at the U.S. intermediate holding company, including regarding emerging risks and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

(*2*) Processes and systems for establishing managerial and employee responsibility for risk management of the U.S. intermediate holding company;

(*3*) Processes and systems for ensuring the independence of the risk-management function of the U.S. intermediate holding company; and

(*4*) Processes and systems to integrate risk management and associated controls with management goals and the compensation structure of the U.S. intermediate holding company.

(iii) *Corporate governance requirements.* The risk committee of the U.S. intermediate holding company must meet at least quarterly and otherwise as needed, and must fully document and maintain records of its proceedings, including risk-management decisions.

(iv) *Minimum member requirements.* The risk committee must:

(A) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(B) Have at least one member who:

(*1*) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the foreign banking organization or its affiliates during the previous three years; and

(*2*) Is not a member of the immediate family, as defined in 12 CFR 225.41(b)(3), of a person who is, or has been within the last three years, an executive officer, as defined in 12 CFR 215.2(e)(1), of the foreign banking organization or its affiliates.

(v) The U.S. intermediate holding company must take appropriate measures to ensure that it implements the risk-management policies for the U.S. intermediate holding company and it provides sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart;

(vi) A U.S. intermediate holding company must comply with risk-committee and risk-management requirements beginning on the date that it is required to be established or designated under this subpart or, if the U.S. intermediate holding company is subject to risk-committee and risk-management requirements on the date that the foreign banking organization becomes subject to § 252.147(a)(3), on the date that the foreign banking organization becomes subject to this subpart.

■ 66. The heading of subpart O is revised to read as follows:

Subpart O—Enhanced Prudential Standards for Foreign Banking Organizations With Total Consolidated Assets of $100 Billion or More and Combined U.S. Assets of $100 Billion or More

■ 67. Section 252.150 is revised to read as follows:

§ 252.150 Scope.

This subpart applies to foreign banking organizations with average total consolidated assets of $100 billion or more and average combined U.S. assets of $100 billion or more.

■ 68. Section 252.152 is revised to read as follows:

§ 252.152 Applicability.

(a) *General applicability.* (1) A foreign banking organization must:

(i) Comply with the requirements of this subpart (other than the U.S. intermediate holding company requirement set forth in § 252.153) beginning on the first day of the ninth quarter following the date on which its average combined U.S. assets equal or exceed $100 billion; and

(ii) Comply with the requirement to establish or designate a U.S. intermediate holding company requirement set forth in § 252.153(a) beginning on the first day of the ninth quarter following the date on which its average U.S. non-branch assets equal or exceed $50 billion or, if the foreign banking organization has established or designated a U.S. intermediate holding company pursuant to § 252.147, beginning on the first day following the date on which the foreign banking organization's average combined U.S. assets equal or exceed $100 billion.

(2) *Changes in requirements following a change in category.* A foreign banking organization that changes from one category of banking organization described in § 252.5(c) through (e) to another of such categories must comply with the requirements applicable to the new category under this subpart no later than on the first day of the second quarter following the change in the foreign banking organization's category.

(b) *Cessation of requirements*—(1) *Enhanced prudential standards applicable to the foreign banking organization.* Subject to paragraph (c)(2) of this section, a foreign banking organization will remain subject to the applicable requirements of this subpart until its combined U.S. assets are below $100 billion for each of four consecutive calendar quarters.

(2) *Intermediate holding company requirement.* A foreign banking organization will remain subject to the U.S. intermediate holding company requirement set forth in § 252.153 until the sum of the total consolidated assets of the top-tier U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary) is below $50 billion for each of four consecutive calendar quarters, or until the foreign banking organization is subject to subpart N of this part and is in compliance with the U.S. intermediate holding company requirements as set forth in § 252.147.

■ 69. In § 252.153:

■ a.Revise the section heading and paragraph (a)(1);

■ b. Add a subject heading to paragraph (a)(2); and

■ c. Revise paragraphs (a)(3) and (c) through (e).

The revisions and addition read as follows:

§ 252.153 U.S. intermediate holding company requirement for foreign banking organizations with combined U.S. assets of $100 billion or more and U.S. non-branch assets of $50 billion or more.

(a) * * *

(1) *Formation.* A foreign banking organization with average U.S. non-branch assets of $50 billion or more must establish a U.S. intermediate holding company, or designate an existing subsidiary that meets the requirements of paragraph (a)(2) of this section, as its U.S. intermediate holding company.

(2) *Structure.* * * *

(3) *Notice.* Within 30 days of establishing or designating a U.S. intermediate holding company under this section, a foreign banking organization must provide to the Board:

(i) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure;

(ii) A certification that the U.S. intermediate holding company meets the requirements of this section; and

(iii) Any other information that the Board determines is appropriate.

* * * * *

(c) *Alternative organizational structure*—(1) *General.* Upon a written request by a foreign banking organization, the Board may permit the foreign banking organization to: Establish or designate multiple U.S. intermediate holding companies; not transfer its ownership interests in certain subsidiaries to a U.S. intermediate holding company; or use an alternative organizational structure to hold its combined U.S. operations.

(2) *Factors.* In making a determination under paragraph (c)(1) of this section, the Board may consider whether applicable law would prohibit the foreign banking organization from owning or controlling one or more of its U.S. subsidiaries through a single U.S. intermediate holding company, or whether circumstances otherwise warrant an exception based on the foreign banking organization's activities, scope of operations, structure, or other similar considerations.

(3) *Request*—(i) *Contents.* A request submitted under this section must include an explanation of why the request should be granted and any other information required by the Board.

(ii) *Timing.* The Board will act on a request for an alternative organizational structure within 90 days of receipt of a complete request, unless the Board provides notice to the organization that it is extending the period for action.

(4) *Conditions.* (i) The Board may grant relief under this section upon such

conditions as the Board deems appropriate, including, but not limited to, requiring the U.S. operations of the foreign banking organization to comply with additional enhanced prudential standards, or requiring the foreign banking organization to enter into supervisory agreements governing such alternative organizational structure.

(ii) If the Board permits a foreign banking organization to form two or more U.S. intermediate holding companies under this section, each U.S. intermediate holding company must determine its category pursuant to § 252.5 of this part as though the U.S. intermediate holding companies were a consolidated company.

(d) *Modifications.* The Board may modify the application of any section of this subpart to a foreign banking organization that is required to form a U.S. intermediate holding company or to such U.S. intermediate holding company if appropriate to accommodate the organizational structure of the foreign banking organization or characteristics specific to such foreign banking organization and such modification is appropriate and consistent with the capital structure, size, complexity, risk profile, scope of operations, or financial condition of each U.S. intermediate holding company, safety and soundness, and the mandate of section 165 of the Dodd-Frank Act.

(e) *Enhanced prudential standards for U.S. intermediate holding companies*—(1) *Capital requirements for a U.S. intermediate holding company.* (i)(A) A U.S. intermediate holding company must comply with 12 CFR part 217, other than subpart E of 12 CFR part 217, in the same manner as a bank holding company.

(B) A U.S. intermediate holding company may choose to comply with subpart E of 12 CFR part 217.

(ii) A U.S. intermediate holding company must comply with applicable capital adequacy standards beginning on the date that it is required to be established or designated under this subpart or, if the U.S. intermediate holding company is subject to capital adequacy standards on the date that the foreign banking organization becomes subject to paragraph (a)(1)(ii) of this section, on the date that the foreign banking organization becomes subject to this subpart.

(2) *Capital planning.* (i) A U.S. intermediate holding company with total consolidated assets of $100 billion or more must comply with 12 CFR 225.8 in the same manner as a bank holding company.

(ii) A U.S. intermediate holding company with total consolidated assets of $100 billion or more must comply with 12 CFR 225.8 on the date prescribed in the transition provisions of 12 CFR 225.8.

(3) *Risk-management and risk committee requirements*—(i) *General.* A U.S. intermediate holding company must establish and maintain a risk committee that approves and periodically reviews the risk-management policies and oversees the risk-management framework of the U.S. intermediate holding company. The risk committee must be a committee of the board of directors of the U.S. intermediate holding company (or equivalent thereof). The risk committee may also serve as the U.S. risk committee for the combined U.S. operations required pursuant to § 252.155(a).

(ii) *Risk-management framework.* The U.S. intermediate holding company's risk-management framework must be commensurate with the structure, risk profile, complexity, activities, and size of the U.S. intermediate holding company and consistent with the risk management policies for the combined U.S. operations of the foreign banking organization. The framework must include:

(A) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for the U.S. intermediate holding company; and

(B) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(*1*) Processes and systems for identifying and reporting risks and risk-management deficiencies at the U.S. intermediate holding company, including regarding emerging risks and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

(*2*) Processes and systems for establishing managerial and employee responsibility for risk management of the U.S. intermediate holding company;

(*3*) Processes and systems for ensuring the independence of the risk-management function of the U.S. intermediate holding company; and

(*4*) Processes and systems to integrate risk management and associated controls with management goals and the compensation structure of the U.S. intermediate holding company.

(iii) *Corporate governance requirements.* The risk committee of the U.S. intermediate holding company must meet at least quarterly and otherwise as needed, and must fully document and maintain records of its proceedings, including risk-management decisions.

(iv) *Minimum member requirements.* The risk committee must:

(A) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(B) Have at least one member who:

(*1*) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the foreign banking organization or its affiliates during the previous three years; and

(*2*) Is not a member of the immediate family, as defined in 12 CFR 225.41(b)(3), of a person who is, or has been within the last three years, an executive officer, as defined in 12 CFR 215.2(e)(1), of the foreign banking organization or its affiliates.

(v) The U.S. intermediate holding company must take appropriate measures to ensure that it implements the risk-management policies for the U.S. intermediate holding company and it provides sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(vi) A U.S. intermediate holding company must comply with risk-committee and risk-management requirements beginning on the date that it is required to be established or designated under this subpart or, if the U.S. intermediate holding company is subject to risk-committee and risk-management requirements on the date that the foreign banking organization becomes subject to § 252.153(a)(1)(ii), on the date that the foreign banking organization becomes subject to this subpart.

(4) *Liquidity requirements.* (i) A U.S. intermediate holding company must comply with the liquidity risk-management requirements in § 252.156 and conduct liquidity stress tests and hold a liquidity buffer pursuant to § 252.157.

(ii) A U.S. intermediate holding company must comply with liquidity risk-management, liquidity stress test, and liquidity buffer requirements beginning on the date that it is required to be established or designated under this subpart.

(5) *Stress test requirements.* (i)(A) A U.S. intermediate holding company with total consolidated assets of $100 billion or more must comply with the requirements of subpart E of this part in the same manner as a bank holding company;

(B) A U.S. intermediate holding company must comply with the requirements of subpart E beginning the later of:

(*1*) The stress test cycle of the calendar year after the calendar year in which the U.S. intermediate holding company becomes subject to regulatory capital requirements; or

(*2*) The transition period provided under subpart E.

(ii)(A) A Category II U.S. intermediate holding company or a Category III U.S. intermediate holding company must comply with the requirements of subpart F of this part in the same manner as a bank holding company;

(B) A Category II U.S. intermediate holding company or Category III U.S. intermediate holding company must comply with the requirements of subpart F beginning the later of:

(*1*) The stress test cycle of the calendar year after the calendar year in which the U.S. intermediate holding company becomes subject to regulatory capital requirements; or

(*2*) The transition period provided under subpart F.

■ 70. In § 252.154 the section heading and paragraphs (a)(1), (b), and (c) are revised to read as follows:

§ 252.154 Risk-based and leverage capital requirements for foreign banking organizations with combined U.S. assets of $100 billion or more.

(a) * * *

(1) A foreign banking organization subject to this subpart more must certify to the Board that it meets capital adequacy standards on a consolidated basis that are established by its home-country supervisor and that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework).

* * * * *

(b) *Reporting.* A foreign banking organization subject to this subpart must provide to the Board reports relating to its compliance with the capital adequacy measures described in paragraph (a) of this section concurrently with filing the FR Y–7Q.

(c) *Noncompliance with the Basel Capital Framework.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the organization before it applies any requirement, condition, or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the organization may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the organization's request for reconsideration prior to applying the requirement, condition, or restriction.

■ 71. In § 252.155 revise the section heading and paragraphs (a)(1) and (3) and (b)(1) to read as follows:

§ 252.155 Risk-management and risk-committee requirements for foreign banking organizations with combined U.S. assets of $100 billion or more.

(a) * * *

(1) *General.* A foreign banking organization subject to this subpart must maintain a U.S. risk committee that approves and periodically reviews the risk-management policies of the combined U.S. operations of the foreign banking organization and oversees the risk-management framework of such combined U.S. operations. The U.S. risk committee's responsibilities include the liquidity risk-management responsibilities set forth in § 252.156(a).

* * * * *

(3) *Placement of the U.S. risk committee.* (i) A foreign banking organization that conducts its operations in the United States solely through a U.S. intermediate holding company must maintain its U.S. risk committee as a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof).

(ii) A foreign banking organization that conducts its operations through U.S. branches or U.S. agencies (in addition to through its U.S. intermediate holding company, if any) may maintain its U.S. risk committee either:

(A) As a committee of the global board of directors (or equivalent thereof), on a standalone basis or as a joint committee with its enterprise-wide risk committee (or equivalent thereof); or

(B) As a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof), on a standalone basis or as a joint committee with the risk committee of its U.S. intermediate holding company required pursuant to § 252.153(e)(3).

* * * * *

(b) * * *

(1) *General.* A foreign banking organization subject to this subpart or its U.S. intermediate holding company, if any, must appoint a U.S. chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

* * * * *

■ 72. In § 252.156, the section heading and paragraphs (a)(1) introductory text, (b)(1) and (2), (b)(3)(i), (b)(4) through (6), (c)(1), (c)(2)(ii), (d)(1), (e)(1), (e)(2)(i)(A) and (C), (e)(2)(ii)(A), (f), and (g) are revised to read as follows:

The revisions read as follows:

§ 252.156 Liquidity risk-management requirements for foreign banking organizations with combined U.S. assets of $100 billion or more.

(a) * * *

(1) The U.S. risk committee established by a foreign banking organization pursuant to § 252.155(a) (or a designated subcommittee of such committee composed of members of the board of directors (or equivalent thereof)) of the U.S. intermediate holding company or the foreign banking organization, as appropriate must:

* * * * *

(b) * * *

(1) *Liquidity risk.* The U.S. chief risk officer of a foreign banking organization subject to this subpart must review the strategies and policies and procedures established by senior management of the U.S. operations for managing the risk that the financial condition or safety and soundness of the foreign banking organization's combined U.S. operations would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk).

(2) *Liquidity risk tolerance.* The U.S. chief risk officer of a foreign banking organization subject to this subpart must review information provided by the senior management of the U.S. operations to determine whether the combined U.S. operations are operating in accordance with the established liquidity risk tolerance. The U.S. chief risk officer must regularly, and, at least semi-annually, report to the foreign banking organization's U.S. risk committee and enterprise-wide risk committee, or the equivalent thereof (if any) (or a designated subcommittee of such committee composed of members of the relevant board of directors (or equivalent thereof)) on the liquidity risk profile of the foreign banking organization's combined U.S. operations and whether it is operating in accordance with the established liquidity risk tolerance for the U.S.

operations, and must establish procedures governing the content of such reports.

(3) * * *

(i) The U.S. chief risk officer of a foreign banking organization subject to this subpart must approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product offered, managed or sold through the foreign banking organization's combined U.S. operations that could have a significant effect on the liquidity risk profile of the U.S. operations of the foreign banking organization. The approval is required before the foreign banking organization implements the business line or offers the product through its combined U.S. operations. In determining whether to approve the new business line or product, the U.S. chief risk officer must consider whether the liquidity risk of the new business line or product (under both current and stressed conditions) is within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

* * * * *

(4) *Cash-flow projections.* The U.S. chief risk officer of a foreign banking organization subject to this subpart must review the cash-flow projections produced under paragraph (d) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the foreign banking organization or the U.S. operations warrant) to ensure that the liquidity risk of the foreign banking organization's combined U.S. operations is within the established liquidity risk tolerance.

(5) *Liquidity risk limits.* The U.S. chief risk officer of a foreign banking organization subject to this subpart must establish liquidity risk limits as set forth in paragraph (f) of this section and review the foreign banking organization's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the U.S. operations of the foreign banking organization warrant).

(6) *Liquidity stress testing.* The U.S. chief risk officer of a foreign banking organization subject to this subpart must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 252.157(a) at least quarterly, and whenever the foreign banking organization materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 252.157(a) of this subpart at least quarterly; and

(iii) Approve the size and composition of the liquidity buffer established under § 252.157(c) of this subpart at least quarterly.

(c) * * *

(1) A foreign banking organization subject to this subpart must establish and maintain a review function, which is independent of the management functions that execute funding for its combined U.S. operations, to evaluate the liquidity risk management for its combined U.S. operations.

(2) * * *

(ii) Assess whether the foreign banking organization's liquidity risk-management function of its combined U.S. operations complies with applicable laws and regulations, and sound business practices; and

* * * * *

(d) * * *

(1) A foreign banking organization subject to this subpart must produce comprehensive cash-flow projections for its combined U.S. operations that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The foreign banking organization must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

* * * * *

(e) * * *

(1) A foreign banking organization subject to this subpart must establish and maintain a contingency funding plan for its combined U.S. operations that sets out the foreign banking organization's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the capital structure, risk profile, complexity, activities, size, and the established liquidity risk tolerance for the combined U.S. operations. The foreign banking organization must update the contingency funding plan for its combined U.S. operations at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) * * *

(i) * * *

(A) Identify liquidity stress events that could have a significant impact on the liquidity of the foreign banking organization or its combined U.S. operations;

* * * * *

(C) Identify the circumstances in which the foreign banking organization would implement its action plan described in paragraph (e)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board on the foreign banking organization's combined U.S. operations;

* * * * *

(ii) * * *

(A) Include an action plan that clearly describes the strategies that the foreign banking organization will use to respond to liquidity shortfalls in its combined U.S. operations for identified liquidity stress events, including the methods that the organization or the combined U.S. operations will use to access alternative funding sources;

* * * * *

(f) *Liquidity risk limits*—(1) *General.* A foreign banking organization must monitor sources of liquidity risk and establish limits on liquidity risk that are consistent with the organization's established liquidity risk tolerance and that reflect the organization's capital structure, risk profile, complexity, activities, and size.

(2) *Liquidity risk limits established by a Category II foreign banking organization or Category III foreign banking organization.* If the foreign banking organization is not a Category IV foreign banking organization, liquidity risk limits established under paragraph (f)(1) of this section must include limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(g) *Collateral, legal entity, and intraday liquidity risk monitoring.* A foreign banking organization subject to this subpart or more must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph (g).

(1) *Collateral.* The foreign banking organization must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which entities in its U.S. operations are counterparties. These policies and procedures must provide that the foreign banking organization:

(i) Calculates all of the collateral positions for its combined U.S. operations according to the frequency specified in paragraph (g)(1)(i)(A) or (B) of this section or as directed by the Board, specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged:

(A) If the foreign banking organization is not a Category IV foreign banking organization, on at least a weekly basis; or

(B) If the foreign banking organization is a Category IV foreign banking organization, on at least a monthly basis;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the foreign banking organization's funding patterns, including shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies and business lines.* The foreign banking organization must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs of its combined U.S. operations, within and across significant legal entities, currencies, and business lines and taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposure.* The foreign banking organization must establish and maintain procedures for monitoring intraday liquidity risk exposure for its combined U.S. operations that are consistent with the capital structure, risk profile, complexity, activities, and size of the foreign banking organization and its combined U.S. operations. If the foreign banking organization is not a Category IV banking organization these procedures must address how the management of the combined U.S. operations will:

(i) Monitor and measure expected gross daily inflows and outflows;

(ii) Manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the foreign banking organizations can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Manage the issuance of credit to customers where necessary; and

(v) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the overall liquidity needs of the combined U.S. operations.

■ 73. In § 252.157:

■ a. The section heading and paragraphs (a)(1)(i) through (iv), (a)(2), and (a)(7)(i) through (iii) are revised;

■ b. Paragraph (a)(8) is added;

■ c. Paragraphs (b) and (c)(1) and (c)(7)(i) through (iv) are revised; and

■ d. Paragraph (c)(7)(v) is added.

The revisions and addition read as follows:

§ 252.157 Liquidity stress testing and buffer requirements for foreign banking organizations with combined U.S. assets of $100 billion or more.

(a) * * *

(1) * * *

(i) A foreign banking organization subject to this subpart must conduct stress tests to separately assess the potential impact of liquidity stress scenarios on the cash flows, liquidity position, profitability, and solvency of:

(A) Its combined U.S. operations as a whole;

(B) Its U.S. branches and agencies on an aggregate basis; and

(C) Its U.S. intermediate holding company, if any.

(ii) Each liquidity stress test required under this paragraph (a)(1) must use the stress scenarios described in paragraph (a)(3) of this section and take into account the current liquidity condition, risks, exposures, strategies, and activities of the combined U.S. operations.

(iii) The liquidity stress tests required under this paragraph (a)(1) must take into consideration the balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure and other characteristics of the foreign banking organization and its combined U.S. operations that affect the liquidity risk profile of the combined U.S. operations.

(iv) In conducting a liquidity stress test using the scenarios described in paragraphs (a)(3)(i) and (iii) of this section, the foreign banking organization must address the potential direct adverse impact of associated market disruptions on the foreign banking organization's combined U.S. operations and the related indirect effect such impact could have on the combined U.S. operations of the foreign banking organization and incorporate the potential actions of other market participants experiencing liquidity stresses under the market disruptions that would adversely affect the foreign banking organization or its combined U.S. operations.

(2) *Frequency.* The foreign banking organization must perform the liquidity stress tests required under paragraph (a)(1) of this section according to the frequency specified in paragraph (a)(2)(i) or (ii) of this section or as directed by the Board:

(i) If the foreign banking organization is not a Category IV foreign banking organization, at least monthly; or

(ii) If the foreign banking organization is a Category IV foreign banking organization, at least quarterly.

* * * * *

(7) * * *

(i) *Stress test function.* A foreign banking organization subject to this subpart, within its combined U.S. operations and its enterprise-wide risk management, must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) *Controls and oversight.* The foreign banking organization must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress-test process, taking into consideration the capital structure, risk profile, complexity, activities, size, and other relevant factors of the combined U.S. operations. These assumptions must be approved by U.S. chief risk officer and subject to independent review consistent with the standards set out in § 252.156(c).

(iii) *Management information systems.* The foreign banking organization must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to the liquidity stress testing of its combined U.S. operations.

(8) *Notice and response.* If the Board determines that a foreign banking organization must conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section, the Board will notify the foreign banking organization before the change in frequency takes effect, and describe the basis for its determination. Within

14 calendar days of receipt of a notification under this paragraph, the foreign banking organization may request in writing that the Board reconsider the requirement. The Board will respond in writing to the organization's request for reconsideration prior to requiring the foreign banking organization to conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Reporting of liquidity stress tests required by home-country regulators.* A foreign banking organization subject to this subpart must make available to the Board, in a timely manner, the results of any liquidity internal stress tests and establishment of liquidity buffers required by regulators in its home jurisdiction. The report required under this paragraph must include the results of its liquidity stress test and liquidity buffer, if required by the laws or regulations implemented in the home jurisdiction, or expected under supervisory guidance.

(c) * * *

(1) *General.* A foreign banking organization subject to this subpart must maintain a liquidity buffer for its U.S. intermediate holding company, if any, calculated in accordance with paragraph (c)(2) of this section, and a separate liquidity buffer for its U.S. branches and agencies, if any, calculated in accordance with paragraph (c)(3) of this section.

* * * * *

(7) * * *

(i) *Highly liquid assets.* The asset must be a highly liquid asset. For these purposes, a highly liquid asset includes:

(A) Cash;

(B) Assets that meet the criteria for high quality liquid assets as defined in 12 CFR 249.20; or

(C) Any other asset that the foreign banking organization demonstrates to the satisfaction of the Board:

(1) Has low credit risk and low market risk;

(2) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(3) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* The asset must be unencumbered. For these purposes, an asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and

(B) Is either:

(*1*) Not pledged or used to secure or provide credit enhancement to any transaction; or

(*2*) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the foreign banking organization must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) *Operational requirements.* With respect to the liquidity buffer, the foreign banking organization must:

(A) Establish and implement policies and procedures that require highly liquid assets comprising the liquidity buffer to be under the control of the management function in the foreign banking organization that is charged with managing liquidity risk of its combined U.S. operations; and

(B) Demonstrate the capability to monetize a highly liquid asset under each scenario required under § 252.157(a)(3).

(v) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the foreign banking organization's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government sponsored enterprise.

* * * * *

■ 74. In § 252.158, the section heading and paragraphs (b)(1) introductory text, (b)(2)(i), (c)(1) introductory text, and (c)(2) introductory text are revised to read as follows:

§ 252.158 Capital stress testing requirements for foreign banking organizations with combined U.S. assets of $100 billion or more.

* * * * *

(b) * * *

(1) A foreign banking organization subject to this subpart and that has a U.S. branch or U.S. agency must:

* * * * *

(2) * * *

(i) A supervisory capital stress test conducted by the foreign banking organization's home-country supervisor or an evaluation and review by the foreign banking organization's home-country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization, according to the frequency specified in paragraph (b)(2)(A) or (B):

(A) If the foreign banking organization is not a Category IV foreign banking organization, at least annually; or

(B) If the foreign banking organization is a Category IV foreign banking organization, at least biennially; and

* * * * *

(c) * * *

(1) *In general.* A foreign banking organization subject to this subpart must report to the Board by January 5 of each calendar year, unless such date is extended by the Board, summary information about its stress-testing activities and results, including the following quantitative and qualitative information:

* * * * *

(2) *Additional information required for foreign banking organizations in a net due from position.* If, on a net basis, the U.S. branches and agencies of a foreign banking organization subject to this subpart provide funding to the foreign banking organization's non-U.S. offices and non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year, the foreign banking organization must report the following information to the Board by January 5 of each calendar year, unless such date is extended by the Board:

* * * * *

Subpart Q—Single-Counterparty Credit Limits

■ 75. Section 252.170 is revised to read as follows:

§ 252.170 Applicability and general provisions.

(a) *In general.* (1) This subpart establishes single counterparty credit limits for a covered foreign entity.

(2) For purposes of this subpart:

(i) *Covered foreign entity* means:

(A) A Category II foreign banking organization;

(B) A Category III foreign banking organization;

(C) A foreign banking organization with total consolidated assets that equal or exceed $250 billion;

(D) A Category II U.S. intermediate holding company; and

(E) A Category III U.S. intermediate holding company.

(ii) *Major foreign banking organization* means a foreign banking organization that is a covered foreign entity and meets the requirements of § 252.172(c)(3) through (5).

(b) *Credit exposure limits.* (1) Section 252.172 establishes credit exposure limits for covered foreign entities and major foreign banking organizations.

(2) A covered foreign entity is required to calculate its aggregate net credit exposure, gross credit exposure, and net credit exposure to a counterparty using the methods in this subpart.

(c) *Applicability of this subpart*—(1) *Foreign banking organizations.* (i) A foreign banking organization that is a covered foreign entity as of October 5, 2018, must comply with the requirements of this subpart, including but not limited to § 252.172, beginning on July 1, 2020, unless that time is extended by the Board in writing.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, a foreign banking organization that is a major foreign banking organization as of October 5, 2018, must comply with the requirements of this subpart, including but not limited to § 252.172, beginning on January 1, 2020, unless that time is extended by the Board in writing.

(iii) A foreign banking organization that becomes a covered foreign entity subject to this subpart after October 5, 2018, must comply with the requirements of this subpart beginning on the first day of the ninth calendar quarter after it becomes a covered foreign entity, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies.* (i) A U.S. intermediate holding company that is a covered foreign entity as of October 5, 2018, must comply with the requirements of this subpart, including but not limited to § 252.172, beginning on July 1, 2020, unless that time is extended by the Board in writing.

(ii) [Reserved]

(iii) A U.S. intermediate holding company that becomes a covered foreign entity subject to this subpart after October 5, 2018, must comply with the requirements of this subpart beginning on the first day of the ninth calendar quarter after it becomes a covered foreign entity, unless that time is accelerated or extended by the Board in writing.

(d) *Cessation of requirements*—(1) *Foreign banking organizations.* (i) Any foreign banking organization that becomes a covered foreign entity will remain subject to the requirements of this subpart unless and until:

(A) The covered foreign entity is not a Category II foreign banking organization;

(B) The covered foreign entity is not a Category III foreign banking organization; and

(C) Its total consolidated assets fall below $250 billion for each of four consecutive quarters, as reported on the covered foreign entity's FR Y–7Q, effective on the as-of date of the fourth consecutive FR Y–7Q.

(ii) A foreign banking organization that is a covered foreign entity and that has ceased to be a major foreign banking organization for purposes of § 252.172(c) is no longer subject to the requirements of § 252.172(c) beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a major foreign banking organization; provided that the foreign banking organization remains subject to the requirements of this subpart, unless it ceases to be a foreign banking organization that is a covered foreign entity pursuant to paragraph (d)(1)(i) of this section.

(2) *U.S. intermediate holding companies.* (i) Any U.S. intermediate holding company that becomes a covered foreign entity will remain subject to the requirements of this subpart unless and until:

(A) The covered foreign entity is not a Category II U.S. intermediate holding company; or

(B) The covered foreign entity is not a Category III U.S. intermediate holding company.

■ 76. In § 252.171,

■ a. Paragraph (f)(1) is revised;

■ b. Paragraph (aa) is removed; and

■ c. Paragraphs (bb) through (ll) are redesignated as paragraphs (aa) through (kk).

The revision reads as follows:

§ 252.171 Definitions.

* * * * *

(f) * * *

(1) With respect to a natural person:

(i) The natural person;

(ii) Except as provided in paragraph (f)(1)(iii) of this section, if the credit exposure of the covered foreign entity to such natural person exceeds 5 percent of tier 1 capital, the natural person and members of the person's immediate family collectively; and

(iii) Until January 1, 2021, with respect to a U.S. intermediate holding company that is a covered foreign entity and that has less than $250 billion in total consolidated assets as of December 31, 2019, if the credit exposure of the U.S. intermediate holding company to such natural person exceeds 5 percent of its capital stock and surplus, the natural person and member of the person's immediately family collectively.

* * * * *

■ 77. In § 252.172:

■ a. Paragraphs (a), (b), and (c) introductory text are revised;

■ b. Paragraph (c)(1) is removed and reserved; and

■ c. Paragraph (c)(2) is revised.

The revisions read as follows:

§ 252.172 Credit exposure limits.

(a) *Transition limit on aggregate credit exposure for certain covered foreign entities.* (1) A U.S. intermediate holding company that is a covered foreign entity and that has less than $250 billion in total consolidated assets as of December 31, 2019 is not required to comply with paragraph (b)(1) of this section until January 1, 2021.

(2) Until January 1, 2021, no U.S. intermediate holding company that is a covered foreign entity and that has less than $250 billion in total consolidated assets as of December 31, 2019 may have an aggregate net credit exposure that exceeds 25 percent of the consolidated capital stock and surplus of the U.S. intermediate holding company.

(b) *Limit on aggregate net credit exposure for covered foreign entities.* (1) Except as provided in paragraph (a) of this section, no U.S. intermediate holding company that is a covered foreign entity may have an aggregate net credit exposure to any counterparty that exceeds 25 percent of the tier 1 capital of the U.S. intermediate holding company.

(2) No foreign banking organization that is a covered foreign entity may permit its combined U.S. operations to have aggregate net credit exposure to any counterparty that exceeds 25 percent of the tier 1 capital of the foreign banking organization.

(c) Limit on aggregate net credit exposure of major foreign banking organizations to major counterparties.

(1) [Reserved]

(2) No major foreign banking organization may permit its combined U.S. operations to have aggregate net credit exposure to any major counterparty that exceeds 15 percent of the tier 1 capital of the major foreign banking organization.

* * * * *

■ 76. In § 252.173 paragraphs (b)(1) and (2) are revised and paragraph (b)(3) is added to read as follows:

§ 252.173 Gross credit exposure.

* * * * *

(b) * * *

(1) A U.S. intermediate holding company that is a covered foreign entity and that has less than $250 billion in total consolidated assets as of December 31, 2019 is not required to comply with paragraph (b)(3) of this section until January 1, 2021.

(2) Until January 1, 2021, unless the Board applies the requirements of § 252.175 to the transaction pursuant to § 252.175(d), a U.S. intermediate holding company that is a covered foreign entity and that has less than $250 billion in total consolidated assets as of December 31, 2019 must:

(i) Calculate pursuant to paragraph (a) of this section its gross credit exposure due to any investment in the debt or equity of, and any credit derivative or equity derivative between the covered foreign entity and a third party where the covered foreign entity is in the protection provider and the reference asset is an obligation or equity security of, or equity investment in, a securitization vehicle, investment fund, and other special purpose vehicle that is not an affiliate of the covered foreign entity; and

(ii) Attribute that gross credit exposure to the securitization vehicle, investment fund, or other special purpose vehicle for purposes of this subpart.

(3) Except as provided in paragraph (b)(1) of this section, a covered foreign entity must calculate pursuant to § 252.175 its gross credit exposure due to any investment in the debt or equity of, and any credit derivative or equity derivative between the covered foreign entity and a third party where the covered foreign entity is the protection provider and the reference asset is an obligation or equity security of, or equity investment in, a securitization vehicle, investment fund, and other special purpose vehicle that is not an affiliate of the covered foreign entity.

* * * * *

■ 77. In § 252.175, paragraph (a)(1) is revised to read as follows:

§ 252.175 Investments in an exposure to securitization vehicles, investment funds, and other special purpose vehicles that are not affiliates of the covered foreign entity.

(a) * * *

(1) This section applies to a covered foreign entity, except as provided in paragraph (a)(1)(i) of this section.

(i) Until January 1, 2021, this section does not apply to a U.S. intermediate holding company that is a covered foreign entity with less than $250 billion in total consolidated assets as of December 31, 2019, provided that:

(A) In order to avoid evasion of this subpart, the Board may determine, after notice to the covered foreign entity and opportunity for hearing, that a U.S. intermediate holding company with less than $250 billion in total consolidated assets must apply either the approach in this paragraph (a) or the look-through approach in paragraph (b) of this section, or must recognize exposures to a third party that has a contractual obligation to provide credit or liquidity support to a securitization vehicle, investment fund, or other special purpose vehicle that is not an affiliate of the covered foreign entity, as provided in paragraph (c) of this section; and

(B) For purposes of paragraph (a)(1)(i)(A) of this section, the Board, in its discretion and as applicable, may allow a covered foreign entity to measure its capital base using the covered foreign entity's capital stock and surplus rather than its tier 1 capital.

* * * * *

■ 78. In § 252.176 paragraphs (a)(1) and (a)(2)(i) are revised to read as follows:

§ 252.176 Aggregation of exposures to more than one counterparty due to economic interdependence or control relationships.

(a) * * *

(1) This section applies to a covered foreign entity except as provided in paragraph (a)(1)(i) of this section.

(i) Until January 1, 2021, paragraphs (a)(2) through (d) of this section do not apply to a U.S. intermediate holding company that is a covered foreign entity with less than $250 billion in total consolidated assets as of December 31, 2019.

(ii) [Reserved]

(2)(i) If a covered foreign entity has an aggregate net credit exposure to any counterparty that exceeds 5 percent of its tier 1 capital, the covered foreign entity must assess its relationship with the counterparty under paragraph (b)(2) of this section to determine whether the counterparty is economically interdependent with one or more other counterparties of the covered foreign entity and under paragraph (c)(1) of this section to determine whether the counterparty is connected by a control relationship with one or more other counterparties.

* * * * *

■ 79. In § 252.178, paragraphs (a)(1) and (2) and (c)(2) are revised to read as follows:

§ 252.178 Compliance.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, using all available data, including any data required to be maintained or reported to the Federal Reserve under this subpart, a covered foreign entity must comply with the requirements of this subpart on a daily basis at the end of each business day.

(2) Until December 31, 2020, using all available data, including any data required to be maintained or reported to the Federal Reserve under this subpart, a U.S. intermediate holding company that is a covered foreign entity with less than $250 billion in total consolidated assets as of December 31, 2019 must comply with the requirements of this subpart on a quarterly basis, unless the Board determines and notifies the entity in writing that more frequent compliance is required.

* * * * *

(c) * * *

(2) A covered foreign entity may request a special temporary credit exposure limit exemption from the Board. The Board may grant approval for such exemption in cases where the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the covered foreign entity or U.S. financial stability. In acting on a request for an exemption, the Board will consider the following:

(i) A decrease in the covered foreign entity's capital stock and surplus or tier 1 capital, as applicable;

(ii) The merger of the covered foreign entity with another covered foreign entity;

(iii) A merger of two counterparties; or

(iv) An unforeseen and abrupt change in the status of a counterparty as a result of which the covered foreign entity's credit exposure to the counterparty becomes limited by the requirements of this section; or

(v) Any other factor(s) the Board determines, in its discretion, is appropriate.

* * * * *

■ 80. In appendix A to part 252:

■ a. Section 1, paragraphs (a) and (b) are revised;

■ b. Section 2 is revised

■ c. Section 3, paragraph (a) is revised

■ d. Section 3.2, paragraph (a) is revised;

■ e. Section 4 is revised;

■ f. Section 4.1, paragraph (a) is revised;

■ g. Section 4.2 is revised;

■ h. Section 4.3 is removed;

■ i. Section 5, paragraphs (a) and (b) are revised;

■ j. Section 5.2.2, paragraph (a) is revised;

■ k. Section 5.3 is removed; and

■ l. Section 6, paragraph (d) is removed.

The revisions read as follows:

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

1. Background

(a) The Board has imposed stress testing requirements through its regulations (stress test rules) implementing section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and section 401(e) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, and through its capital plan rule (12 CFR 225.8). Under the stress test rules, the Board conducts a supervisory stress test of each bank holding company with total consolidated assets of $100 billion or more, intermediate holding company of a foreign banking organization with total consolidated assets of $100 billion or more, and nonbank financial company that the Financial Stability Oversight Council has designated for supervision by the Board (together, covered companies).[1] In addition, under the stress test rules, certain firms are also subject to company-run stress test requirements.[2] The Board will provide for at least two different sets of conditions (each set, a scenario), including baseline and severely adverse scenarios for both supervisory and company-run stress tests (macroeconomic scenarios).[3]

(b) The stress test rules provide that the Board will notify covered companies by no later than February 15 of each year of the scenarios it will use to conduct its supervisory stress tests and provide, also by no later than February 15, covered companies and other financial companies subject to the final rules the set of scenarios they must use to conduct their company-run stress tests. Under the stress test rules, the Board may require certain companies to use additional components in the severely adverse scenario or additional scenarios. For example, the Board expects to require large banking organizations with significant trading activities to include a trading and counterparty component (market shock, described in the following sections) in their severely adverse scenario. The Board will provide any additional components or scenario by no later than March 1 of each year.[4] The Board expects that the scenarios it will require the companies to use will be the same as those the Board will use to conduct its supervisory stress tests (together, stress test scenarios).

* * * * *

2. Overview and Scope

(a) This policy statement provides more detail on the characteristics of the stress test scenarios and explains the considerations and procedures that underlie the approach for formulating these scenarios. The considerations and procedures described in this policy statement apply to the Board's stress testing framework, including to the stress tests required under 12 CFR part 252, subparts B, E, and F as well as the Board's capital plan rule (12 CFR 225.8).[6]

(b) Although the Board does not envision that the broad approach used to develop scenarios will change from year to year, the stress test scenarios will reflect changes in the outlook for economic and financial conditions and changes to specific risks or vulnerabilities that the Board, in consultation with the other federal banking agencies, determines should be considered in the annual stress tests. The stress test scenarios should not be regarded as forecasts; rather, they are hypothetical paths of economic variables that will be used to assess the strength and resilience of the companies' capital in various economic and financial environments.

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

3. Content of the Stress Test Scenarios

(a) The Board will publish a minimum of two different scenarios, including baseline and severely adverse conditions, for use in stress tests required in the stress test rules.[7] In general, the Board anticipates that it will not issue additional scenarios. Specific circumstances or vulnerabilities that in any given year the Board determines require particular vigilance to ensure the resilience of the banking sector will be captured in the severely adverse scenario. A greater number of scenarios could be needed in some years—for example, because the Board identifies a large number of unrelated and uncorrelated but nonetheless significant risks.

* * * * *

3.2 Market Shock Component

(a) The market shock component of the severely adverse scenario will only apply to companies with significant trading activity and their subsidiaries.[10] The component consists of large moves in market prices and rates that would be expected to generate losses. Market shocks differ from macroeconomic scenarios in a number of ways, both in their design and application. For instance, market shocks that might typically be observed over an extended period (*e.g.,* 6 months) are assumed to be an instantaneous event which immediately affects the market value of the companies' trading assets and liabilities. In addition, under the stress test rules, the as-of date for market shocks will differ from the quarter-end, and the Board will provide the as-of date for market shocks no later than February 1 of each year. Finally, as described in section 4, the market shock includes a much larger set of risk factors than the set of economic and financial variables included in macroeconomic scenarios. Broadly, these risk factors include shocks to financial market variables that affect asset prices, such as a credit spread or the yield on a bond, and, in some cases, the value of the position itself (*e.g.,* the market value of private equity positions).

* * * * *

4. Approach for Formulating the Macroeconomic Assumptions for Scenarios

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

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

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

4.1 Approach for Formulating Macroeconomic Assumptions in the Baseline Scenario

(a) The stress test rules define the baseline scenario as a set of conditions that affect the

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

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

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

[4] *Id.*

[6] 12 CFR 252.14(a), 12 CFR 252.44(a), 12 CFR 252.54(a).

[7] 12 CFR 252.14(b), 12 CFR 252.44(b), 12 CFR 252.54(b).

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

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

* * * * *

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

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

* * * * *

5. Approach for Formulating the Market Shock Component

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

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

* * * * *

5.2.2 Approaches to Market Shock Design

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

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–23662 Filed 10–31–19; 8:45 am]

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Part V

National Credit Union Administration

The NCUA Staff Draft 2020–2021 Budget Justification; Notice

NATIONAL CREDIT UNION ADMINISTRATION

The NCUA Staff Draft 2020—2021 Budget Justification

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The NCUA's draft, ''detailed business-type budget'' is being made available for public review as required by federal statute. The proposed resources will finance the agency's annual operations and capital projects, both of which are necessary for the agency to accomplish its mission. The briefing schedule and comment instructions are included in the supplementary information section.

DATES: Requests to deliver a statement at the budget briefing must be received on or before Tuesday, November 12, 2019. In order for the NCUA to produce copies for public distribution at the budget briefing, written statements and presentations for those scheduled to appear at the budget briefing must be received on or before Monday, November 18, 2019.

Written comments without public presentation at the budget briefing may be submitted by Monday, December 2, 2019.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

• Presentation at public budget briefing: submit requests to deliver a statement at the briefing to *BudgetBriefing@ncua.gov* by Tuesday, November 12, 2019. Include your name, title, affiliation, mailing address, email address, and telephone number. Copies of your presentation must be submitted to the same email address by Monday, November 18, 2019.

• *Written comments:* submit comments to *BudgetComments@ncua.gov* by Monday, December 2, 2019. Include your name and the following subject line ''Comments on the NCUA Draft 2020–2021 Budget Justification.''

Copies of the NCUA Draft 2020–2021 Budget Justification and associated materials are also available on the NCUA website at *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.* Printed copies will be available at the November 20, 2019 budget briefing.

FOR FURTHER INFORMATION CONTACT: Rendell Jones, Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6571.

SUPPLEMENTARY INFORMATION: The following itemized list details the documents attached to this notice and made available for public review:

I. The NCUA Budget in Brief
II. Introduction and Strategic Context
III. Forecast and Enterprise Challenges
IV. Key Themes of the 2020–2021 Budget
V. Operating Budget
VI. Capital Budget
VII. Share Insurance Fund Administrative Budget
VIII. Financing The NCUA Programs
IX. Appendix A: Supplemental Budget Information
X: Appendix B: Capital Projects

Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174) amended 12 U.S.C. 1789(b)(1)(A) to require the NCUA Board (Board) to ''make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' Although 12 U.S.C. 1789(b)(1)(A) requires publication of a ''business-type budget'' only for the agency operations arising under the Federal Credit Union Act's subchapter on insurance activities, in the interest of transparency the Board is providing the agency's entire staff draft 2020–2021 Budget Justification (budget) in this Notice.

The draft budget details the resources required to support NCUA's mission as outlined in its 2018–2022 Strategic Plan. The draft budget includes personnel and dollar estimates for three major budget components: (1) The Operating Budget; (2) the Capital Budget; and (3) the Share Insurance Fund Administrative Budget. The resources proposed in the draft budget will be used to carry out the agency's annual operations.

The NCUA staff will present its draft budget to the Board at a budget briefing open to the public and scheduled for Wednesday, November 20, 2019 from 10:00 a.m. to 12:00 p.m. Eastern. The budget briefing will be held in the NCUA Board meeting room. A livestream of the briefing also will be available through a link on *ncua.gov*.

If you wish to attend the briefing and deliver a statement, you must email a request to *BudgetBriefing@ncua.gov* by Tuesday, November 12, 2019. Your request must include your name, title, affiliation, mailing address, email address, and telephone number. The NCUA will work to accommodate as many public statements as possible at the November 20, 2019 budget briefing. The Board Secretary will inform you if you have been approved to make a presentation and how much time you will be allotted. A written copy of your presentation must be delivered to the Board Secretary via email at *BudgetBriefing@ncua.gov* by Monday, November 18, 2019.

Written comments on the draft budget will also be accepted by email at *BudgetComments@ncua.gov* until Monday, December 2, 2019. Include your name and the following subject line with your comments: ''Comments on the NCUA Draft 2020–2021 Budget Justification.''

All comments should provide specific, actionable recommendations rather than general remarks. The Board will review and consider any comments from the public prior to approving the budget.

By the National Credit Union Administration Board on October 28, 2019.

Gerard S. Poliquin,

Secretary of the Board.

I. The NCUA Budget in Brief

Proposed 2020 and 2021 Budgets

The National Credit Union Administration's (NCUA) *2018–2022 Strategic Plan* sets forth the agency's goals and objectives that form the basis for determining resource needs and allocations. The annual budget provides the resources to execute the strategic plan, to implement important initiatives, and to undertake the NCUA's major programs: Examination and supervision, insurance, credit union development, consumer financial protection, and asset management.

2020–2021 NCUA BUDGET RESOURCES

Budget	2020 Board Approved Budget	2020 Revised Budget	Change (2020)	Change Percent (2020)	2021 Requested Budget	Change (2020-21)	Change Percent (2020–21)	2020 FTE	2021 FTE	FTE Change 2020–2021
Operating Budget	316,164,000	316,213,000	49,000	0.0%	325,973,000	9,760,000	3.1%	1,180	1,180	-
Capital Budget	18,608,000	25,075,541	6,467,541	34.8%	25,205,000	129,459	0.5%	-	-	-
Share Insurance Fund Admin. Budget	9,121,000	6,450,000	(2,671,000)	-29.3%	6,932,000	482,000	7.5%	5	5	-
Total	**$ 343,893,000**	**$ 347,738,541**	**$ 3,845,541**	**1.1%**	**$ 358,110,000**	**$10,371,459**	**3.0%**	**1,185**	**1,185**	**-**

The NCUA's 2020–2021 budget justification consists of three separate budgets: The Operating Budget, the Capital Budget, and the National Credit Union Share Insurance Fund Administrative Budget. Combined, these three budgets total $347.7 million for 2020, which is 1.1 percent more than the 2020 funding level approved by the NCUA Board in November 2018, and 3.9 percent more than the comparable 2019 Board-approved budget.

A significant cost driver in the 2020 budget is the increase in mandatory contributions all federal agencies must make to the Office of Personnel Management (OPM) for the Federal Employee Retirement System (FERS). Of the total 3.9 percent budget increase between 2019 and 2020, 1.6 percentage points of growth are directly attributable to the increased cost of FERS contributions and 2.3 percentage points of growth are the result of changes in agency operations.

The 2.3 percent growth in agency operations also includes absorbing the equivalent of 0.8 percentage points of growth for costs avoided in the Share Insurance Fund Administrative Budget. This means the actual budget increase to fund the agency's operations is the equivalent of 1.5 percent growth.

Personnel levels for 2020 and 2021 reflect the agency's current staffing requirements and proposed staffing enhancements related to high-priority initiatives.

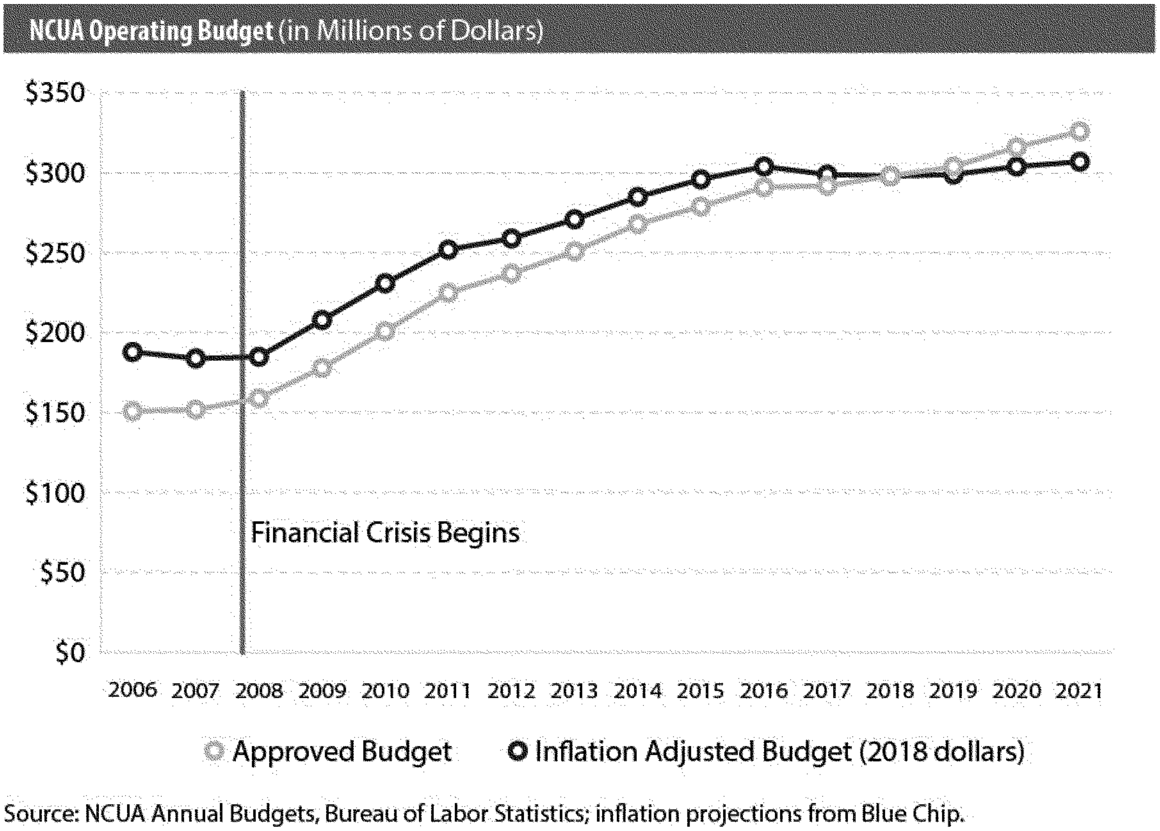
Operating Budget

The proposed 2020 Operating Budget is $316.2 million. Personnel levels increase by three full-time equivalents (FTE) compared to the 2019 Board-approved budget.[1]

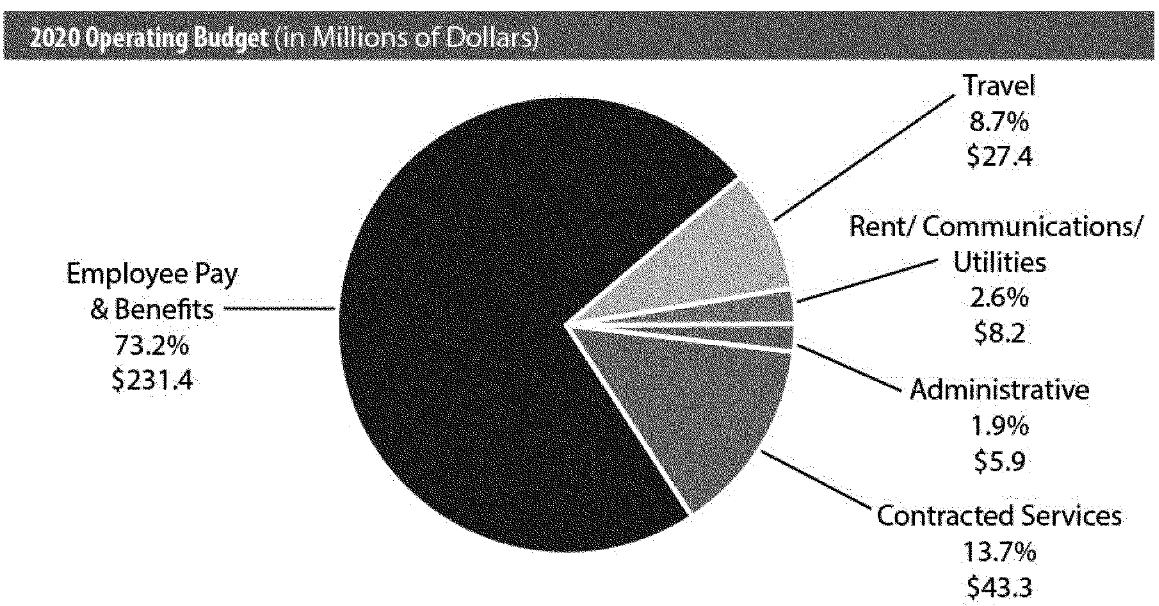
The 2020 Operating Budget, when adjusted for inflation, represents a real dollar increase of approximately $5.2 million, or 1.7 percent, compared to the 2019 Board-approved budget. In nominal dollars, the 2019 Budget increases by $11.8 million, or 3.9 percent, over the 2019 Board-approved budget of $304.4 million. The Operating Budget estimate for 2021 is $326 million and reflects no change to authorized positions.

The following chart shows recent year-on-year trends for the NCUA Operating Budget, in both real dollar and nominal terms:

[1] The published 2019 FTE level approved by the Board on November 15, 2018 was 1,173 for the Operating Budget. On July 18, 2019, the NCUA Board approved an additional four FTE. The revised 2020 Operating Budget proposes three more FTE, for a total of 1,180.

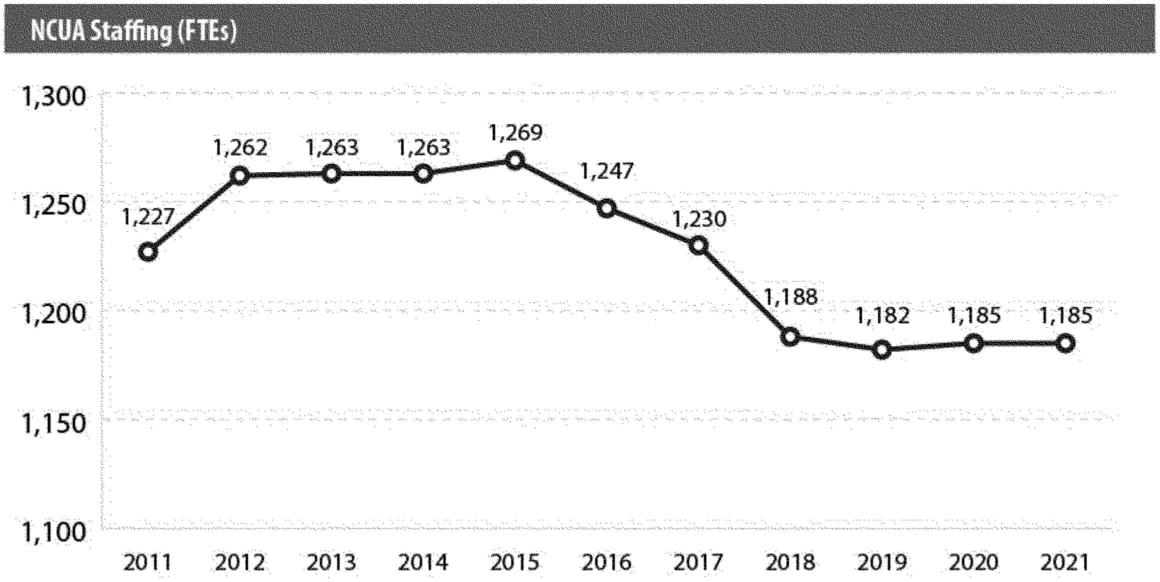


The following chart presents the major categories of spending supported by the 2020 budget, while specific adjustments to the 2019 Board-approved budget are discussed in further detail, below:



note: minor rounding differences may occur in totals

Total Staffing. The budget supports 1,185 FTE in total for 2020, of which five are funded by the Share Insurance Fund Administrative Budget. The Operating Budget funds 1,180 FTE in 2020, a net increase of three FTEs from the 2019 levels approved by the Board. Additional staff have been added to several offices as discussed later in this document. Since 2018 and despite significant credit union asset growth, total NCUA staffing has remained within a range of approximately five positions, as shown in the chart below.



Pay and Benefits. Pay and benefits increase by $8.5 million in 2020, or 3.8 percent, for a budget of $231.4 million. Over 50 percent of the growth in pay and benefits—nearly $5 million—is the result of OPM increasing the mandatory employer contribution for the FERS. Required FERS payments to OPM increase from 13.7 percent of covered employees' salaries to 16 percent, a change of 230 basis points. Nearly all NCUA employees are covered by FERS, which includes a defined pension benefit funded by both employee and employer contributions. Because almost every federal agency is required to participate in FERS, the employer share of contributions increases throughout the government in 2020. Excluding additional FERS contributions from the 2020 budget, total personnel compensation growth would be 1.6 percent instead of 3.8 percent, and total Operating Budget growth would be 2.2 percent instead of 3.9 percent.

The remaining increase in pay and benefits accounts for the merit and locality pay adjustments required by the NCUA's current collective bargaining agreement, the three new positions proposed for 2020, anticipated staff promotions, position changes, and increased costs for other mandatory employer contributions such as health insurance and retirement contributions.

Travel. The travel budget increases by $590,000 in 2020, or 2.2 percent, for a budget of $27.4 million. In 2020, the NCUA plans to train its Credit Union Examiner workforce to conduct examinations using the Modern Examination and Risk Identification Tool (MERIT) system, which is planned for full implementation in the fourth quarter of 2020. State credit union examiners will also be trained to use MERIT. The Operating Budget includes approximately $1.0 million in one-time travel costs associated with the 778 NCUA employees who will participate in MERIT training meetings in 2020.

In general, the NCUA continues working to contain the growth of travel costs by expanding offsite examination work and using technology-driven training. Government-wide per diem rates published by the General Services Administration (GSA) are expected to increase by almost 1.3 percent in 2020, accounting for a share of the travel budget growth. In addition, starting in 2019 GSA instituted a cost recovery fee for airline tickets purchased at negotiated government rates, which adds approximately $20,000 annually to the agency's cost of purchasing airline tickets at government rates.

Rent, Communications, and Utilities. Rent, communications, and utilities increase by $188,000 in 2020, or 2.3 percent, for a budget of $8.2 million. This funding pays for telecommunications services, data capacity contracts, and information technology network support. The increase is primarily due to additional data capacity that will be required as a result of implementing the new MERIT examination system, which will be cloud-based and consume more data bandwidth than the AIRES system it is replacing.

Administrative Expenses. Administrative expenses decrease by $2.8 million in 2020, or 31.9 percent, for a total budget of $5.9 million. Decreases to the administrative expenses budget category largely result from reclassifying $2.6 million in software licensing costs as contracted services, not administrative expenses, in order to reflect these costs consistently with other federal budgetary presentations.

Contracted Services. Contracted services expenses increase by $5.3 million in 2020 for a total budget of $43.3 million. However, as discussed above, approximately $2.6 million of this increase results from costs previously shown as administrative expenses being reclassified as contracted services in order to reflect these costs consistently with other federal budgetary presentations. The actual increase in the contracted services budget is approximately $2.7 million, or 7 percent.

Contracted services funding pays for products and services acquired in the commercial marketplace, and includes critical mission support services such as information technology hardware and software support, accounting and auditing services, and specialized subject matter expertise. Certain information technology costs that were previously reported as administrative expenses are now included as contracted services, which accounts for a portion of this increase. Expected price inflation for services to be purchased in 2020 accounts for the remainder of the growth in this category.

Capital Budget. The proposed 2020 Capital Budget is $25.1 million. The 2020 Capital Budget is $6.5 million more than the 2020 funding level approved by the Board in November 2018, and $3.1 million than the 2019 Board-approved budget.

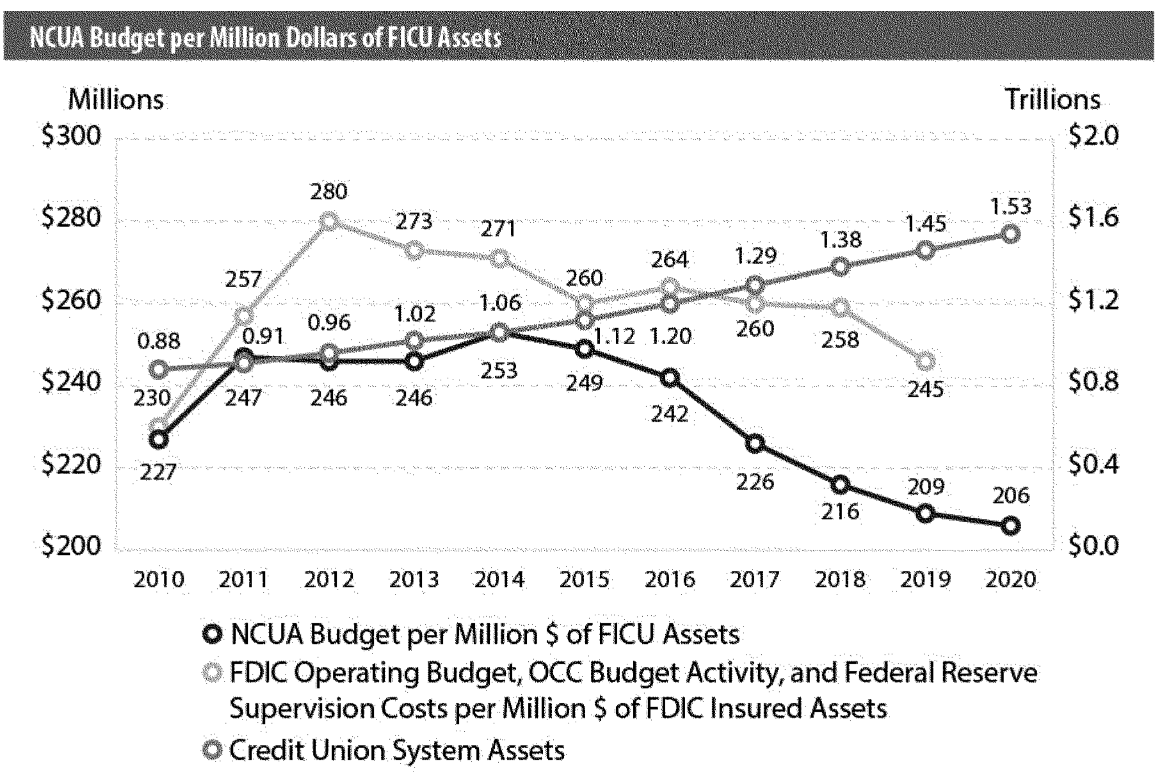
The Capital Budget pays for continued investments in technology and infrastructure projects. A major component of the Capital Budget is the development of the first phases of the Enterprise Solution Modernization (ESM) program, which includes a new technical platform and security infrastructure, a central user interface for stakeholders to transact business with the NCUA, integration of business intelligence tools into the supervision function, and the MERIT examination system, which will replace the agency's antiquated AIRES examination software and will be used by both federal and state examiners in almost all credit union examinations. The business intelligence capabilities were slated for a later iteration of ESM, but were added to the first phase when it was determined they could be integrated into MERIT for the 2020 release. The NCUA's Information Technology Prioritization Council recommended $20.9 million for IT software development projects that continue to replace the NCUA's decades-old and functionally obsolete information technology systems, and $2.7 million in other IT investments for 2020. The NCUA's facilities require $1.5 million in capital investments.

Share Insurance Fund Administrative Expenses. The proposed 2020 Share Insurance Fund Administrative budget is $6.5 million.

The 2020 Share Insurance Fund (SIF) Administrative Budget is $2.7 million less than the 2020 funding level approved by the Board in November 2018, and $1.9 million less than the 2019 Board-approved budget. The decrease in the SIF Administrative Budget is primarily attributed to the Office of National Examinations and Supervision plan to oversee credit union-run stress testing for the largest Credit Unions using its own proprietary models in 2020. Direct charges within this budget include administration of the NCUA Guaranteed Note (NGN) program, state examiner training and laptop leases, as well as financial audit support. The reduction in the SIF Administrative Expenses budget reflects that costs related to the oversight of credit union-run stress testing will be financed by the Operating Budget.

Budget Trends.

As shown in the chart below, the relative size of the NCUA budget continues to decline when compared to balance sheets at federally insured credit unions. This trend illustrates the greater operating efficiencies the NCUA has attained in the last several years relative to the size of the credit union system. Additionally, the NCUA has improved its operating efficiencies more aggressively than other financial industry regulators.



Source: NCUA Annual Budgets, Call Reports, FDIC, OCC, and Federal Reserve financial reports
*Budget per million dollars of FICU assets is calculated as the fiscal year's budget divided by the previous year's end-of-year assets (e.g. - FY2020 budget ($316M) / projected FICU assets as of 2019Q4 ($1.537T) = $206 of NCUA budget per $1M in FICU assets).

It is also notable that the NCUA's operations have become more efficient relative to the size of the credit union system because consolidation in the industry has led to growth in the number of large credit unions, specifically those with more than $10 billion in assets. This results in additional complexity in the balance sheets of such credit unions, and a corresponding increase in the supervisory review required to ensure the safety and soundness of such large institutions. The NCUA has responded to this increasing complexity through several initiatives: Creation of the specialized Office of National Examination and Supervision, development of in-house capabilities to oversee large credit unions' stress testing, use of specialist examiners with expertise in cybersecurity and capital markets, and improved quality of examination reports through enhanced quality review processes.

Federal Compliance Cost Burden

As a federal agency, the NCUA is required to devote significant resources to numerous compliance activities required by federal law, regulations, or, in some cases, Executive Orders. These requirements dictate how many of the agency's activities are implemented, and generally result in increasing costs. These compliance activities require additional effort in areas such as information technology acquisitions and management, human capital processes, financial management processes and reporting, privacy compliance, and physical and cyber security programs. While agency managers are responsible for these activities, required compliance activities add additional layers of review and procedures that make processes more challenging and expensive.

Financial Management

Federal law, regulations, and government-wide guidance promulgated by the Office of Management and Budget (OMB), the Government Accountability Office (GAO), and the Department of the Treasury place numerous requirements on federal agencies including the NCUA regarding the management of public funds. Government-wide financial management compliance requirements include: Financial statement audits, improper payments, prompt payments, internal controls, procurement, audits, enterprise risk management, strategic planning, and public reporting of financial and other information.

Information Technology (IT)

There are numerous laws, regulations and required guidance concerning information technology used by the federal government. Many of the requirements cover IT security such as the Federal Information Security Management Act. Other requirements cover records management, paperwork reduction, information technology acquisition, cybersecurity spending, and accessible technology and continuity.

Human Capital

Like other federal agencies, the NCUA is subject to an array of human capital-related laws, regulations, and other mandatory guidance issued by OPM, the Equal Employment Opportunity Commission, and OMB. Human capital compliance requirements include procedures for engagement related to hiring; management engagement with public unions and collective bargaining; employee discipline and removal procedures; required training for supervisors and employees; employee work-life and benefits programs; equal employment opportunity and required diversity and inclusion programs; and storage and retention of human resource records. The NCUA is also required by law to ''maintain comparability with other federal bank regulatory agencies'' when setting employee salaries.

Security

The NCUA's security posture is driven by numerous legal and regulatory requirements covering the full range of security functions. The NCUA is required to comply with mandatory requirements for personnel security; physical security; emergency management and continuity; communications and information security; and insider threat activities. In addition to meeting specific legislative mandates, as a federal agency, the NCUA is required to follow guidance from, but not limited to, the Office of the Director of National Intelligence, OPM, and the Federal Emergency Management Agency.

General Compliance Activities

The NCUA also has other general compliance activities that cut across numerous offices. For example, the NCUA expends resources complying with the Privacy Act; Government in the Sunshine Act; multiple laws and regulations related to government ethics standards; and various reporting and other requirements set forth by the Federal Credit Union Act and other statutes.

Federal retirement costs are an example of mandatory payments to other federal agencies. As discussed earlier in this document, the cost of mandatory contributions to OPM for most NCUA employees' retirement system will increase from 13.7 to 16.0 percent of their salaries, based on the OPM Board of Actuaries of the Civil Service Retirement System recommendations. The budget impact of these additional retirement costs in 2020 is an increase of approximately $5 million over 2019.

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2020 Budget in Brief: Summary Table

(dollars in millions)	Budget	Change from 2019 Budget	% Change	Description
2020 Operating Budget	$316.2	↑ $11.8	+ 3.9%	The 2020 budget provides the resources required to execute the priorities outlined in the NCUA's Strategic Plan (2018-2022).
Total Staffing (FTE)	1,185	↑ 3	+ 0.3%	The 2020 FTE level increases by three positions from 1,182 authorized by the Board in 2019[1].
Budget Category				
Pay & Benefits	$231.4	↑ $8.5	+ 3.8%	The pay and benefits adjustment covers merit and locality pay changes required by the Collective Bargaining Agreement. The increase also funds $5 million in one-time mandatory employer contributions for retirement, as well as health benefits and the compensation costs for new FTEs.
Travel	$27.4	↑ $0.6	+ 2.2%	The travel budget increases by $590,000. In 2020, the NCUA will conduct one-time MERIT training for credit union examiners. Other travel spending aligns with the examination workload.
Rent, Communications & Utilities	$8.2	↑ $0.2	+2.3%	Rent, communications, and utilities budgets maintain essential telecommunications, data capacity, and network support. This budget increases due to an anticipated increase in data capacity required for the MERIT examination system.
Administrative	$5.9	↓ $2.8	-31.9%	Administrative expenses primarily support operational requirements, FFIEC fees, relocation expenses, and employee supplies. This budget decreases because certain information technology costs were reclassified to the Contracted Services cost category.
Contracted Services	$43.3	↑ $5.3	+13.8%	Contracted services reflect costs incurred when products and services are acquired in the commercial marketplace and include critical mission support services such as information technology hardware and software development support, accounting and auditing services, and specialized subject matter expertise.

[1] The published 2019 FTE level approved by the Board on November 15, 2018 was 1,178. On July 18, 2019, the NCUA Board approved an additional four FTE.

2021 Budget in Brief: Summary Table

(dollars in millions)	Budget	Change from 2020 Budget	% Change	Description
2021 Operating Budget	**$326.0**	**↑ $9.8**	**+3.1%**	The 2021 budget provides the resources required to execute the priorities outlined in the NCUA's Strategic Plan (2018-2022).
Total Staffing (FTE)	**1,185**	**0**	**0%**	The 2021 budget includes no change from the 2020 FTE levels.
Budget Category				
Pay & Benefits	**$237.8**	**↑ $6.4**	**+ 2.8%**	The pay and benefits adjustment covers merit and locality pay changes required by the Collective Bargaining Agreement. The increase also funds mandatory employer contributions for health insurance and retirement. Other 2021 cost drivers include full cost for new FTEs added in 2020.
Travel	**$26.7**	**↓ $0.7**	**-2.4%**	Travels costs for carrying out the examination and supervision workload and other agency business.
Rent Communications & Utilities	**$8.0**	**↓ $0.2**	**-2.7%**	Rent, communications, and utilities expenses include utilities, space rental, software licenses and other recurring costs.
Administration	**$6.2**	**↑ $0.3**	**+4.2%**	Administration expenses primarily support operational requirements, FFIEC fees, relocation expenses, and employee supplies.
Contracted Services	**$47.4**	**$4.0**	**9.3%**	Contracted services reflect costs incurred for products and services acquired in the commercial marketplace. The increase for 2021 reflects system operations and maintenance support related to implementation of the MERIT examination and supervision solution.

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II. Introduction and Strategic Context

History

For more than 100 years, credit unions have provided financial services to their members in the United States. Credit unions are unique depository institutions created not for profit, but to serve their members as credit cooperatives.

On June 26, 2019, the NCUA celebrated the 85th Anniversary of President Franklin Roosevelt's signing of the Federal Credit Union Act. The law was enacted during the Great Depression, in 1934, enabling credit unions to be organized throughout the United States under charters approved by the federal government. The purpose of the federal law was to make credit available to Americans and promote thrift through a national system of nonprofit, cooperative credit unions. In the years since the passage of the Federal Credit Union Act, credit unions have evolved and are larger and more complex today than those first institutions. But, credit unions continue to provide needed financial services to millions of Americans.

The NCUA is the independent federal agency established in 1970 by the U.S. Congress to regulate, charter, and supervise federal credit unions. With the backing of the full faith and credit of the United States, the NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of the account holders in all federal credit unions and the vast majority of state-chartered credit unions. No credit union member has ever lost a penny of deposits insured by the Share Insurance Fund.

Today, the NCUA is responsible for the regulation and supervision of 5,308 federally insured credit unions [2] with approximately 118.3 million members [3] and more than $1.5 trillion [3] in assets across all states and U.S. territories.

Authority

Pursuant to the Federal Credit Union Act, authority for management of the NCUA is vested in the NCUA Board. It is the Board's responsibility to determine the resources necessary to carry out the NCUA's responsibilities under the Act.[3] The Board is authorized to expend such funds and perform such other functions or acts as it deems necessary or appropriate in accordance with the rules, regulations, or policies it establishes.[4]

Upon determination of the budgeted annual expenses for the agency's operations, the Board determines a fee schedule to assess federal credit unions. The Board gives consideration to the ability of federal credit unions to pay

[2] Source: The NCUA quarterly call report data, Q2 2019.

[3] *See* 12 U.S.C. 1752a(a).

[4] *See* 12 U.S.C. 1766(i)(2).

such a fee, and the necessity of the expenses the NCUA will incur in carrying out its responsibilities in connection with federal credit unions.[5] Pursuant to the law, fees collected are deposited in the agency's Operating Fund at the Treasury of the United States, and those fees are expended by the Board to defray the cost of carrying out the agency's operations, including the examination and supervision of federal credit unions.[6] In accordance with its authority [7] to use the Share Insurance Fund to carry out a portion of its responsibilities, the Board approved an Overhead Transfer Rate methodology, and authorized the Office of the Chief Financial Officer to transfer resources from the Share Insurance Fund to the Operating Fund to account for insurance-related expenses.

Mission, Goals, and Strategy

The NCUA's 2020–2021 Budget Submission supports the agency's third year implementing its *2018–2022 Strategic Plan* to achieve its priorities and improve program performance.

Throughout 2020 and 2021, the NCUA will continue fulfilling its mission to ''*provide, through regulation and supervision, a safe and sound credit union system which promotes confidence in the national system of cooperative credit,*'' and its vision to ensure that the ''*NCUA protects credit unions and consumers who own them through effective supervision, regulation and insurance.*'' This budget commits the resources necessary to implement the NCUA's plans to identify key challenges facing the credit union industry and leverage agency strengths to help credit unions address those challenges.

The budget supports the NCUA's programs, which are focused on achieving the agency's three strategic goals:

- Ensure a safe and sound credit union system;
- Provide a regulatory framework that is transparent, efficient, and improves consumer access; and
- Maximize organizational performance to enable mission success.

Additional information about alignment of the budget to the NCUA's strategic goals is in Appendix A.

In support of its first strategic goal—*ensure a safe and sound credit union system*—the NCUA will continue to supervise federally insured credit unions effectively and maintain a strong Share Insurance Fund.

The NCUA's primary function is to identify credit union system risks, determine the magnitude of those risks, and mitigate unacceptable levels through the examination and supervision program. The agency identifies supervision program priorities each year, aligning budgeted resources to these priorities while addressing emerging issues in order to minimize losses to the Share Insurance Fund. Program priorities in 2020 include addressing broad market risks and emerging cybersecurity threats that could threaten financial stability generally, including the safety and soundness of the credit union system.

Cybersecurity threats and other technology-related issues continue to be of key interest and concern to the NCUA. Increasingly sophisticated cyber-attacks pose a significant threat to credit unions, financial regulators, and the broader financial services sector. The availability, confidentiality, and integrity of credit union member information remains a key supervisory priority for the NCUA. As such, the 2020 budget includes resources to continue to improve and standardize supervision related to information protection and cybersecurity risks and threats.

The NCUA staff of credit union examiners are the agency's most important assets for identifying and addressing risks before they threaten members' deposits. To do their jobs effectively in this complex and dynamic financial environment, the NCUA staff require the advanced skills, training, and tools supported by the budget. The multi-year ESM program will reach a major milestone in 2020 with the release of the Modern Examination and Risk Identification Tool (MERIT), the agency's modernized examination tool replacing the Automated Integrated Regulatory Examination System (AIRES), to all credit union examiners and state regulators. As the agency transitions to this new tool, which will result in more efficient and effective supervision, the NCUA must ensure its staff is prepared. The 2020 budget includes resources to train and prepare the NCUA staff as they transition to using MERIT.

To fulfill the NCUA's second strategic goal—*provide a regulatory framework that is transparent, efficient, and improves customer access*—the agency is committed to creating a more responsive system that will encourage innovation, provide flexibility, and fulfill its primary mission of protecting safety and soundness. The NCUA also seeks to promote financial inclusion to better serve a changing population and economy. The NCUA also seeks to ensure consumer compliance, and financial protection. The budget allocates resources to agency programs that keep regulations up to date and consistent with current law, assist existing and prospective credit unions with expansion and new chartering activities.

Accomplishing the third strategic goal—*maximize organizational performance to enable mission success*—ensures the NCUA employees achieve the agency's mission by supporting them through efficient and effective business processes, modern and secure technology, and suitable tools necessary to perform their duties. The budget makes investments in improved tools and facilities for the NCUA staff, and technological enhancements including new systems that will improve operational effectiveness and efficiency. The budget also allocates resources to developing better human capital planning and processes including a new leadership development strategy and a focus on training for the transition to MERIT.

Organization, Major Agency Programs, and Workforce

The NCUA operates its headquarters in Alexandria, Virginia, to administer and oversee its major programs and support functions; its Asset Management and Assistance Center (AMAC) in Austin, Texas, to liquidate credit unions and recover assets; and three regional offices, to carry out the agency's supervision and examination program.

In January 2019, the NCUA consolidated its five regional offices into three—Eastern, Southern, and Western—as part of its on-going effort to strengthen agency operations while increasing efficiency. Reporting to these regional offices, the NCUA has credit union examiners responsible for a portfolio of credit unions covering all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

The NCUA organizational chart below reflects the agency's current structure, and the map shows each region's geographical alignment:

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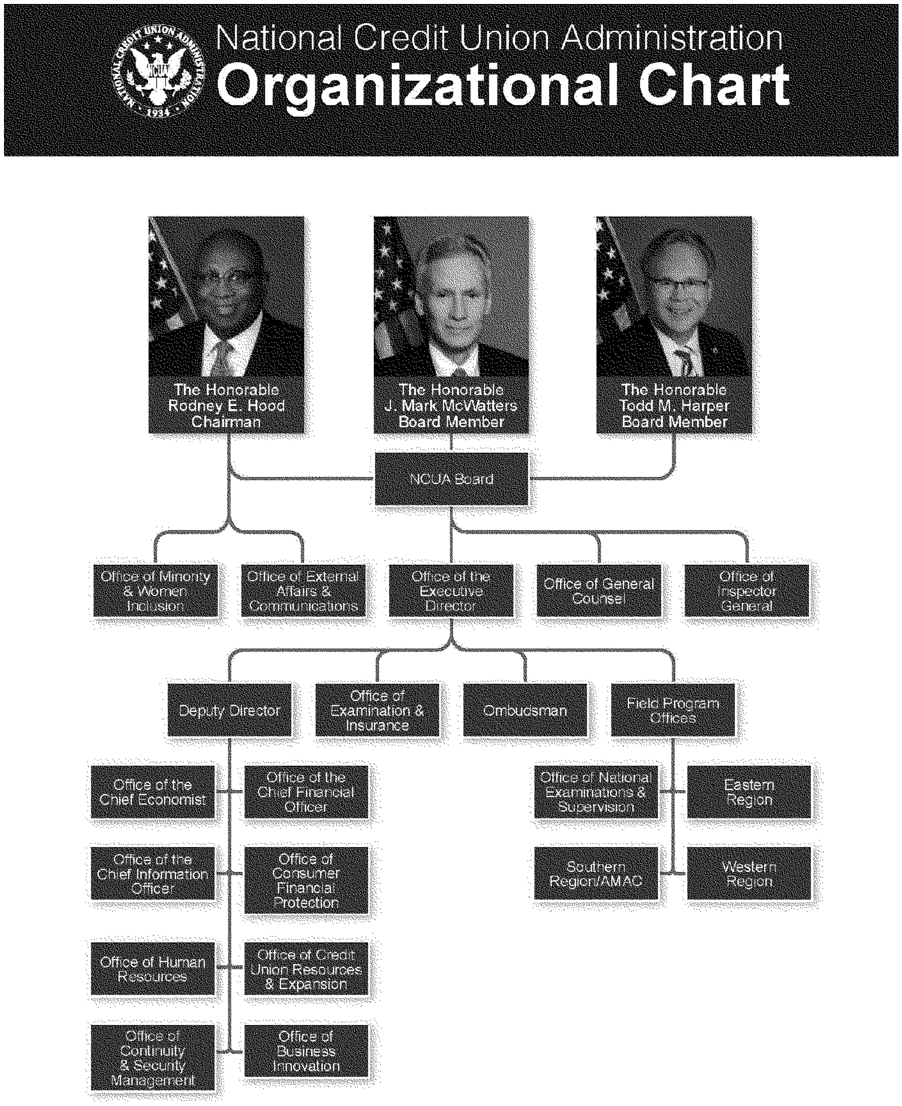
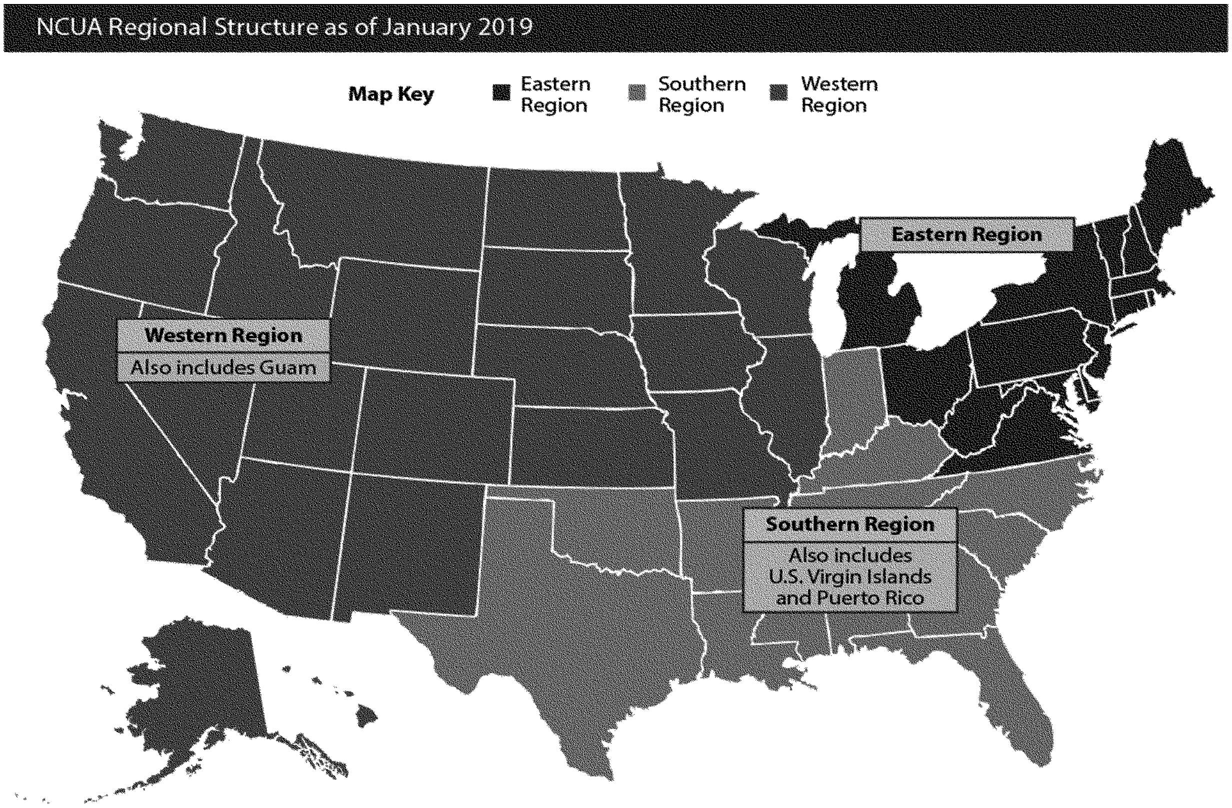
[5] *See* 12 U.S.C. 1755(a)–(b).

[6] *See* 12 U.S.C. 1755(d).

[7] *See* 12 U.S.C. 1783(a).


National Credit Union Administration
Organizational Chart
The Honorable Rodney E. Hood Chairman
The Honorable J. Mark McWatters Board Member
The Honorable Todd M. Harper Board Member
NCUA Board
Office of Minority & Women Inclusion
Office of External Affairs & Communications
Office of the Executive Director
Office of General Counsel
Office of Inspector General
Deputy Director
Office of Examination & Insurance
Ombudsman
Field Program Offices
Office of the Chief Economist
Office of the Chief Financial Officer
Office of the Chief Information Officer
Office of Consumer Financial Protection
Office of Human Resources
Office of Credit Union Resources & Expansion
Office of Continuity & Security Management
Office of Business Innovation
Office of National Examinations & Supervision
Eastern Region
Southern Region/AMAC
Western Region



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The NCUA's regional offices will carry out the agency's 2020 examination program. The NCUA uses an extended examination cycle for well-managed, low-risk federal credit unions with assets of less than $1 billion. Additionally, the NCUA's examiners perform streamlined examination procedures for financially and operationally sound credit unions with assets less than $50 million. In addition, the Office of National Examination and Supervision (ONES) will continue to examine credit unions with assets that total over $10 billion that are located throughout the United States. Based on 2019 second quarter call report statistics, there are currently nine such credit unions with 18.0 million members, accounting for $256 billion in credit union assets.

In 2020 and 2021, the agency's workforce will undertake tasks in all of the NCUA's major programs:

Supervision: The NCUA supervises federally insured credit unions through examinations and regulatory enforcement including providing guidance through various publications, taking administrative actions and conserving, liquidating, or merging severely troubled institutions as necessary to manage risk.

Insurance: The NCUA manages the $16 billion Share Insurance Fund, which provides insurance to at least $250,000 for deposits held at federally insured credit unions. The fund is capitalized by credit unions and through retained earnings.

Credit Union Development: Through training, partnerships and resource assistance, the NCUA fosters credit union development, particularly the expansion of services to eligible members provided by small, minority, newly chartered, and low-income designated credit unions. The NCUA also charters new federal credit unions, as well as approves modifications to existing charters and fields of membership.

Consumer Financial Protection: The NCUA protects consumers' rights through effective enforcement of federal consumer financial protection laws, regulations, and requirements. The NCUA also develops and promotes financial education programs for credit unions to assist members in making smarter financial decisions.

Asset Management: The NCUA conducts credit union liquidations and performs management and recovery of assets through AMAC. This office effectively and efficiently manages and disposes assets acquired from liquidations.

The NCUA also performs stakeholder outreach and is involved in numerous cross-agency initiatives. The NCUA conducts stakeholder outreach to clearly understand the needs of the credit union system. The NCUA seeks input from all of its stakeholders, including the Administration, Congress, State Supervisory Authorities, credit union members, credit unions, and their associations.

The NCUA collaborates with the other financial regulatory agencies including through participation in several councils. Significant councils include the Financial Stability Oversight Council (FSOC), the Federal Financial Institutions Examination Council (FFIEC), and the Financial and Banking Information Infrastructure Committee (FBIIC). These councils and relationships help ensure consistent policy and standards within the nation's financial system, where appropriate.

Budget Process—Strategy to Budget

The NCUA's budget process starts with a review of the agency's goals and objectives set forth in the strategic plan. The strategic plan is a framework that sets the agency's direction and guides resource requests, ensuring the agency's resources and workforce are allocated and aligned to agency priorities and initiatives.

Each regional and central office director at the NCUA develops an initial budget request identifying the resources necessary for their office to support the

NCUA's mission, strategic goals, and strategic objectives. These budgets are developed to ensure each office's requirements are individually justified and remain consistent with the agency's overall strategic plan.

For regional offices, one of the primary inputs in the development process is a comprehensive workload analysis that estimates the amount of time necessary to conduct examinations and supervise federally insured credit unions in order to carry out the NCUA's dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the current year. The workload estimates are then refined by regional managers and submitted to the NCUA central office for the annual budget proposal. The workload analysis accounts for the efforts of nearly seventy percent of the NCUA workforce and is the foundation for budget requests from regional offices and ONES.

In addition to the workload analysis, from which central office budget staff derive related personnel and travel cost estimates, each of the NCUA offices submit estimates for fixed and recurring expenses, such as rental payments for leased property, operations and maintenance for owned facilities or equipment, supplies, telecommunications services, major capital investments, and other administrative and contracted services costs.

Because information technology investments impact all offices within the agency, the NCUA has established an Information Technology Prioritization Council (ITPC). The ITPC meets several times each year to consider, analyze, and prioritize major information technology investments to ensure they are aligned with the NCUA's strategic plan. These focused reviews result in a mutually agreed-upon budget recommendation to support the NCUA's top short-term and long-term information technology needs and investment priorities.

Once compiled for the entire agency, all office budget submissions undergo thorough reviews by the responsible regional and central office directors, the Chief Financial Officer, and the NCUA's executive leadership. Through a series of presentations and briefings by the relevant office executives, the NCUA Executive Director formulates an agency-wide budget recommendation for consideration by the Board.

In recent years, the Board has emphasized the need for increased transparency of the NCUA's finances and its budgeting processes. In response, the Office of the Chief Financial Officer has made draft budgets available for public comment via the NCUA's website, and solicited public comments before presenting final budget recommendations for the Board's approval. Furthermore, the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, enacted May 24, 2018, requires in Section 212 that the NCUA "make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget." To fulfill this requirement, the Board delegated to the Executive Director the authority to publish the draft budget before submitting it for Board review.

This 2020–2021 budget justification document includes comparisons to the Board approved 2019–2020 budget, and includes a summary description of the major spending items in each budget category to provide transparency and understanding of the use of budgeted resources. Estimates are provided by major budget category, office, and cost element.

The NCUA also posts supporting documentation for its budget request on the NCUA website to assist the public in understanding its budget development process. The budget request for 2020 represents the NCUA's projections of operating and capital costs for the year, and is subject to approval by the Board.

Commitment to Financial Stewardship

The NCUA funds its activities through operating fees levied on all federal credit unions and through reimbursements from the Share Insurance Fund, funded by both federal credit unions and federally insured state-chartered credit unions. The Overhead Transfer Rate (OTR) calculation determines the annual amount that the Share Insurance Fund reimburses the Operating Fund to pay for the NCUA's insurance-related activities. At the end of each calendar year, the NCUA's financial transactions are subject to audit in accordance with Generally Accepted Government Auditing Standards.[8]

The Board and the agency are committed to providing sound financial stewardship. In recent years, the NCUA Chief Financial Officer, with support and direction from the Executive Director and Board, has worked to improve the NCUA's financial management, financial reporting, and budget processes. In addition, through prudent management of the Corporate System Resolution Program, the NCUA has paid nearly $900 million in dividends to eligible credit unions over the last two years.

The NCUA revised its financial presentations to conform to federal budgetary concepts and increase transparency of the agency's planned financial activity, starting with the 2018 budget. The 2020–2021 budget continues this presentation. The NCUA is the only Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) agency that publishes a detailed, draft budget and solicits public comments on it at a meeting with its Board and other agency leadership.

The NCUA continues to work diligently to strengthen its internal controls for financial transactions, in accordance with sound financial management policies and practices. Based on the results of the NCUA's assessments conducted through the course of 2018, the agency provided an unmodified Statement of Assurance (signed February 14, 2019) that its management had established and maintained effective controls to achieve the objectives of the Federal Managers Financial Integrity Act (FMFIA) and Office of Management and Budget (OMB) Circular A–123. Specifically, the NCUA supports the internal control objectives of reporting, operations, and compliance, as well as its integration with overarching risk management activities. Within the Office of the Chief Financial Officer, the Internal Controls Assessment Team (ICAT) continues to mature the agency-wide internal control program and continues to strengthen the overall system of internal control, further promote the importance of identifying risk, and ensure the agency has identified appropriate responses to mitigate identified risks, in accordance with the Government Accountability Office's Standards for Internal Controls in the Federal Government (Green Book) requirements.

III. Forecast and Enterprise Challenges

Economic Outlook

The NCUA's mission is to provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit. The challenges that the NCUA faces, and the resources the NCUA requires to fulfill its mission, depend on a variety of factors that directly or indirectly affect the health of the credit union system. The NCUA must anticipate, to the extent possible, developments that will affect the system, develop strategies, plans and processes to meet

[8] *See* 12 U.S.C. 1783(b) and 1789(b).

both the current and anticipated needs, and assemble the resources, including staff, necessary to ensure a safe and sound system.

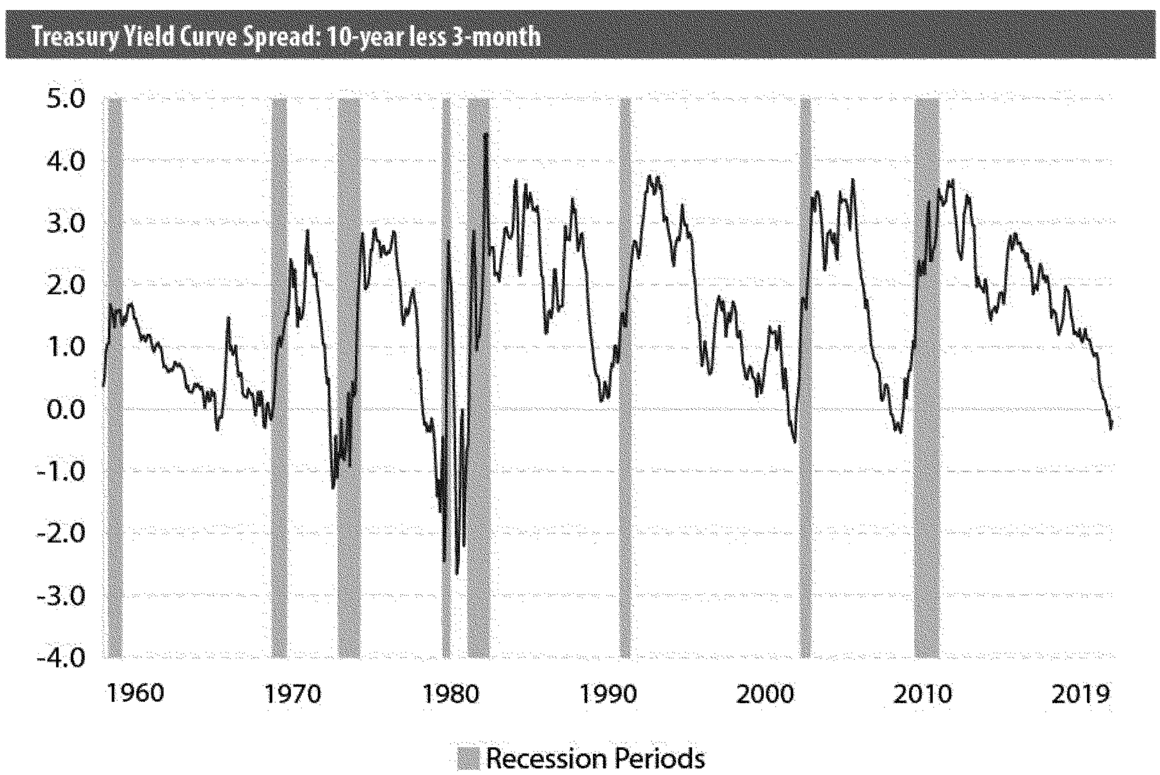
One key determinant of credit union performance is the underlying economic environment in which they must operate. In general, for the past few years, the economy has supported solid financial system performance. The economy continued to perform well in the first half of 2019. Real gross domestic product expanded by 2.6 percent at an annual rate and, in July, the current economic expansion reached the 10-year mark, making it the longest post-war expansion on record. Employment has risen steadily for close to a decade and the unemployment rate at mid-year was at a five-decade low. Inflation remained subdued.

With the support of a solid economic foundation, credit union lending, membership growth, and credit quality remained strong through the second quarter of 2019. Federally insured credit unions added 4.3 million members over the year, boosting credit union membership to 118.3 million in the second quarter of 2019. Credit union shares and deposits rose 5.5 percent over the year ending in the second quarter to $1.5 trillion. Total loans outstanding at federally insured credit unions increased 6.4 percent to $1.1 trillion, and the system-wide loan delinquency rate fell to 63 basis points from 67 basis points a year earlier. The credit union system's return on average assets rose to 97 basis points, and the system's net worth ratio increased to 11.27 percent in the second quarter.

Although economic conditions were generally favorable heading into the second half of 2019, a number of downside risks exist. Growth in several major economies overseas showed signs of weakness. This has generated a level of uncertainty, which weighs on business activity, boosts financial market volatility, has pushed long-term interest rates in the U.S. downward, and has contributed to the Federal Reserve's decision to loosen monetary policy and lower their short-term policy rate in two 25 basis point moves during the summer after four years of tightening.

As of early October, long-term interest rates had fallen by about 160 basis points from their most recent peaks in late 2018, and short-term rates had declined roughly 50 basis points. With long-term rates falling more than short-term rates, the yield curve shifted down and flattened.

In late May, the spread between the 10-year Treasury note and 3-month Treasury bond turned negative; it remained negative through the start of October. Yield curve inversion has preceded every recession in the last 50 years, but the timing between initial inversion and the onset of recession has varied, as shown in the chart. Most analysts expect the current expansion to continue during the NCUA 2020–2021 budget horizon.



Even though the number of negative risks to the economy has risen, the near-term outlook for the U.S. economy remains positive. Forecasts for the next two years call for somewhat slower—but still solid—economic growth compared with 2018. Employment is projected to rise and the unemployment rate—already below the level associated with full employment—is expected to remain low. Tight labor market conditions are projected to keep inflation near the Federal Reserve's 2.0 percent target. Federal Reserve policymakers have lowered the federal funds target rate by 50 basis points since July. Their most recent forecast, released in September, suggests they could leave the federal funds rate unchanged in a range of 1.75 percent and 2.00 percent through next year, but there is a wide range of views on the appropriate path of short-term interest rates going forward. Analysts are expecting the federal funds target rate to decline by an additional 25 basis points before the end of 2019 and are projecting that other short-term interest rates—which largely determine the interest payments credit unions make—will also move lower in the months ahead. Longer-term rates—which largely determine the interest payments credit unions receive—are expected to stabilize in the second half of 2019 and edge higher in 2020, as the recent flight to safety reverses.

Solid economic conditions should remain a positive force for credit union lending, membership growth, and credit quality over the 2020–2021 budget horizon. In addition, the wider term spread implied by current interest rate forecasts should translate into less pressure on credit union net interest margins and net income going forward.

However, forecasts of the economic environment are far from perfect. A recession would pose significant challenges to the credit union system, leading to rising delinquencies, reduced loan demand, and, potentially, an increase in shares as consumers move funds from riskier investments into safer, insured credit union deposits. A downturn in the economy would likely lead to lower interest rates as well. Credit union balance sheets should be robust to a variety of rate environments. The NCUA, like the credit unions themselves, needs to plan and prepare for a range of economic outcomes that could affect credit union performance and determine resource needs.

Other Risk Factors and Trends

In addition to risks associated with movements in the general economy, the NCUA and credit unions will need to understand their increasing exposure to, and address risks associated with, the technological and structural changes facing the system. Over the longer-term, increased concentration of loan portfolios, development of alternative loan and deposit products, technology-driven changes in the financial landscape, continued industry consolidation, and ongoing demographic changes will continue to shape the environment facing credit unions and will determine the resource needs of the NCUA.

Cybersecurity: Credit unions' increasing use of technology is making the credit union system more vulnerable to cyber-attacks. The prevalence of malware, ransomware, distributed denial of service (DDOS) attacks, and other forms of cyber intrusion are creating challenges at credit unions of all sizes, and will require ongoing measures for containment. These trends are likely to continue, and even accelerate, over the next two years.

Lending trends: Increasing concentrations in member business loans and private student loans, in addition to other new types of lending by credit unions, emphasize the need for long-term risk diversification and effective risk management tools and practices, along with expertise to properly manage increasing concentrations of risk.

Financial Landscape and Technology: New financial products that mimic deposit and loan accounts, such as Apple Pay, Walmart pre-paid cards and peer-to-peer lending, continue to emerge. These new products pose a competitive challenge to credit unions and banks alike. Credit unions also face a range of challenges from financial technology (Fintech) companies in the areas of lending and the provision of other services. For example, underwriting and lending may be automated at a cost below levels associated with more traditional financial institutions, but may not be subject to the same regulations and safeguards that credit unions and other traditional financial institutions face. The emergence and increasing importance of digital currencies may pose both risks and opportunities for credit unions. As these institutions and products gain popularity, credit unions may have to be more active in marketing and rethink their business models.

Technological changes outside the financial sector may also lead to changes in consumer behavior that indirectly affect credit unions. For example, the increase in on-demand use of auto services and pay-as-you-go, on-demand vehicle rental could reduce purchases of consumer-owned vehicles. That could lead to a slowdown or reduction in the demand for vehicle loans, now slightly more than a third of the credit union system loan portfolio.

Membership trends: While overall credit union membership continues to grow, roughly half of federally insured credit unions had fewer members at the end of the second quarter of 2019 than a year earlier. Demographic and field of membership changes are likely to continue leading to declining membership at many credit unions. All credit unions need to consider whether their product mix is consistent with their members' needs and demographic profile.

Smaller credit unions' challenges and industry consolidation: Small credit unions face challenges to their long-term viability for a variety of reasons, including weak earnings, declining membership, high loan delinquencies, and elevated non-interest expenses. If current consolidation trends persist, there will be fewer credit unions in operation and those that remain will be considerably larger and more complex. As of June 30, 2019, there were 576 federally insured credit unions with assets of at least $500 million, 29 percent more than just five years earlier. These 576 credit unions accounted for 73 percent of credit union members and 79 percent of credit union assets. Large credit unions tend to offer more complex products, services and investments. Increasingly complex institutions will pose management challenges for the institutions themselves, as well as the NCUA; consolidation means the risks posed by individual institutions will become more significant to the Share Insurance Fund.

Enterprise Risk Management

The NCUA uses an Enterprise Risk Management (ERM) program to evaluate various factors arising from its operations and activities (both internal to the agency and external in the industry) that can impact the agency's performance relative to its mission, vision, and performance outcomes. Agency priority risks include both internal considerations such as the agency's control framework, information security posture, and external factors such as credit union diversification risk. All of these risks can materially impact the agency's ability to achieve its mission.

The NCUA's ERM Council provides oversight of the agency's enterprise risk management activities. Through the ERM program, established in 2015, the agency is identifying and managing risks that could affect the achievement of its strategic objectives. In 2018 and 2019, the NCUA developed and implemented processes for analyzing and responding to enterprise risks. The NCUA has conducted several risk response assessments for priority areas including credit union business diversification, credit union cybersecurity, agency controls, and information security. These assessments help inform the agency's activities, operations, and planning and budget processes. Overall, the NCUA's ERM program promotes effective awareness and management of risks, which, when combined with robust measurement and communication, are central to cost-effective decision-making and risk optimization within the agency.

The NCUA adopted its enterprise risk appetite statement in the *2018–2022 Strategic Plan,* which is:

> The NCUA is vigilant and has an overall judicious risk appetite. The NCUA's primary goal is to ensure the safety and soundness of the credit union system and the agency recognizes it is not desirable or practical to avoid all risk. Acceptance of some risk is often necessary to foster innovation and agility. This risk appetite will guide the

NCUA's actions to achieve its strategic objectives in support of providing, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit.

The agency's risk appetite helps align risks with opportunities when making decisions and allocating resources to achieve the agency's strategic goals and objectives. This enterprise risk appetite statement is part of the NCUA's overall management approach and is supported by detailed appetite statements for individual risk areas.

In practice, this means that the NCUA recognizes that risk is unavoidable and sometimes inherent in carrying out the agency's mandate. The NCUA is positioned to accept greater risks in some areas than in others; however, when consolidated, the risk appetite establishes boundaries for the entire agency and all of its programs. Collaboration across programs and functions is a fundamental part of ensuring the agency stays within its risk appetite boundaries, and the NCUA will identify, assess, prioritize, respond to and monitor risks to an acceptable level. This budget proposal for 2020–2021 incorporates several specific programmatic changes that resulted from the NCUA's enterprise risk management reviews, such as hiring new personnel focused on cybersecurity, acquiring data loss prevention and other network security tools, and strengthening analytical focus on emerging financial risks within the credit union system.

IV. Key Themes of the 2020–2021 Budget

Overview

The budget supports the priorities and goals outlined in the agency's annual performance plan and the *2018–2022 Strategic Plan.* The resources and new initiatives proposed in the budget support the NCUA's mission to maintain a safe and sound credit union system.

The 2020–2021 budget carries forward a number of key ongoing initiatives, which include: The Exam Flexibility Initiative; the increased use of off-site examinations work and data analytics; the modernization of information technology systems; regulatory reform initiatives; and efforts to implement organizational efficiencies. Over the course of the next five years, these efforts will result in a more effective organization.

In the 2020–2021 budget, the NCUA will increase staffing in critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues and continuing to modernize the examination program. The NCUA employees are the agency's most valuable resource for achieving its mission, and the agency is committed to a workplace and a workforce with integrity, accountability, transparency, inclusivity, and proficiency. We will continue investing in the workforce through training and development, helping employees develop the tools they need to do their work effectively.

Employment-related costs are the single largest driver of the NCUA budget; therefore, managing the size of the workforce is important from a budgetary standpoint. Increases to the agency's staffing levels in 2020 address gaps in the agency's workforce that must be filled in order to execute the agency's mission and foster an innovative, responsive and sound credit union system that meets the needs of all Americans. The NCUA continues to assess and balance its mission workload needs with the financial costs the agency imposes on the credit union system. Although the number of credit unions continues to decline nationwide, the NCUA must also consider the increasing complexity and growing asset base of the entire credit union system.

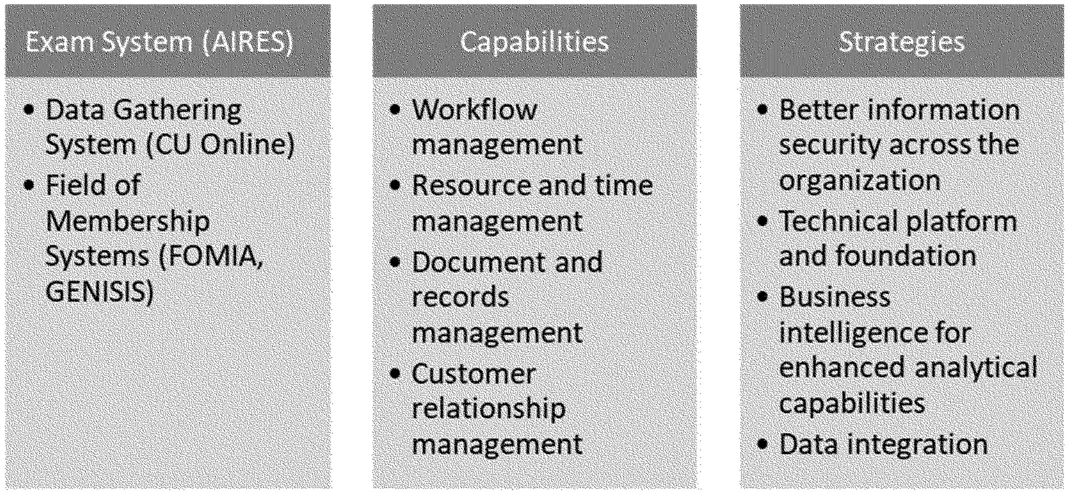
The efficiency and effectiveness of the agency's workforce is dependent upon the resiliency of the NCUA's information technology infrastructure and availability of technological applications. The NCUA is committed to implementing new technology responsibly and delivering secure, reliable and innovative technological solutions to support its mission. This necessitates investments funded in the Capital Budget and additional staff to provide the analytical tools and technology the workforce needs to achieve the NCUA mission.

Enterprise Solution Modernization

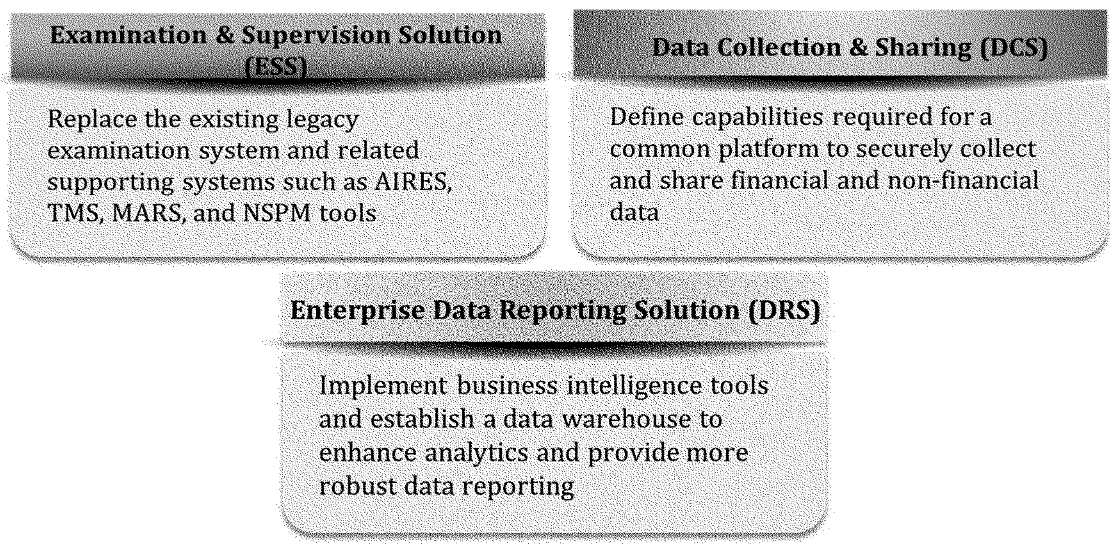
In 2015, the NCUA conducted an assessment of the information technology (IT) needs across the agency and developed a business case for replacing its antiquated legacy systems. This assessment recognized the full range of industry leading, cost-effective alternative strategies, services, and products for implementing the agency's next generation of IT information management, examination, supervisory, and data collection solutions.

At that time, the NCUA acknowledged a technology revamp of this magnitude as a high-risk endeavor, both in terms of cost and delivered functionality. The risk stems from the number of systems impacted and the unique nature of the NCUA's applications, many of which require a high degree of customization. However, the agency required a major modernization after many years of under-investment in software and application development.

In November 2015, the NCUA Board approved a plan for modernizing the agency's IT systems known as the Enterprise Solution Modernization (ESM) program. The ESM program recognizes the following legacy systems, capabilities and strategies need to be modernized:



To better manage the complexity of the ESM Program, the NCUA established three sub-programs to modernize the NCUA's technology solutions and create an integrated examination and data environment that facilitates a safe and sound credit union system:



Given the age of the NCUA's legacy examination systems and their importance to the mission of the agency, priority was given to the following parts of the modernization effort in the first phase of ESM development:

○ Better information security across the organization.

○ Technical platform and foundation for new applications.

○ AIRES replacement (Examination and Supervision Solution), including financial analytics.

○ Central user interface for stakeholders to interact with the NCUA.

○ Business Intelligence tools for enhanced analytical capabilities (added later to the initial phase as explained below).

To deploy the Examination and Supervision Solution, it was first necessary to stand up new agency infrastructure that supports the full modernization program: The technology architecture, infrastructure, and security posture required to operate modernized systems. The necessary infrastructure was acquired and put in place in 2019. The ESS program capabilities have been deployed in part in 2019 and will be rolled out nationwide in 2020. The new examination solution, which is named the Modern Examination and Risk Identification Tool (MERIT), was released to the Office of National Examinations and Supervision in September 2019, while the release to the remaining Regional staff is scheduled for the summer of 2020.

Though not originally included as part of the initial ESM plan, the agency has incorporated a robust business intelligence solution into the MERIT deployment, which advances the agency's analytic capabilities during this phase. The need for better analytics is central to the strategy to shift more exam work offsite.

In addition to better data analytics, MERIT provides numerous improvements over the legacy AIRES examination system, including:

○ Implementation of better controlled access to examination data across the organization.

○ Faster and well-organized ability to request and submit items for the examination.

○ Collaboration and real-time information for examiners, team members, and supervisors, including state supervisory authorities on joint exams.

○ Opportunities for credit union users to manage examination findings and view completed examination reports.

○ Business process improvements to achieve exam efficiencies, including less data redundancy and relational support between scope tasks, questionnaires, and findings.

Cost Estimates

The NCUA engaged an independent market research firm to estimate the cost of the initial ESM phases, including MERIT. Their research estimated a range in costs of $18.9 to $37.9 million.

From 2015 to 2019, the NCUA Board approved a total budget of $20.8 million for the MERIT program. This total included the modernized and more secure IT infrastructure, central user interface, and the first release of MERIT.

The total expected acquisition costs for this phase of ESM, including actual costs through 2019 and the budget for 2020, is $36.6 million. This will provide additional needed functionality in the second release of MERIT, including the loan and share download business intelligence integration.

The NCUA awarded the Examination and Supervision Solution agile development contract in 2018. For the first three-month discovery phase of the contract, the NCUA and the systems integrator worked diligently to translate the business process context and identify tool-based implications and functional gaps. After discovery concluded, the NCUA determined the full funding needed to meet developmental, organizational change management, and scheduling requirements. As discussed above, the funding total now includes the advanced business intelligence capabilities.

Through September 2019, the NCUA accomplished the following:

○ Established the ESM technical program infrastructure platform, including enhanced IT security.

○ Developed the central user interface known as NCUA Connect, achieving a secure, single entry point into NCUA applications.

○ Deployed the new MERIT examination tool to ONES to support examination and supervision of the largest credit unions.

○ Developed financial analytics with dashboards and visualizations designed to assist the examiner in identifying risk.

The project is on schedule to meet the following performance targets:

○ *2019:* Conduct ONES examinations and supervision contacts for all federal credit unions with assets greater than $10 billion and joint exams with state regulators in federally insured state-chartered credit unions with assets greater than $10 billion in Washington and North Carolina using the MERIT solution, which commenced on October 7, 2019.

○ *2020:* Deploy second release of MERIT for the majority of the NCUA staff, state supervisory authorities, and credit unions in the third quarter of 2020.

Cybersecurity Priorities

Cyber-attacks pose a threat to credit unions, financial regulators, and the broader financial system. Advances in technology and increased use of cyberspace for financial transactions means more opportunities for cybersecurity threats and other technology-related issues. As a result, cybersecurity is one of the top priorities of the NCUA Board. In June 2019, Chairman Rodney E. Hood appointed a special advisor for cybersecurity who not only will provide strategic counsel on cybersecurity policy but will also engage with other federal financial institution regulators and external stakeholders.

In 2018, the NCUA began implementing a new Automated Cybersecurity Examination Tool (ACET) maturity assessment for credit unions with assets greater than $1 billion. The focus of the ACET implementation was to baseline individual credit unions' cybersecurity maturity consistently while benchmarking the entirety of the sector. In 2019, the maturity assessments were conducted on credit unions with assets greater than $250 million; in 2020, the agency will conduct maturity assessments on credit unions with assets between $100 million and $250 million. The NCUA continues to evaluate the feasibility for conducting the maturity assessments on even smaller, less complex institutions.

Concurrently, the NCUA is developing a tailored examination program based on the Information Technology Risk Examination (InTREx) solution leveraged by the Federal Deposit Insurance Corporation, the Federal Reserve Board and state regulators to ensure a harmonized, repeatable, measurable and transparent process for examining the compliance, safety and soundness of the credit unions' information security programs.

The examination procedures will be maintained within the NCUA MERIT solution. The agency expects the results of both the maturity assessment and the examination program to help focus and prioritize cybersecurity for credit unions and make it an integral part of their risk-management strategies.

The NCUA will further build upon its cybersecurity capabilities and programs to continue helping credit unions and consumers protect themselves. Specifically, the 2020 budget allocates resources to the following cybersecurity-related activities:

○ Advancing consistency, transparency and accountability within the cybersecurity examination and supervision program;

○ Expanding cybersecurity analytics to better inform examination and supervision decisions;

○ Enhancing interoperability of the maturity assessment capability for broad credit union system distribution and full integration into the new examination system, MERIT;

○ Stimulating due diligence for supply chain and third-party service provider management within the credit union sub-sector;

○ Assisting institutions with resources to improve operational cybersecurity hygiene and resilience;

○ Performing skills assessments of credit union examiners and taking steps to build skill set of examination staff in accordance with the National Initiative of Cybersecurity Education (NICE) Framework;

○ Enhancing the professional expertise and knowledge management of

○ agency specialists on cybersecurity and emerging technical innovation in the delivery of financial services, cybersecurity trends and risk/threat; and

○ Expanding collaboration and coordination with relevant agencies towards a more harmonized examination and critical infrastructure protection capability.

These initiatives—focused on supervisory program development, training, industry analysis and exercises, combined with interagency coordination and industry outreach—will require additional personnel. The 2020 budget includes two new cybersecurity positions within the Office of Examination and Insurance to improve the agency's ability to be prepared for and respond to the broadening responsibilities tied to cybersecurity and critical infrastructure protection.

The NCUA also places strong emphasis on ensuring the security of the agency's systems and the controlled, unclassified information it collects. The NCUA's Office of the Chief Information Officer is continually taking steps to enhance the agency's information security posture and ensure the NCUA's systems and information are protected from compromise, including the work done as part of ESM. The 2020 budget allocates $500,000 to acquire and implement data loss prevention (DLP) as part of the Information Technology (IT) Infrastructure, Platform and Security Refresh Capital Initiative. DLP is a set of tools and processes used to ensure that sensitive data is not lost, misused, or accessed by unauthorized users.

Bank Secrecy Act Compliance

The NCUA continues to budget resources to comply with the statutory mandate from Congress to enforce federal credit union compliance with Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) laws and regulations. Technological advancements may expose even the smallest credit unions to potential illicit finance activities. The NCUA examines federal credit union compliance with BSA during every examination. Additionally, the NCUA assists state regulators by conducting BSA examinations in federally insured, state-chartered credit unions where state resources are limited.

In 2019, the NCUA's field staff began more in-depth reviews of credit unions' BSA and AML policies, procedures, and processes to assess compliance with new customer due diligence (31 CFR 1020.210(b)(5)) and beneficial ownership requirements (31 CFR 1010.230) which became effective May 11, 2018.

The NCUA's BSA reviews are risk-focused and include procedures to review an institution's compliance with the pillars of the BSA. These procedures are based on the examination procedures in the FFIEC BSA/AML Examination Manual the NCUA issues jointly with the other federal financial institution regulators. The NCUA's examiners tailor examinations based on the unique risk characteristics of each federal credit union. Additional or more in depth reviews are performed for those with higher risk activities; reviews at credit unions with lower risk activities are scaled appropriately.

The NCUA coordinates regularly with our counterparts at the other federal financial institution regulatory agencies, as well as the Financial Crimes Enforcement Network (FinCEN). The NCUA actively participates in the Bank Secrecy Act Advisory Group (BSAAG), the FFIEC BSA/AML Working Group and an interagency working group to improve effectiveness and streamline, where possible, regulations and supervisory processes. The NCUA also partners with the other federal financial institution regulators to issue joint BSA statements, including the *Joint Statement on Risk-Focused BSA/AML Supervision,* dated July 22, 2019. Interagency groups are currently updating the *Interagency Statement on Enforcement of BSA/AML Requirements,* originally issued in 2007, and the *FFIEC BSA/AML Examination Manual,* last revised in 2014. The NCUA intends to continue collaborating with our regulatory counterparts, including FinCEN.

In 2019, the NCUA issued Regulatory Alert 19–RA–02, *Serving Hemp Businesses,* to update federally insured credit unions about changes in federal law and regulation related to hemp. Specifically, the guidance clarifies that credit unions may provide the customary range of financial services for business accounts, including loans, to lawfully operating hemp related businesses within their fields of membership, and provides information to help credit unions better understand what they should consider providing financial services to lawfully operating hemp businesses.

Stakeholder Engagement

In 2020, the agency is allocating resources for engagement summits with stakeholders. These events will include credit union officials, staff, and volunteers in order to discuss many of the priorities the agency has funded through this budget process. Topics of interest at these summits may include financial inclusion, minority depository institutions, cybersecurity or risk and risk mitigation strategies in the current environment. The NCUA Board is committed to understanding how these priority areas impact credit unions and engaging in a thoughtful dialogue to determine whether there are additional actions the NCUA should and shouldn't take to ensure credit unions are best prepared to serve their members while doing so in a safe and sound manner.

Examination Initiatives

The NCUA is focused on several additional examination modernization efforts as outlined in the August 2018 Letter to Credit Unions: 18–CU–01—''Examination Modernization Initiatives.'' This letter outlined five initiatives to modernize the agency's examinations processes, including the ESM program outlined above. Intended benefits of these initiatives include:

○ More efficient and less burdensome examinations and supervision

○ More consistent and accurate supervisory determinations

○ Enhanced coordination with State Supervisory Authorities

○ More secure, reliable, and flexible technology to support future expansion capabilities

These modernization initiatives are interrelated and complement each other. As these initiatives support and build upon each other, they will ultimately result in a fully modernized examination and supervision program with various incremental improvements along the way. The budget allocates resources in support of these improvements. Below is a more in-depth discussion of four of the initiatives. The fifth initiative, the ESM program, is discussed in detail above.

ONES Data-Driven Supervision

This initiative began in 2018 as an effort to move to a continuous supervision model for the large, natural-person credit unions supervised by the ONES. This ongoing supervision program will use data-driven analytics to monitor and identify credit union risk while supporting the oversight of credit union-driven stress testing. The NCUA's ONES travel costs are projected to decrease by 10 percent as a result of implementing this program and the transition to the NCUA's in-house oversight of credit union run stress-testing will allow the NCUSIF to avoid $3 million in costs in 2020. The data-driven supervision initiative may lead to analytical advancements that can be adapted for supervising some or all other insured credit unions.

Shared NCUA-State Regulator Federally Insured, State-Chartered Credit Unions Program

In 2017, the NCUA created the Joint NCUA-State Supervisor Working Group (working group), which is tasked with improving coordination and scheduling for joint exams, providing scheduling flexibility, and reducing redundancy where possible. The group's goal is to minimize the burden on federally insured, state-chartered credit unions resulting from having a separate financial regulator and insurer.

In addition, the working group is evaluating the appropriateness and feasibility of adopting an alternating-year examination approach for federally insured, state-chartered credit unions. A pilot program launched January 2019 and will allow the NCUA, state regulators, and stakeholders to evaluate the benefits and challenges of an alternate-year examination program. The pilot will last approximately three years in order to collect enough information to evaluate one full alternating-year exam cycle. The results of the pilot will provide valuable insight into the advantages and risks of such an approach prior to finalizing a decision about a permanent alternating-year exam cycle.

To support joint examinations in federally insured, state-chartered credit unions, the working group developed a new template framework for improved coordination and cooperation between the NCUA regions and the respective state regulators. The working group is also exploring ways to minimize duplication and overlap through examination and procedure improvements and greater use of technology. In addition, the working group is evaluating other areas of potential duplication that can be reduced or eliminated, such as loan participations, Credit Union Service Organizations (CUSOs) and third party vendor reviews, and other supervisory matters. The goal of these reviews is to better leverage the work of each regulatory party in examining and supervising federally insured, state-chartered credit unions.

Virtual Examination Program

In 2017, the NCUA Board approved the project and associated resources to research methods to conduct offsite as many aspects of the examination and supervision processes as possible. The virtual exam project team is researching ways to harness new and emerging data, advancements in analytical techniques, innovative technology, and improvements in supervisory approaches. When approving the 2019 budget, the NCUA Board approved using past years' unspent balances to complete the research and discovery phase for virtualizing key elements of the examination; this work will continue through 2020.

By identifying and adopting alternative methods to remotely analyze much of the financial and operational condition of a credit union, with equivalent or improved effectiveness relative to current examinations, it may be possible to significantly reduce the frequency and scope of onsite examinations. Onsite examination activities could potentially be limited to periodic data quality and governance reviews, interventions for material problems, and meetings or other examination activities that need to be handled in person.

The virtual exam should lead to greater use of standardized interaction protocols, advanced analytical capabilities, and more-informed subject matter experts. This should result in more consistent and accurate supervisory determinations, provide greater clarity and consistency with respect to how the agency conducts supervisory oversight, and reduce coordination challenges between agency and credit union staff.

To be successful, it is likely examination staff will need to analyze more information about the credit union being examined and communicate more frequently with management at the credit union. However, it is not the agency's intent to intervene in credit unions' day-to-day operations or strategic planning.

The virtual examination team will deliver to the NCUA Board by the end of 2020 a report discussing alternative methods identified to remotely analyze aspects of the financial and operational condition of a credit union.

Offsite Examination Procedures

Starting in 2016, the NCUA's Southern Region piloted a flexible exam program—commonly called FLEX. The pilot program ran through 2018 and evaluated conducting certain existing exam procedures offsite. The pilot assessed examiners working remotely on elements of examinations of well-run credit unions with the technology and platforms to provide electronic data securely.

In 2019, the NCUA adopted the best practices from the FLEX pilot nationally. Now known as offsite examination procedures, the NCUA updated its National Supervision Policy Manual to indicate the agency's support for providing staff with the flexibility to conduct examination work offsite when appropriate conditions are met. The NCUA continues to develop plans to increase agency use of offsite procedures.

Regulatory Reform

The NCUA established a Regulatory Reform Task Force (Task Force) in March 2017 to oversee implementation of the agency's regulatory reform agenda. This is consistent with the spirit of Executive Order 13777 and the Trump administration's regulatory reform agenda. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the agency chose to review all of the NCUA's regulations, consistent with the spirit of initiative and the public benefit of periodic regulatory review. The NCUA has undertaken a series of regulatory changes as part of this effort, and continues to pursue a regulatory reform agenda, including matters such as advertising, field of membership, equity distribution, and securitization. The Task Force published its final report in December 2018.

Reorganization/Restructuring

In July 2017, the NCUA's executive leadership committed to a comprehensive plan that would invest in the agency's future, make critical organizational alignment changes, and improve the NCUA's efficiency, effectiveness, and focus on its core mission responsibilities. The agency has completed the operational actions related to its reform plan.

As a result of the NCUA's reform plan:

- ○ The NCUA created an office focused exclusively on credit union service needs including new charters, credit union expansion, and training—the Credit Union Resources and Expansion (CURE) Office.
- ○ Examination reports have been improved through enhanced quality measures.
- ○ Two regional offices closed in January 2019 and leased office space has been reduced.
- ○ AMAC's staffing has been reduced, and support functions are now better aligned with the central office.

The NCUA continues to examine how to best balance meeting workforce and technology needs while containing operating costs.

V. Operating Budget

Overview

The NCUA Operating Budget is the annual resource plan for the NCUA to conduct activities prescribed by the Federal Credit Union Act of 1934. These activities include: (1) Chartering new federal credit unions; (2) approving field of membership applications of federal credit unions; (3) promulgating regulations and providing guidance; (4) performing regulatory compliance and safety and soundness examinations; (5) implementing and administering enforcement actions, such as prohibition orders, orders to cease and desist, orders of conservatorship and orders of liquidation; and (6) administering the National Credit Union Share Insurance Fund.

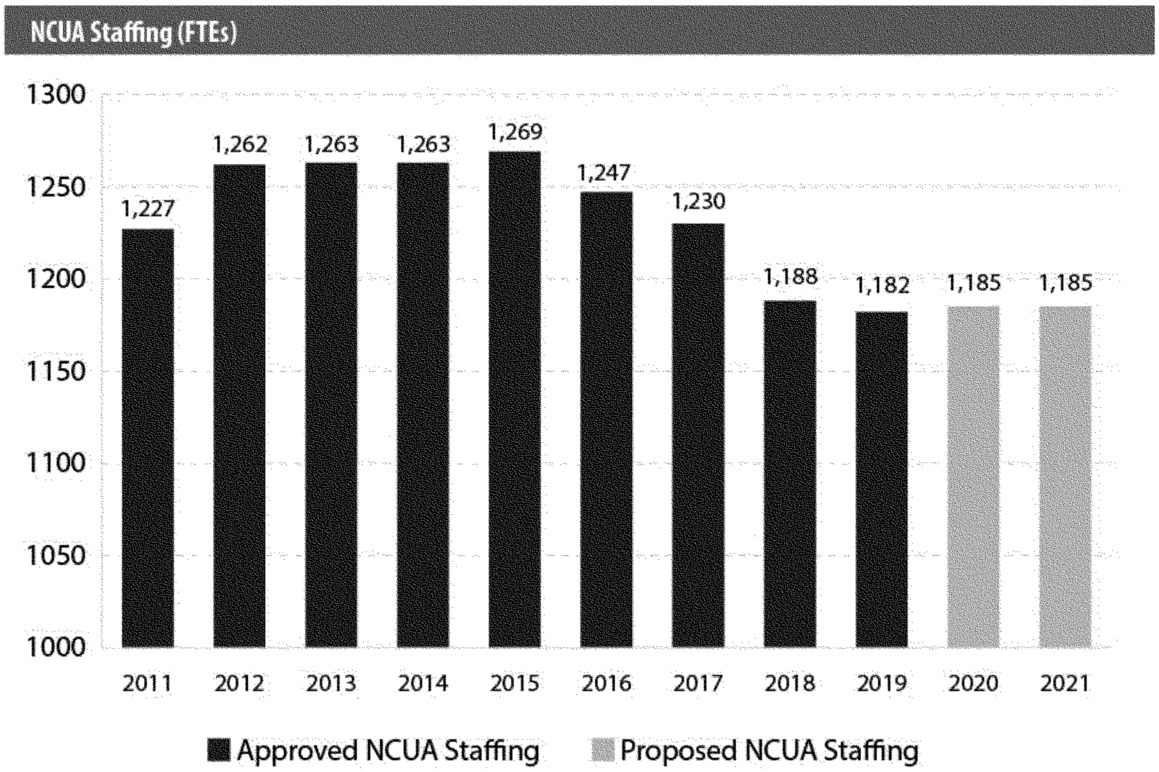
Staffing

The staffing levels proposed for 2020 reflect the resource requirements for steady state operations at the NCUA as it continues to modernize the examination process to enhance the efficiency and effectiveness of the supervisory process. Two new information systems officers in the Office of Examinations and Insurance will support expanded responsibilities for cybersecurity and critical infrastructure protection. A third position will be created in the

Chairman's office to support the NCUA through strategic outreach and engagement with stakeholders in the credit union system, including credit union management, associations and leagues, and journalists who cover the industry.

During the July 2019 mid-session review, the NCUA Board approved four additional staff to support the agency's growing engagement with the Administration, Congress, industry stakeholders, and the general public. The newly authorized positions for the Office of External Affairs and Communications include a Deputy Director, a Communications Specialist, a Technical Writer and Editor, and a Program Analyst for External Affairs. The full cost of these positions are included in the 2020 budget.

The 2020 budget supports a total agency staffing level of 1,185 personnel, of which 1,180 are funded in the Operating Budget. This is a net increase of three positions, or 0.25 percent, compared to the Board-approved level for 2019, as modified at the July 2019 Board meeting. The new 2020 positions are described in greater detail below.



Authorized Regional Examiners and Specialists	2013	2014	2015	2016	2017	2018	2019
Credit Union Examiner	600	566	571	541	517	472	471
Regional Capital Market Specialist	12	18	24	24	25	24	25
Regional Information System Officer	7	8	13	17	18	18	20
Problem Case Officer	41	46	37	31	31	32	32
Regional Lending Specialist	21	28	27	31	30	30	30
Director of Special Actions	7	10	9	10	10	10	10
Supervisory CU Examiner	71	73	68	67	64	50	50
Other Regional Staff	117	120	116	117	115	117	118
TOTAL	**876**	**869**	**865**	**838**	**810**	**753**	**756**

In addition to the staff assigned to regional offices, most of the staff in ONES are remote field staff who also travel to credit unions as part of their examination responsibilities.

Request for New Staff in 2020

Information Systems Officers (+2 New Positions)

These new employees, requested in the Office of Examination and Insurance, will be responsible for expanded cybersecurity responsibilities that include: Management of interagency activities, development of industry policy related to information security, and improvement of credit union cybersecurity resilience. The goal of these positions is to increase institutional knowledge of cybersecurity best practices within the credit union system and broaden skills within the NCUA to ensure a consistent and professional approach during credit union supervision.

Senior Adviser to the Chairman for Communications and Engagement (+1 New Position)

This new employee will support the NCUA through strategic outreach and engagement with stakeholders in the credit union system, including credit union management, associations and leagues, and journalists who cover the industry. This employee will also assist the NCUA Board by keeping members up to date about challenges and changes within the system.

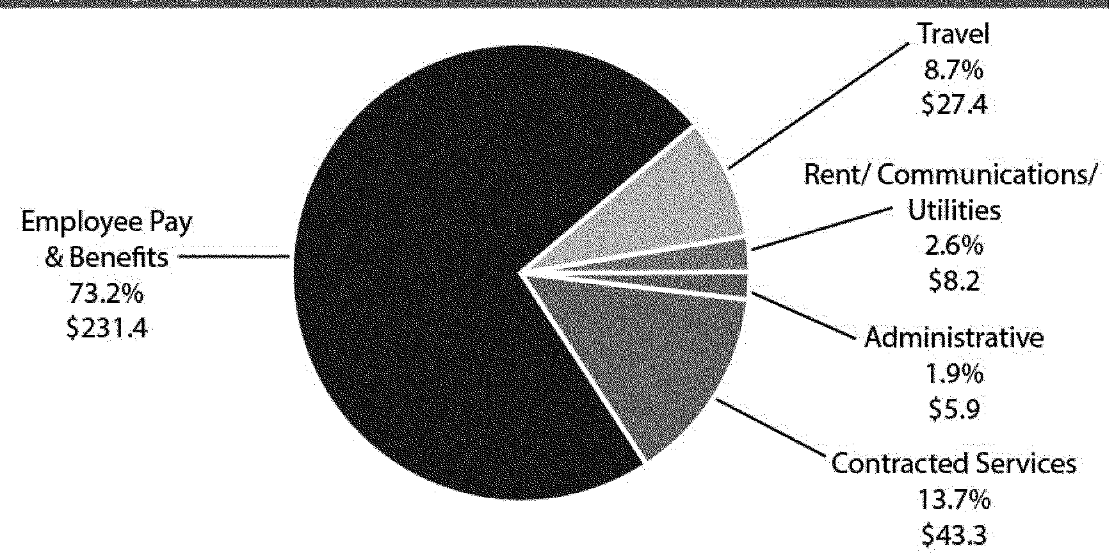
Budget Category Descriptions and Major Changes

There are five major expenditure categories in the NCUA budget. This section explains how these expenditures support the NCUA's operations, and presents a transparent and comprehensive accounting of the Operating Budget.

2020–2021 NCUA OPERATING BUDGET SUMMARY

Budget Cost Category	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
Employee compensation	222,827,000	231,365,000	8,538,000	3.8%	237,754,000	6,389,000	2.8%
Salaries	159,686,000	162,566,000	2,880,000	1.8%	167,257,000	4,691,000	2.9%
Benefits	63,141,000	68,799,000	5,658,000	9.0%	70,497,000	1,698,000	2.5%
Travel	26,774,000	27,364,000	590,000	2.2%	26,694,000	(670,000)	-2.4%
Rent/Comm/Utilities	8,044,000	8,232,000	188,000	2.3%	8,012,000	(220,000)	-2.7%
Administrative	8,672,000	5,907,000	(2,765,000)	-31.9%	6,157,000	250,000	4.2%
Contracted Services	38,081,000	43,345,000	5,264,000	13.8%	47,356,000	4,011,000	9.3%
Total	**$ 304,398,000**	**$ 316,213,000**	**11,815,000**	**3.9%**	**$ 325,973,000**	**9,760,000**	**3.1%**

2020 Operating Budget (in Millions of Dollars)



note: minor rounding differences may occur in totals

Salaries and Benefits

The budget includes $231.4 million for employee salaries and benefits in 2020. This change is an $8.5 million, or 3.8 percent, increase from the 2019 Board-approved budget.

Salaries and benefits costs make up 73.2 percent of the total budget. There are two primary drivers of increased costs in 2020 for the Salaries and Benefits category:

- Merit and locality pay increases for the NCUA's 1,180 personnel paid from the Operating Budget, in accordance with the agency's current Collective Bargaining Agreement (CBA) and its merit-based pay system. Salaries are estimated to increase 1.8 percent in aggregate compared to 2019. This growth is lower than prior years due to new employee starting salaries being set at the lower end of pay ranges when turnover occurs and because of some staff reaching the salary caps for their pay grades.
- Contributions for employee retirement to the Federal Employee

Retirement System (FERS), which are unilaterally set by the Office of Personnel Management, and which cannot be negotiated or changed by the NCUA. Driven by the mandatory rate adjustment, the 2020 benefits costs increase 9.0 percent compared to 2019.

These changes are described in more detail below.

In 2020, the NCUA's compensation levels will continue to ''maintain comparability with other federal bank regulatory agencies,'' as required by the Federal Credit Union Act.[9] The Salaries and Benefits category of the budget includes all employee pay raises for 2020, such as merit and locality increases, and those for promotions, reassignments, and other changes, as described below.

Consistent with other federal pay systems, the NCUA's compensation includes base pay and locality pay components. The NCUA staff will be eligible to receive an average merit-based increase of 3.0 percent, and an additional locality adjustment ranging from −1.0 percent to +3.0 percent, depending on the geographic location. The average increase in locality pay is estimated to be 1.52 percent. Starting in 2018, the NCUA discontinued the annual, general pay scale increase of 1.25 percent in accordance with the most-recent CBA negotiations.

The first-year cost of the new positions added in 2020 is estimated to be $0.9 million. Specific increases to individual offices' salaries and benefits budgets will vary based on current pay levels, position changes, and promotions.

Personnel compensation at the NCUA varies among every office and region depending on work experience, skills, years of service, supervisory or non-supervisory responsibilities, and geographic locations. In general, more than 85 percent of the NCUA workforce has earned a bachelor's degree or higher, compared to approximately 35 percent of the private-sector workforce. This high level of educational achievement ensures the NCUA workforce is able to fulfill its mission effectively and efficiently, and attracting a well-qualified workforce requires the agency to pay employees competitive salaries.

Individual employee compensation varies, depending on the cost of living in the location where the employee is stationed. The federal government sets locality pay standards, which are managed by the President's Pay Agent—a council established to make recommendations on federal pay. The council uses data from the Occupational Employment Statistics program, collected by the Bureau of Labor Statistics, to compare salaries in over 30 metropolitan areas, and establishes recommendations for equitable adjustments to employee salaries to account for cost-of-living differences between localities.

The OPM economic assumptions for actuarial valuation of the FERS have increased significantly for 2020. All federal agencies are expected to contribute 16.0 percent of FERS employees' salaries to the OPM retirement system, an increase of 230 basis points compared to the 2019 level. This mandatary contribution is prescribed in the OPM Benefits Administration Letter dated June 2019. The estimated impact on the NCUA budget is an increase of approximately $5.0 million in mandatory payments to OPM, or 1.6 percentage points of budgetary growth, compared to 2019 levels.

The average health insurance costs for the Federal Employees Health Benefits program for 2020 are consistent with historical actual expenses. The employee salary and benefits category also includes costs associated with other mandatory employer contributions such as Social Security, Medicare, transportation subsidies, unemployment, and workers' compensation.

The 2020 budget estimate for pay and benefits includes the assumption of a 2.2 percent vacancy rate (roughly 26 full-time positions) during the year. This aligns with the NCUA's recent attrition rates and workforce management efforts to carefully review every vacancy created in the agency in 2020 before a hiring notice is published. The effect of this adjustment lowers the NCUA budget estimate and results in reduced fees collected from credit unions.

The 2021 budget request for salaries and benefits is estimated at $237.8 million, a $6.4 million increase from the 2020 level, which accounts for merit and locality increases consistent with the CBA (approximately $4.1 million), the full-year cost impact of new positions (approximately $0.6 million), and associated increases in benefits for all employees (approximately $1.7 million). The assumptions used for compensation-related adjustments are based on the CBA currently in force. The NCUA CBA will be renegotiated during 2020, with any changes reflected in future budget cycles.

Travel

The 2020 budget includes $27.4 million for Travel. This change is a $590,000, or 2.2 percent, increase to the 2019 Board-approved budget. Travel comprises approximately nine percent of the overall 2020 budget. The cumulative reduction of the credit union examiner positions compared to past years, extended examination cycles, and increased use of offsite examinations all help contain the NCUA's travel costs. However, the General Services Administration (GSA) announced an increase to standard lodging rates to $96 dollars in 2020, an increase of four dollars, or four percent compared to 2019, which contributes to the growth of estimated travel expenses in 2020. In addition, effective with 2019, GSA will charge the NCUA fees for the city pair program that provides discounted and flexible air passenger transportation services to federal government travelers. Although the NCUA has always participated in the mandatory program, prior year fee payments were not applied to the NCUA. The annual cost of $20,000 to GSA for all the NCUA employee travel fees may increase depending on future travel schedules.

The Travel cost category includes expenses for employees' airfare, lodging, meals, auto rentals, reimbursements for privately owned vehicle usage, and other travel-related expenses. These are necessary expenses for examiners' onsite work in credit unions. Close to two-thirds of the NCUA's workforce is comprised of field staff who spend a significant part of their year traveling to conduct the examination and supervision program.

The NCUA staff also travel for routine and specialized training. In 2020, the NCUA will conduct a series of training events to support the nationwide roll-out of MERIT. The NCUA's planning staff conducted extensive research to identify low-cost locations for these events. The roll-out will be a labor intensive effort requiring up to six weeks of travel for many of the NCUA's staff, and will provide hands-on training for this new system, which will be officially deployed in the fourth quarter of 2020. The estimated travel costs for MERIT-related training funded in the 2020 Operating Budget is $1.0 million.

The NCUA plans to evaluate future cost avoidance for travel through continued expansion of offsite examination work. In addition, agency personnel will continue to utilize more virtual training options, where appropriate, to help minimize travel expenses. The 2021 budget request for

[9] The Federal Credit Union Act states that, ''In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other [F]ederal bank regulatory agencies.'' *See* 12 U.S.C. 1766(j)(2).

the travel is estimated to be $26.7 million, less than 2020 because of the exclusion of one-time MERIT training costs.

Rent, Communications, and Utilities

The 2020 budget includes $8.2 million for Rent, Communications, and Utilities. This is an $188,000 increase, or 2.3 percent more than the 2019 Board-approved budget. The Rent, Communications, and Utilities category is the smallest component of the NCUA's budget and funds the agency's telecommunications and information technology network expenses, and facility rental costs.

The agency telecommunications budget for 2020 is $4.5 million and accounts for most of the increase in this budget category. The telecommunication charges include leased lines, domestic and international voice (including mobile), and other network charges. Telecommunication costs include the circuits and any associated usage fees for providing voice or data telecommunications service between data centers, office locations, the internet and any customer, supplier or partner. The increased costs support trusted internet protocol services due to higher data consumption and use of cloud-based services.

Office building leases, meeting rentals, office utilities, and postage expenses are also included in this budget category. Facility costs total $2.1 million for 2020 and include the NCUA's annual payment of $1.3 million to the Share Insurance Fund for its central office note, which is scheduled to be fully repaid in 2023. The annual utility costs for the central office and regional offices are estimated at $483,000.

The 2020 budget also includes $1.1 million for event rental costs for examiner meetings and other training events. This includes the one-time costs of $220,000 for space rental for the MERIT training events planned in 2020.

The 2021 budget request for the Rent, Communications, and Utilities category is estimated to be $8.0 million, less than 2020 because of the exclusion of one-time MERIT training costs.

Administrative Expenses

The 2020 budget includes $5.9 million for Administrative Expenses. This is a decrease of $2.8 million, or 31.9 percent, compared to the 2019 Board-approved budget. Recurring costs in the Administrative Expenses category include the annual reimbursement to the Federal Financial Institutions Examination Council (FFIEC), employee relocation expenses, recruitment and advertising, shipping, printing, subscriptions, examiner training and meeting supplies, office furniture, and employee supplies and materials.

Most of the decrease in the Administrative Expenses budget results from realigning the costs of various service contracts, maintenance fees, and end-user licensing for computer software and database management applications to the Contracted Services budget. Approximately $3.8 million, unchanged from 2019, will be permanently included in Contract Services, which is consistent with standard government reporting for software costs. This includes annual software licenses and maintenance support fees for the call center managed by the Office of Consumer Financial Protection.

As part of the FFIEC, the NCUA shares in costs for joint actions and services that affect the financial services industry. The overall decrease is $78,000 less than the 2019 budget levels since the state examiner training costs will be reduced next year.

The 2020 budget includes $100,000 for employee relocation expenses, although expected relocation expenses are estimated to be more. The budget proposes using $900,000 of unspent balances from prior years to pay for these additional costs, for a total relocation budget of $1,000,000. This spending level reflects recent average annual expenditures for employee relocations and is a $250,000 increase over the 2019 Board-approved budget. Relocation costs are paid by the NCUA to employees who are competitively selected for a promotion or new job within the agency in a different geographic area than where they live. Employee relocations have increased in quantity and cost per employee in recent years, especially in 2019. The larger number of employee relocations is partly the result of additional hiring and partly from the effects of the 2018 NCUA reorganization. The increase in relocation costs is also related to changes in the 2017 tax law that now treats all relocation reimbursements as taxable income. Like other government agencies and private sector employees, the NCUA must now reimburse employees not just for their relocation expenses, but also for the personal tax liability resulting from those payments.

Continuous business process improvements and financial controls have decreased costs for printing, and other administrative costs, which are estimated to be $112,000 less than in 2019.

The 2021 budget request for the Administrative Services category is expected to increase by $250,000, or 4.2 percent, due to increases in the employee relocation budget.

Contracted Services

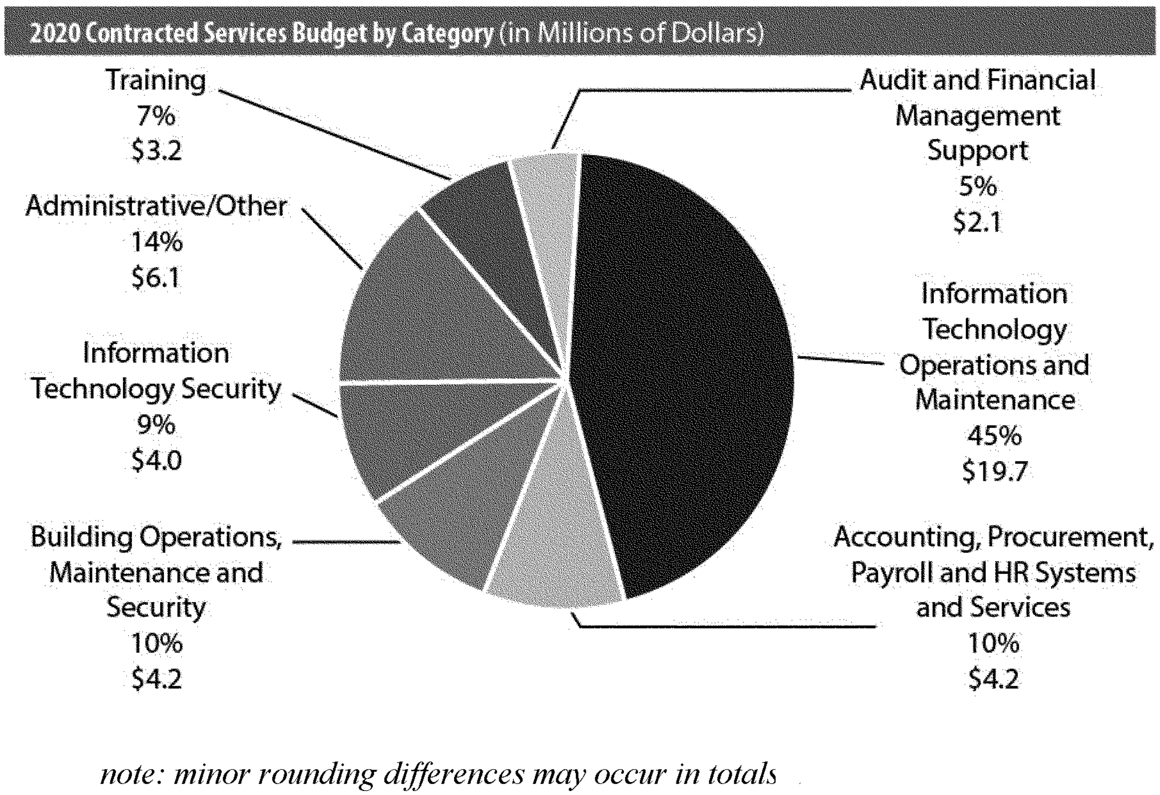
The 2020 budget includes $43.3 million for Contracted Services. This is a $5.3 million, or 13.8 percent, increase compared to the 2019 Board-approved budget. The Contracted Services budget category includes costs incurred when products and services are acquired in the commercial marketplace. Acquiring specific expertise or services from contract providers is often the most cost-effective approach to fulfill the NCUA's mission. Such services include critical mission support such as information technology equipment and software development, accounting and auditing services, and specialized subject matter expertise that enable staff to focus on core mission execution.

The majority of funding in the Contracted Services category is related to the NCUA's priority to implement a robust supervision framework by identifying and resolving traditional risk concerns such as interest rate risk, credit risk, and industry concentration risk, as well as by addressing new and evolving operational risks such as cybersecurity threats. Growth in the contracted services budget category results primarily from new operations and maintenance costs associated with ongoing capital investments, such as replacements for the AIRES and CU Online. Other costs include core agency business operation systems such as accounting and payroll processing, and various recurring costs, as described in the seven major categories, below:

- Information Technology Operations and Maintenance (45 percent of contracted services)
  - —IT network support services and help desk support
  - —Contractor program and web support and network and equipment maintenance services
  - —Administration of software products such as Microsoft Office, Share Point and audio visual services
- Administrative Support and Other Services (14 percent of contracted services)
  - —Examination and Supervision program support
  - —Technical support for examination and cybersecurity training programs
  - —Equipment maintenance services
  - —Legal services and other expert consulting support
  - —Other administrative mission support services for the NCUA central office

- Accounting, Procurement, Payroll and Human Resources Systems (10 percent of contracted services)
  —Accounting and procurement systems and support
  —Human resources, payroll, and employee services
  —Equal employment opportunity and diversity programs
- Building Operations, Maintenance, and Security (10 percent of contracted services)
  —Central office facility operations and maintenance
  —Building security and continuity programs
  —Personnel security and administrative programs
- Information Technology Security (9 percent of contracted services)
  —Enhanced secure data storage and operations
  —Information security programs
  —Security system assessment services
- Training (7 percent of contracted services)
  —Examiner staff, technical and specialized training and development
  —Senior executive and mission support staff professional development
- Audit and Financial Management Support (5 percent of contracted services)
  —Annual audit support services
  —Material loss reviews
  —Investigation support services
  —Financial management support services

The following pie chart illustrates the breakout of the seven categories for the total 2020 contracted services budget of $43.3 million.



Major programs within the contracted services category include:

- *Training requirements for the examiner workforce.* The NCUA's most important resource is its highly educated, experienced, and skilled workforce. It is important that staff have the proper knowledge, skills, and abilities to perform assigned duties and meet emerging needs. Each year, Credit Union Examiners attend several levels of training, including in core areas such as capital markets, consumer compliance, and specialized lending. The training deliverables for 2020 include the MERIT training sessions discussed elsewhere in this document, classes offered by the Federal Financial Institutions Examination Council, new examiner classes, and subject matter expert training sessions for the NCUA examiners.

Starting in 2020, the NCUA is reducing its financial support for training for state examiners. Budgets for state examiner training at the FFIEC have been reduced by approximately 50 percent.

Contracted service providers, in partnership with the NCUA subject matter experts, will develop and design subject matter expert training classes for examiners and conduct a triennial review of several modules of the NCUA's core course curriculum. Additionally, contracted service providers and central office staff will continue conducting organizational development and teambuilding training to help support new team operations as a result of the Agency reorganization.

- *The NCUA's information security program* supports ongoing efforts to strengthen cybersecurity and ensure compliance with the Federal Information System Management Act.
- *Agency financial management services, human resources technology support, and payroll services.* The NCUA contracts for these back-office support services with the U.S. Department of Transportation's Enterprise Service Center (DOT/ESC) and the General Services Administration. The NCUA's human resource system, HR Links, also adopted by other federal agencies, is a shared solution that automates routine human

resource tasks and improves time and attendance functionality.

- *Audit.* The NCUA Office of Inspector General contracts with an accounting firm to conduct the annual audit of the agency's four permanent funds. The results of these audits are posted annually on the NCUA website and also included as part of the agency's Annual Report.

A significant share of the budget for the Contracted Services category finances on-going infrastructure support for the agency. For example, the NCUA relies on recurring contracted services to maintain a number of the agency's examination systems that will replace legacy systems such as AIRES and CU Online. In future budgets, annual Operation and Maintenance costs for the MERIT system will be included in the Contract Services spending category. Several of the NCUA's core information technology systems and processes also require additional contract support in 2020, which result in increased budgets in the Contracted Services category, as described below.

Within the budget for the Office of Chief Information Officer, an additional $0.7 million is required primarily for the operations and maintenance costs of capital projects delivered in 2019 and 2020, and for other information technology hardware critical to ensure business continuity.

Within the budget for the Office of Chief Financial Officer, the annual fee paid to the Department of Transportation (DOT) for the NCUA's financial management system is roughly the same as the 2019 level of $1.2 million.

Within the budget for the Office of Continuity and Security Management, the Central Office building's physical access controls will be replaced in 2020, which is expected to cost approximately $600,000. In addition, mandatory reimbursement to the Office of Personnel Management for background investigations will increase by an estimated $125,000 in 2020.

The 2021 budget for Contracted Services is estimated to increase by $4,000,000, or 9.3 percent, compared to 2020, largely due to the operations and maintenance costs resulting from the delivery of capital projects funded in prior years.

VI. Capital Budget

Overview

Annually, the NCUA uses a rigorous investment review process to identify the agency's needs for information technology (IT), facility improvements and repairs, and other multi-year capital investments. The NCUA staff review the agency's inventory of owned facilities, equipment, information technology systems, and information technology hardware to determine what requires repair, major renovation, or replacement. The staff then make recommendations for prioritized investments to the Executive Director and the NCUA Board.

Routine repairs and lifecycle-driven property renovations are necessary to properly maintain investments in the NCUA's central office building in Alexandria, Virginia and the agency's owned office building in Austin, Texas. The NCUA facility manager assesses the agency's properties to determine the need for essential repairs, replacement of building systems that have reached the end of their engineered lives, or renovations required to support changes in the agency's organizational structure or to address revisions to building standards and codes.

IT systems and hardware are another significant capital expenditure for modern organizations. The 2019 budget allowed the NCUA to deliver and deploy a number of cybersecurity and governance tools, and the first iteration of ESM with several projects included, such as the first release of MERIT in 2019. The 2020 budget maintains the investment in current and replacement IT systems.

The budget fully supports the NCUA's effort to modernize its IT infrastructure and applications, including the full rollout of MERIT, the NCUA's Examination and Supervision Solution (ESS) project, which will replace the legacy Automated Integrated Regulatory Examination System (AIRES) system. Other IT investments include ongoing enhancements and upgrades to enhance decades-old legacy systems, network servers, incident and vulnerability management systems to enhance the agency's cybersecurity posture, and various hardware investments to refresh agency networks and ensure staff have the tools necessary to maintain and increase their productivity.

The NCUA's 2020 capital budget is $25.1 million. The capital budget funds the NCUA's long-term investments. The Information Technology Prioritization Council recommended $20.9 million for IT software development projects and $2.7 million in other IT investments for 2020. The NCUA facilities require $1.5 million in capital investments. Detailed descriptions of all 2020 capital projects, including a discussion of how each project helps the agency achieve its strategic goals and objectives, are provided in Appendix B.

Summary of Capital Projects

Examination and Supervision Solution and Infrastructure Hosting ($15.8 Million)

The purpose of the Examination and Supervision Solution and Infrastructure Hosting (ESS&IH) project is to implement a new, flexible, technical foundation to enable current and future NCUA business process modernization initiatives, and replace the NCUA's legacy exam system, AIRES, with a new customized Commercial-Off-The-Shelf (COTS) solution. In 2020, all NCUA examiners will be trained to use the new MERIT system, with full implementation expected by the fourth quarter.

Enterprise Central Data Repository ($1.1 Million)

The Enterprise Central Data Repository (ECDR) project will implement a central data repository that will serve as the data integration point for ESS, ONES's analytic tools, the NCUA's legacy applications and the Data Collection Solution (DCS). The ECDR will become an enterprise solution for the NCUA allowing the agency to transition in a phased approach from the existing legacy databases to a cloud-based data repository serving the agency's needs.

Enterprise Data Program ($0.45 Million)

The purpose of this project is the centralization, organization and storage of the NCUA data. The primary goal is to enable the NCUA to manage enterprise data as a strategic asset through its full lifecycle (create/collect, manage/move, consume, dispose). The Enterprise Data Program (EDP) will also facilitate the centralization and organization of the NCUA's data with an authoritative source so analysis is more accurate, simple and easily distributed across the agency.

Asset and Liabilities Management Application ($2.1 Million)

The purpose of the Asset and Liabilities Management (ALM) application is for the NCUA to build internal analytical capabilities to run supervisory stress testing in house and to conduct regular quantitative risk assessments by procuring and configuring off-the-shelf analytical tools, models and software used commonly in stress testing and other risk management activities.

This effort delivers a complete solution that will focus on modernizing the NCUA's supervision tools and approaches, identifying material risks facing the covered credit unions, and tailoring resources to the material risks and risk focused exams. This effort will allow the NCUA to reduce the existing third party contractor's role to only consultation.

Enterprise Learning Management System Replacement ($1.0 Million)

The purpose of the Enterprise Learning Management System (LMS) Replacement project is to conduct market research, initiate an acquisition, create a project management plan, and execute the production and implementation of a cost-effective, cloud-based solution and training services that provides the NCUA with the full-range of eLearning functionality associated with a modern LMS. This will allow for enhanced examiner utilization and accessibility driven by quality content, ease of use and system reliability, role-based interface, ability to view personalized pages by role, centralized content and, adherence to federally mandated reporting requirements and records management requirements.

Integrated Financial Management System Analysis ($0.4 Million)

The purpose of this project is to analyze financial system improvements. The NCUA's current financial management system service provider increased the fee it charges the NCUA in 2019 by 40 percent. The NCUA plans to review various options to obtain better financial management results in a cost-effective manner.

Enterprise Laptop Lease ($0.65 Million)

The purpose of the Enterprise Laptop Refresh project is to provide the NCUA with a more efficient, mobile friendly, and secure tool to help employees better perform their jobs at a reasonable cost.

Information Technology Infrastructure, Platform and Security Refresh ($2.0 Million)

The purpose of the Information Technology (IT) Infrastructure, Platform and Security Refresh project is to refresh and/or replace routers, switches virtual servers, wireless, virtual private network, infrastructure appliances, end of life and end of service components in order to ensure that the NCUA data is secure and operations are stable.

NCUA Website Development ($0.1 Million)

The purpose of the Web Services project is to serve the web-related needs of the internal NCUA stakeholders and the public. The project provides design, development, and maintenance of the agency's public websites: *NCUA.gov* and *MyCreditUnion.gov.*

Central Office Renovations ($0.5 Million)

NCUA headquarters renovation project will improve overall space utilization in the NCUA-owned Central Office. The goal of the project is to improve operational efficiency while decreasing operating cost by discontinuing commercial office leases and consolidating all Washington-region operations within one owned building. The project will increase the NCUA headquarters building capacity and some offices currently on separate floors will be collocated onto one floor, increasing operational efficiency.

Central Office Heating, Ventilation, and Air Conditioning (HVAC) System Replacement ($0.75 Million)

The NCUA central office HVAC system replacement project will recapitalize the HVAC system in the agency's central office building, including all cooling towers, air handlers, boilers and HVAC components. The current HVAC system is original to the facility, 24 years old and obsolete. The current system is at the end of its usable life and it is not working efficiently.

Austin, Texas Office Building Modernization ($0.27 million)

In 2020, the NCUA will continue its multi-year improvement project at the Austin, Texas office building. These capital improvements are required for the facility to continue routine and safe operations, and align with the lifecycle replacement required for critical infrastructure.

VII. Share Insurance Fund Administrative Budget

Overview

The Share Insurance Fund Administrative budget funds direct costs associated with authorized Share Insurance Fund activities. The direct charges to the Share Insurance Fund include costs associated with the NCUA Guaranteed Note (NGN) program and administrative costs, and represent total estimated costs to the Share Insurance Fund.[10] The Share Insurance Fund Administrative budget funds five positions that were formerly part of the Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund) budget.

The cost of the NGN program and the Corporate System Resolution Program, including costs associated with the administration of those programs, are funded from the Share Insurance Fund Administrative budget. These costs have no impact on the NCUA's current and future Operating Fund budgets. The budget for the Share Insurance Fund also includes funding for expenditures previously authorized as direct expenses of the Share Insurance Fund for items such as state examiner computer leases, training and financial audit support.

The 2020 Share Insurance Fund Administrative budget is estimated to be $6.5 million, $1.9 million, or 23 percent, less than 2019. The budget decrease is primarily driven by the removal of third-party stress testing on large credit unions and the decrease in costs for valuation services for the NGN program. These services enable the NCUA to continue supporting the NGN program, which includes managing legacy assets within the NGN trusts. Legacy assets consist of over 1,000 investment securities that are secured by residential mortgages and other assets.

The 2021 requested budget supports similar workload and resources, increasing $482,000, or 7.5 percent, compared to the 2020 funding level.

Budget Category Descriptions and Major Changes

Salaries and Benefits

The employee pay and benefits expense category for the Share Insurance Fund Administrative budget is estimated to be $1.47 million, which represents an increase of $232,000 compared to 2019. This increase is due to aligning the budget to actual payroll costs for staff on board, as well as an increase to mandatory agency contribution rates to the FERS retirement program. Personnel compensation is 23 percent of the total budget. The financial analysts on the NGN team have specialized technical expertise to manage the remaining $6 billion of legacy assets. Personnel costs are estimated in a manner similar to the operating budget.

Travel

The estimated travel cost of $52,000 is less than one percent of the overall 2019 budget and remains the same as the 2020 budget estimate. These costs cover all of the travel expenses for the five staff that manage and support the NGN

[10] Note these direct costs are exclusive of any costs that are shared with the Operating Fund through the Overhead Transfer Rate, and with payments available upon requisition by the Board, without fiscal year limitation, for insurance under section 1787 of this title, and for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions as it may determine to be proper.

program. Two of the five staff are remote employees and are expected to travel periodically to the NCUA's central office.

Administrative Training

Training expenses, which represent less than one percent of the budget, are estimated to be remain at $27,000, based on projections of employee professional development plans and specialized training requirements.

Support for the NGN Program (Contract Support)

Contract costs to support the NGN program, which represent 42 percent of the budget, are estimated to be $2.7 million, a decrease of $0.2 million from the 2019 level. Funding is needed to fulfill Corporate System Resolution Program requirements and includes outside professional services such as external valuation experts, financial specialists, and accountants.

These experts assist the NCUA with the following services:

Consulting Services in the amount of $1.0 million support two NCUA offices: Examination and Insurance and the Chief Financial Officer. Services include quarterly management reviews of asset valuations, as well as analyses of emerging issues. Contractors also provide support for the annual financial audit process and improvements in internal controls. Tasks include: Supporting complex accounting and financial requirements for settlements, sale of legacy assets, parity payments, changing valuation model assumptions, and other asset disposition activities. Additionally, professional services are used to assist with accounting, tax, financial reporting, and systems support for the corporate Asset Management Estates.

Valuation Services in the amount of $0.9 million funds valuation support for the NGN legacy assets. As supported by the NGN Oversight Committee, resources are also needed to conduct special analyses, including valuations for determining reasonable market prices for securities to be sold by auction.

Software and Data Subscription Services in the amount of $0.8 million supports technical tools used to provide waterfall models, calculations, and metrics for the structured investment products underlying the NGN portfolio. The service provides coverage of all relevant asset classes, waterfall models that are seasoned and tested throughout the industry, and a broad array of calculations and metrics. Financial data analytics play a critical role in the surveillance, modeling, and pricing of the legacy assets that securitize the NGN Trusts, as well as supporting the management reviews that the NCUA performs on the cash flow projections. Now that some of the NGNs have begun maturing, the NCUA has added data subscription services to provide additional valuation as well as support for the legacy asset disposition process.

Other annual subscriptions provide important services related to surveillance of the portfolio of corporate bonds and mortgage-related bonds. Independent credit research services include fundamental capital structure research, credit analyses for surveillance of corporate bond portfolio and monoline insurer exposure, and direct access to various industry experts for discussion on specific credits.

Other Direct Expenses

Other direct expenses of the Share Insurance Fund are estimated to be $2.2 million in 2020, a decrease of $1.9 million, or 47 percent, compared to the 2019 budget level. NCUA is required to conduct annual stress testing of certain large credit unions to ensure the credit unions remain financially sound through challenging economic cycles. In previous years the NCUA engaged BlackRock Solutions as its partner to challenge the stress test results prepared by the covered credit unions. Over a multi-year endeavor, the NCUA has procured the personnel, data, and systems to conduct this analysis internally. Accordingly, the NCUA has determined it will not engage BlackRock Solutions for the 2020 stress test cycle and has removed this cost from the budget. Had BlackRock been engaged for the 2020 cycle, the agency would have incurred $3 million in costs.

The $0.7 million increase in the estimated costs for state examiner training is driven by the MERIT travel and training requirement.

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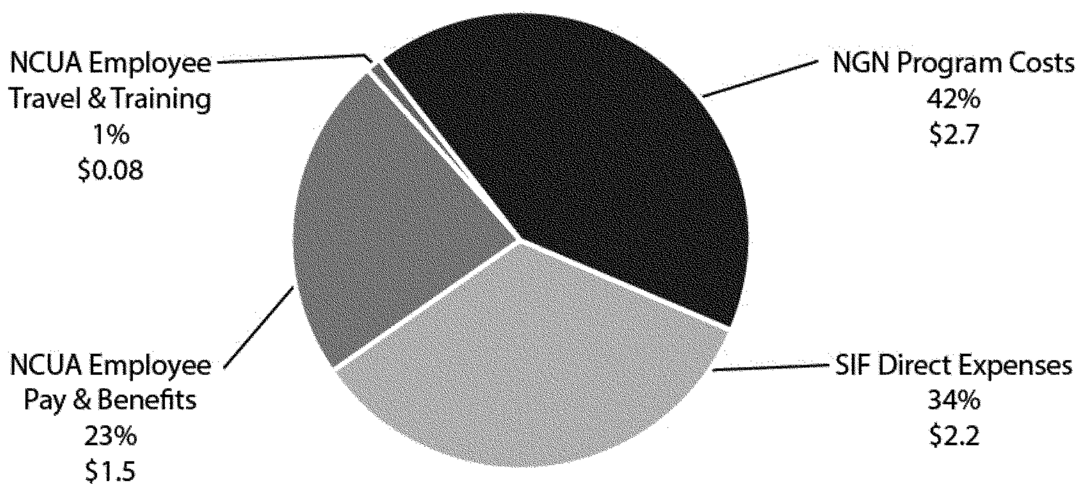
2020–2021 SHARE INSURANCE FUND ADMINISTRATIVE BUDGET

By Cost Category	2019 Board Approved Budget	2020 Requested Budget	2021 Requested Budget	Change (2019–20)	Change Percent (2019–20)	2019 FTE	2020 FTE
Employee Pay and Benefits	**1,238,000**	**1,470,000**	**1,514,000**	**232,000**	**18.7%**	5	5
Travel	**52,000**	**52,000**	**52,000**	**-**	**0.0%**		
Administrative (NGN Staff Training)	**27,000**	**27,000**	**27,000**	**-**	**0.0%**		
Support for NCUA Guaranteed Note Program:	**2,907,000**	**2,689,000**	**2,689,000**	**(218,000)**	**-7.5%**		
Consulting	1,015,000	1,015,000	1,015,000	-	0.0%		
Valuation Services	1,100,000	875,000	875,000	(225,000)	-20.5%		
Software/Data Subscriptions	792,000	799,000	799,000	7,000	0.9%		
Share Insurance Fund Direct Expenses:	**4,147,000**	**2,212,000**	**1,879,508**	**(1,935,000)**	**-46.7%**		
State Examination computer leases	175,000	62,000	500,000	(113,000)	-64.6%		
State Examiner Training	992,000	1,670,000	899,508	678,000	68.3%		
Stress testing for large credit unions	2,500,000	-	-	(2,500,000)	-100.0%		
Financial Audit Support	450,000	450,000	450,000	-	0.0%		
Bank Charges	30,000	30,000	30,000	-	0.0%		
Total	**$ 8,371,000**	**$ 6,450,000**	**$ 6,161,508**	**$ (1,921,000)**	**-22.9%**	**5**	**5**

2020 Share Insurance Fund Administrative Budget (in Millions of Dollars)



note: minor rounding differences may occur in totals

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The NCUA website has a dedicated section that provides financial reports for the Share Insurance Fund,[11] and a separate page that explains the NCUA Guaranteed Notes Program and provides comprehensive reporting and analysis on the legacy assets.[12]

VIII. Financing the NCUA Programs

Overview

As part of the annual budgetary process, the NCUA remains mindful that its operating funding comes directly from federal and state chartered credit unions. The agency strives to ensure that any allocation of these funds follows a thorough review of the necessity of the expenditures and whether programs are operating in an efficient, effective, transparent, and fully accountable manner.

To achieve its statutory mission, the NCUA incurs various expenses, including those involved in examining

[11] See: *https://www.ncua.gov/services/Pages/share-insurance/reports.aspx.*

[12] See: *https://www.ncua.gov/regulation-supervision/Pages/guaranteed-notes.aspx.*

and supervising federally insured credit unions. The NCUA Board adopts an Operating Budget, including the Capital Budget, in the fall of each year to fund the vast majority of the costs of operating the agency.[13] The Federal Credit Union Act authorizes two primary sources to fund the Operating Budget:

(1) Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper''; [14] and

(2) ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].'' [15] Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions].''

Taken together, these dual authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating expenses.

In 1972, the Government Accountability Office recommended the NCUA adopt a method for properly allocating Operating Budget costs—that is, the portion of the NCUA's budget funded by requisitions from the Share Insurance Fund and the portion covered by Operating Fees paid by federal credit unions.[16] The NCUA has since used an allocation methodology, known as the Overhead Transfer Rate (OTR), to determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

To allocate agency expenses between these two primary funding sources, the NCUA uses the OTR methodology. The OTR is the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II. Almost all other operating expenses are collected through annual Operating Fees paid by federal credit unions.[17]

Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for the NCUA's Operating Budget and, hence, the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.[18] Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.[19] The NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the OTR.

Overhead Transfer Rate (OTR)

The NCUA Board approved the current methodology for calculating the OTR at its November 2017 open meeting.[20] The OTR is designed to cover the NCUA's costs of examining and supervising the risk to the Share Insurance Fund posed by all federally insured credit unions, as well as the costs of administering the fund. The OTR represents the percentage of the agency's operating budget paid for by a transfer from the Share Insurance Fund. Federally insured credit unions are not billed for, and do not have to remit, the OTR amount; instead, it is transferred directly to the Operating Fund from the Share Insurance Fund. This transfer, therefore, represents a cost to all federally insured credit unions.

The OTR formula is based on the following underlying principles to allocate agency operating costs:

1. Time spent examining and supervising federal credit unions is allocated as 50 percent insurance related.[21]

2. All time and costs the NCUA spends supervising or evaluating the risks posed by federally insured, state-chartered credit unions or other entities that the NCUA does not charter or regulate (for example, third-party vendors and CUSOs) are allocated as 100 percent insurance related.[22]

3. Time and costs related to the NCUA's role as charterer and enforcer of consumer protection and other non-insurance based laws governing the operation of credit unions (like field of membership requirements) are allocated as 0 percent insurance related.[23]

4. Time and costs related to the NCUA's role in administering federal share insurance and the Share Insurance Fund are allocated as 100 percent insurance related.[24]

These four principles are applied to the activities and costs of the agency, which results in the portion of the agency's Operating Budget that is transferred from the Share Insurance Fund. Based on the Board–approved methodology, the OTR for 2020 is modestly higher than 2019, and estimated to be 61.3 percent. Thus, 61.3 percent of the total Operating Budget is estimated to be paid out of the Share Insurance Fund. The remaining 38.7 percent of the Operating Budget is estimated to be paid for through the Operating Fee. The explicit and implicit distribution of total Operating Budget costs for federal credit unions and federally insured, state-chartered credit unions is as follows:

[13] Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.

[14] 12 U.S.C. 1783(a).

[15] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget have included interest income, funds from publication sales, parking fee income, and rental income.

[16] *http://www.gao.gov/assets/210/203181.pdf.*

[17] Annual Operating Fees must ''be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [FCUs] to pay the fee.'' 12 U.S.C. 1755(b).

[18] 12 U.S.C. 1783(a).

[19] The Act in 12 U.S.C. 1755(a) states, ''[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'' See also 12 U.S.C. 1766(j)(3).

[20] 82 FR 55644 (Nov. 22, 2017).

[21] The 50 percent allocation mathematically emulates an examination and supervision program design where the NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate units within the NCUA. It reflects an equal sharing of supervisory responsibilities between the NCUA's dual roles as charterer/prudential regulator and insurer given both roles have a vested interest in the safety and soundness of federal credit unions. It is consistent with the alternating examinations the FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress. Further, it reflects that the NCUA is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator.

[22] The NCUA does not charter state-chartered credit unions nor serve as their prudential regulator. The NCUA's role with respect to federally insured state-chartered credit unions is as insurer. Therefore, all examination and supervision work and other agency costs attributable to insured state-chartered credit unions is allocated as 100 percent insurance related.

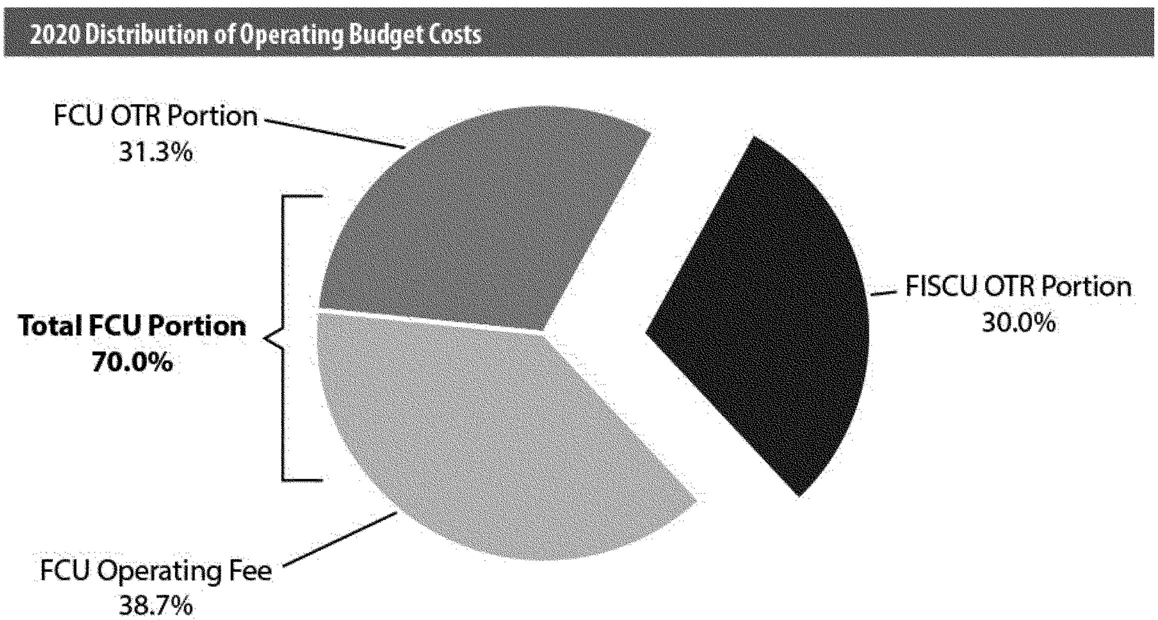
[23] As the federal agency with the responsibility to charter federal credit unions and enforce non-insurance related laws governing how credit unions operate in the marketplace, the NCUA resources allocated to these functions are properly assigned to its role as charterer/prudential regulator.

[24] The NCUA conducts liquidations of credit unions, insured share payouts, and other resolution activities in its role as insurer. Also, activities related to share insurance, such as answering consumer inquiries about insurance coverage, are a function of the NCUA's role as insurer.

Est. share of the operating budget covered by:	Federal credit unions (percent)	Federally insured, state-chartered credit unions (percent)
Federal Credit Union Operating Fee	38.7	0.0
OTR × Percent of Insured Shares	31.3 (61.3 × 51.1)	30.0 (61.3 × 48.9)
Total	70.0	30.0

In terms of accounting for funds transferred from the Share Insurance Fund to the Operating Fund, the OTR is applied to actual expenses incurred each month. Therefore, the rate calculated by the OTR formula is multiplied by each month's actual operating expenses and charged to the Share Insurance Fund. Because of this monthly reconciliation to actual operating expenditures, when the NCUA's expenditures are less than budgeted, the amount charged to the Share Insurance Fund is also less—and those lower expenditures benefit both federally chartered and state charted credit unions.

The following chart illustrates the share of the Operating Budget paid by federal credit unions (FCUs, 70.0%) and federally insured, state-chartered credit unions (FISCUs, 30.0%).



Operating Fee

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the Operating Fees, and to set the fee schedule as calculated per the approved methodology outlined in this section. There is no change to the underlying approved Operating Fee methodology for 2020; the change in the assessments for 2020 are due to changes in the OTR rate and to indexing the fee schedule for projected asset growth.

For 2020, based on the OTR methodology discussed above, the resulting share of the budget that is funded from the Operating Fee is $144.8 million. This equates to 0.0181 percent of the estimated federal credit union assets for December 2019. The overall increase for the operating fee is 1.2 percent over 2019.

The Operating Fee will be assessed to federal credit unions based on estimated year-end assets. Credit unions with assets less than $1 million will not be assessed an Operating Fee. To set the assessment scale for 2020, federal credit union asset growth will be projected through December 31, 2019. Based on the June 30, 2019, Call Report data, annual growth is projected to be 5.6 percent at year end. The asset level dividing points will be increased by this same projected growth rate. Assets are indexed annually to preserve the same relative relationship of the scale to applicable asset base.

To establish the rate applicable to each asset level, the factors outlined in the table below result in an average Operating Fee rate increase of 1.2 percent for natural person federal credit unions. The corporate federal credit union rate scale remains unchanged from prior years.

To illustrate the rate impact for federal credit unions with assets under $1.5 billion, the fee increases from $269.4 per million dollars of assets, to $272.7 per one million dollars of assets. This is an increase of $3.3 per million dollars of assets, or 1.2 percent.

Federal credit union assets between $1.5 billion and $4.8 billion would be assessed at a rate of $79.48 per million, and assets above $4.8 billion would be assessed at $26.54 per million. As noted above, these tiers were indexed to the 5.6 percent projected asset growth, and the rates are increased by 1.2 percent.

The following tables illustrate the methodology and calculations used to develop the Operating Fee.

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2020 OPERATING FEE REQUIREMENTS AND OPERATING FEE METHODOLOGY

Operating Fee Schedule explanation:

	Natural Person Federal Credit Union Operating Fee Calculation Factors and Explanation	Calculation Formula	2020
1	**Proposed Annual Operating Fund Budget** amount determines the baseline fee requirement.		**$ 316.213**
2	**Remove King Street Station Note from Calculation,** because the Share Insurance Fund cannot fund this expense since the building loan is from the Share Insurance Fund.	Subtract amount of KSS note payment	$ (1.340)
3	**Operating Fund Budget to apply OTR (61.3%)**	Sum lines 1–2	$ 314.873
4	**Overhead Transfer Rate** determines the amount of the budget to be reimbursed by the Share Insurance Fund, pursuant to the Board-approved methodology. This amount is subtracted from the proposed budget amount.	OTR% x line 3	**$ (193.017)**
5	**Interest Income** projected for the year is estimated based on the latest financial statements, and is subtracted from the budget.		$ (2.250)
6	**Miscellaneous** (publication and FOIA fees) is estimated based on the latest financial statements, and is subtracted from the budget.		$ (1.000)
7	**Net** Adjustment to Budget	Sum lines 3–6	**$ 118.606**
8	Reduction of any **Operating Fund** adjustment	*reduce cash collections*	$ -
Removed non-cash items of depreciation and accrued annual leave previously adjusted since these non-cash line items are now excluded as part of the budget.			
9	**New investment projects requested in Capital Budget**	*increase cash collections*	$ 25.075
10	**Annual payment of King Street Station Note Payable** (scheduled principal payments)		$ 1.340
11	**Budgeted Operating Fee/Capital Requirements**	Sum lines 7–10	**$ 145.021**
12	Corporate federal credit union fees are collected and subtracted from natural person credit union fee requirement (based on corporate credit union scale)		$ (0.200)
13	**Natural Person Federal Credit Union Operating Fees Required**	Sum lines 11–12	**$ 144.821**
14	**Estimated Fee collections** for end of year (December 31). This projection uses the current operating fee scale with estimated asset growth from an internal NCUA economic forecasting model . Based on the June 30 assets, the year end assets are projected using the estimated asset growth to calculate fee collection estimates for the following year. The operating fee assessment is applied against the year end credit union asset value.		$ (143.072)
15	Difference between estimated operating fee collections and projected collections based on estimated asset growth.	Difference between lines 13 and 14	**$ 1.749**
16	**Average Rate Adjustment Indicated** (line 15 divided by line 14)	Line 15 divided by 14	**1.21%**

B: Operating Fee Scale explanation:

Projected federal credit union asset growth = change in asset level dividing points. Every year, the asset level scale is adjusted by the same percentage as the estimated growth rate.	Percent growth noted on line 14
Operating fee rate change = Change in assessment rate percentage	same as Line 16
The Corporate Credit Union scale remains unchanged from year to year as the number of CCUs and the collections continue to decrease to an immaterial amount.	

PROPOSED 2020 OPERATING FEE SCALE

2019 Natural Person Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$0	to	$1,000,000	$0.00				
$1,000,000	to	$1,514,387,940	$0.00	+	0.00026940	X total assets over	$0.00
$1,514,387,940	to	$4,582,515,156	$407,976	+	0.00007852	X total assets over	$1,514,387,940
$4,582,515,156	and	over	$648,885	+	0.00002622	X total assets over	$4,582,515,156

2020 (Proposed) Natural Person Federal Credit Union Scale

Projected FCU asset growth rate	5.6%	Change in asset level dividing points
Operating fee rate change	1.2%	Change in assessment rate percentages

Asset Level			Operating Fee Assessment				
$0	to	$1,000,000	$0.00				
$1,000,000	to	$1,599,193,665	$0.00	+	0.00027269	X total assets over	$0.00
$1,599,193,665	to	$4,839,136,005	$436,084	+	0.00007948	X total assets over	$1,599,193,665
$4,839,136,005	and	over	$693,595	+	0.00002654	X total assets over	$4,839,136,005

FY2020 (Proposed) Corporate Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$50,000,000	to	$100,000,000	$11,047	+	0.00019870	X total assets over	$50,000,000
$100,000,000	and	over	$20,982	+	0.00001230	X total assets over	$100,000,000

IX. Appendix A: Supplemental Budget Information

2020 Budget by Strategic Goal

Strategic Goal	2020 Proposed Budget	
	Dollars (in Millions)	Full-Time Equivalents*
Goal 1: Ensure a safe and sound credit union system	$227.9	929.6
Goal 2: Provide a regulatory framework that is transparent, efficient, and improves consumer access	$32.9	115.3
Goal 3: Maximize organizational performance to enable mission success	$83.0	130.2
Office of Inspector General	$3.9	10.0
Total	$347.8	1,185.0

Expenses for the Offices of the Board, Executive Director, Inspector General, External Affairs and Communications, and Chief Financial Officer are allocated across all strategic goals.

*NCUA's 2020 positions are funded by three different sources: the Central Liquidity Facility funds 3 full-time equivalents, and the Share Insurance Fund funds 5 full-time equivalents. NCUA's Operating Fund funds the remaining 1,177 full-time equivalents.

note: minor rounding differences may occur in totals.

Office Budget Summary

2020–2021 NCUA OPERATING BUDGET

Office	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change		2021 Requested Budget	2020–2021 Change		Authorized Positions		
								2019**	2020	2021
Eastern Region	59,006,000	59,230,000	224,000	0.4%	60,570,000	1,340,000	2.3%	285	285	285
Southern Region	45,356,000	47,084,000	1,728,000	3.8%	48,126,000	1,042,000	2.2%	233	233	233
Western Region	49,363,000	50,911,000	1,548,000	3.1%	52,000,000	1,089,000	2.1%	237	237	237
Office of National Examinations and Supervision	12,700,000	12,877,000	177,000	1.4%	13,158,000	281,000	2.2%	45	45	45
Supervision and Examination	**166,425,000**	**170,102,000**	**3,677,000**	**2.2%**	**173,854,000**	**3,752,000**	**2.2%**	**800**	**800**	**800**
Office of the Board	2,742,000	3,068,000	326,000	11.9%	3,123,000	55,000	1.8%	11	12	12
Office of the Executive Director	1,931,000	2,044,000	113,000	5.9%	2,089,000	45,000	2.2%	6	6	6
Federal Financial Institutions Examination Council	1,390,000	1,314,000	(76,000)	-5.5%	1,314,000	-	0.0%			
Office of Business Innovations	2,975,000	3,325,000	350,000	11.8%	3,406,000	81,000	2.4%	12	12	12
Office of Continuity and Security Management	4,271,000	5,080,000	809,000	18.9%	5,154,000	74,000	1.5%	12	12	12
Office of Minority and Women Inclusion	3,478,000	3,503,000	25,000	0.7%	3,556,000	53,000	1.5%	10	10	10
Office of the Chief Economist	2,282,000	2,357,000	75,000	3.3%	2,413,000	56,000	2.4%	8	8	8
Office of Consumer Financial Protection	5,252,000	5,526,000	274,000	5.2%	5,658,000	132,000	2.4%	24	24	24
Office of the Chief Financial Officer	20,485,000	20,981,000	496,000	2.4%	21,271,000	290,000	1.4%	54	54	54
King Street Station Note	1,340,000	1,340,000	-	0.0%	1,340,000	-	0.0%			
Cross-cutting agency expenses	(1,420,000)	(2,348,000)	(928,000)	65.4%	(1,582,000)	766,000	-32.6%			
Office of the Chief Information Officer	37,829,000	39,271,000	1,442,000	3.8%	43,555,000	4,284,000	10.9%	44	44	44
Credit Union Resources and Expansion	8,459,000	8,795,000	336,000	4.0%	9,000,000	205,000	2.3%	36	36	36
Office of Examination & Insurance*	13,611,000	15,615,000	2,004,000	14.7%	15,924,000	309,000	2.0%	54	56	56
Office of General Counsel	11,973,000	12,380,000	407,000	3.4%	12,639,000	259,000	2.1%	47	47	47
Office of Inspector General	3,776,000	3,907,000	131,000	3.5%	3,975,000	68,000	1.7%	10	10	10
Office of Human Resources	15,757,000	17,304,000	1,547,000	9.8%	16,500,000	(804,000)	-4.6%	43	43	43
Office of External Affairs and Communication	1,842,000	2,649,000	807,000	43.8%	2,784,000	135,000	5.1%	11	11	11
Mission Support	**137,973,000**	**146,111,000**	**8,138,000**	**5.9%**	**152,119,000**	**6,008,000**	**4.1%**	**382**	**385**	**385**
Total*	**$ 304,398,000**	**$ 316,213,000**	**$ 11,815,000**	**3.9%**	**$ 325,973,000**	**$ 9,760,000**	**3.1%**	**1,182**	**1,185**	**1,185**

*Budget includes 8 FTEs related to other NCUA funds; 3 FTEs are paid-for by the Central Liquidity Facility, and 5 FTEs are paid-for by the Share Insurance Fund.
**2019 Budget adjusted with mid-season approval of 4 FTEs that support the office of External Affairs and Communications. The overall number of FTEs increased from 1,178 to 1,182. Other internal office FTE reallocation adjustments for the Eastern and Southern regions and the Chief Financial Officer did not affect the bottom line of 1,182 authorized FTEs.

Board Budgets

OFFICE OF THE CHAIRMAN: 2020–2021 BUDGET SUMMARY	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**3.0**	**4.0**	**1.0**	**33.3%**	**4.0**	**-**	**-**
Employee Compensation	713,780	953,556	239,776	33.6%	972,546	18,990	2.0%
Salaries	529,408	698,308	168,900	31.9%	713,361	15,053	2.2%
Benefits	184,372	255,248	70,876	38.4%	259,185	3,936	1.5%
Travel	60,000	60,000	-	0.0%	60,000	-	0.0%
Rent /Comm/Util	250	250	-	0.0%	250	-	0.0%
Administrative	10,000	10,000	-	0.0%	10,000	-	0.0%
Contracted Services	27,000	27,000	-	0.0%	27,000	-	0.0%
Total	**$ 811,030**	**$ 1,050,806**	**$ 239,776**	**29.6%**	**$ 1,069,796**	**$ 18,990**	**1.8%**

BOARD MEMBER McWatters: 2020–2021 BUDGET SUMMARY	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**3.0**	**3.0**	**-**	**0.0%**	**3.0**	**-**	**-**
Employee Compensation	670,559	734,311	63,752	9.5%	747,224	12,913	1.8%
Salaries	494,397	534,043	39,646	8.0%	544,279	10,236	1.9%
Benefits	176,162	200,268	24,106	13.7%	202,945	2,677	1.3%
Travel	40,000	40,000	-	0.0%	40,000	-	0.0%
Rent /Comm/Util	500	500	-	0.0%	500	-	0.0%
Administrative	9,000	9,000	-	0.0%	9,000	-	0.0%
Contracted Services	28,000	8,000	(20,000)	-71.4%	8,000	-	0.0%
Total	**$ 748,059**	**$ 791,811**	**$ 43,752**	**5.8%**	**$ 804,724**	**$ 12,913**	**1.6%**

BOARD MEMBER Harper: 2020–2021 BUDGET SUMMARY	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**3.0**	**3.0**	**-**	**-**	**3.0**	**-**	**-**
Employee Compensation	670,559	688,079	17,520	2.6%	699,693	11,614	1.7%
Salaries	494,397	497,395	2,998	0.6%	506,601	9,206	1.9%
Benefits	176,162	190,685	14,523	8.2%	193,092	2,407	1.3%
Travel	40,000	50,000	10,000	25.0%	50,000	-	0.0%
Rent /Comm/Util	500	500	-	0.0%	500	-	0.0%
Administrative	9,000	9,000	-	0.0%	9,000	-	0.0%
Contracted Services	28,000	18,000	(10,000)	-35.7%	18,000	-	0.0%
Total	**$ 748,059**	**$ 765,579**	**$ 17,520**	**2.3%**	**$ 777,193**	**$ 11,614**	**1.5%**

note: minor rounding differences may occur in totals.

Office Budgets

EASTERN REGION: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**285.0**	**285.0**	**0.00**	**0.0%**	**285.0**	-	-
Employee Compensation	51,030,573	52,021,801	991,228	1.9%	53,362,425	1,340,624	2.6%
Salaries	36,576,732	36,570,573	(6,159)	0.0%	37,613,193	1,042,620	2.9%
Benefits	14,453,841	15,451,228	997,387	6.9%	15,749,232	298,003	1.9%
Travel	6,800,000	6,654,236	(145,764)	-2.1%	6,654,236	-	0.0%
Rent /Comm/Util	726,163	148,300	(577,863)	-79.6%	148,300	-	0.0%
Administrative	252,080	203,819	(48,261)	-19.1%	203,819	-	0.0%
Contracted Services	197,450	201,498	4,048	2.1%	201,498	-	0.0%
Total	**$ 59,006,266**	**$ 59,229,654**	**$ 223,388**	**0.4%**	**$ 60,570,278**	**$ 1,340,624**	**2.3%**

SOUTHERN REGION: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**233.0**	**233.0**	**0.0**	**0.0%**	**233.0**	-	-
Employee Compensation	38,519,296	40,347,162	1,827,866	4.7%	41,388,945	1,041,783	2.6%
Salaries	27,420,801	28,366,086	945,286	3.4%	29,174,270	808,183	2.8%
Benefits	11,098,495	11,981,076	882,581	8.0%	12,214,675	233,600	1.9%
Travel	6,100,000	6,100,000	-	-	6,100,000	-	0.0%
Rent /Comm/Util	178,738	200,500	21,762	12.2%	200,500	-	0.0%
Administrative	193,075	233,100	40,025	20.7%	233,100	-	0.0%
Contracted Services	364,500	203,000	(161,500)	-44.3%	203,000	-	0.0%
Total	**$ 45,355,609**	**$ 47,083,762**	**$ 1,728,153**	**3.8%**	**$ 48,125,545**	**$ 1,041,783**	**2.2%**

WESTERN REGION: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**237.0**	**237.0**	-	-	**237.0**	-	-
Employee Compensation	41,693,060	42,647,527	954,467	2.3%	43,736,375	1,088,847	2.6%
Salaries	29,680,900	29,741,955	61,055	0.2%	30,589,367	847,411	2.8%
Benefits	12,012,160	12,905,572	893,412	7.4%	13,147,008	241,436	1.9%
Travel	6,550,000	7,110,000	560,000	8.5%	7,110,000	-	0.0%
Rent /Comm/Util	625,000	570,000	(55,000)	-8.8%	570,000	-	0.0%
Administrative	290,000	334,300	44,300	15.3%	334,300	-	0.0%
Contracted Services	205,000	249,700	44,700	21.8%	249,700	-	0.0%
Total	**$ 49,363,060**	**$ 50,911,527**	**$ 1,548,467**	**3.1%**	**$ 52,000,375**	**$ 1,088,847**	**2.1%**

note: minor rounding differences may occur in totals.

OFFICE OF THE BOARD: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**11.0**	**12.0**	**1.0**	**9.1%**	**12.0**	**-**	**-**
Employee Compensation	2,476,380	2,820,175	343,795	13.9%	2,875,433	55,258	2.0%
Salaries	1,829,488	2,052,052	222,564	12.2%	2,095,737	43,685	2.1%
Benefits	646,892	768,123	121,231	18.7%	779,696	11,573	1.5%
Travel	141,500	152,000	10,500	7.4%	152,000	-	0.0%
Rent /Comm/Util	1,250	1,250	-	-	1,250	-	0.0%
Administrative	28,000	28,000	-	-	28,000	-	0.0%
Contracted Services	94,500	66,500	(28,000)	-29.6%	66,500	-	0.0%
Total	**$ 2,741,630**	**$ 3,067,925**	**$ 326,295**	**11.9%**	**$ 3,123,183**	**$ 55,258**	**1.8%**

OFFICE OF THE EXECUTIVE DIRECTOR: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**6.0**	**6.0**	**-**	**-**	**6.0**	**-**	**-**
Employee Compensation	1,621,460	1,730,310	108,850	6.7%	1,775,619	45,309	2.6%
Salaries	1,194,062	1,250,843	56,781	4.8%	1,286,506	35,663	2.9%
Benefits	427,398	479,467	52,069	12.2%	489,112	9,646	2.0%
Travel	45,000	45,000	-	-	45,000	-	0.0%
Rent /Comm/Util	20,250	20,250	-	0.0%	20,250	-	0.0%
Administrative	1,415,000	1,339,000	(76,000)	-5.4%	1,339,000	-	0.0%
ED Core	25,000	25,000	-	0.0%	25,000	-	0.0%
FFIEC	1,390,000	1,314,000	(76,000)	-5.5%	1,314,000	-	0.0%
Contracted Services	219,500	223,500	4,000	1.8%	223,500	-	0.0%
Total	**$ 3,321,210**	**$ 3,358,060**	**$ 36,850**	**1.1%**	**$ 3,403,369**	**$ 45,309**	**1.3%**

OFFICE OF BUSINESS INNOVATION: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**12.0**	**12.0**	**-**	**-**	**12.0**	**-**	**-**
Employee Compensation	2,767,775	3,049,685	281,910	10.2%	3,129,837	80,152	2.6%
Salaries	2,071,694	2,228,475	156,781	7.6%	2,292,012	63,537	2.9%
Benefits	696,081	821,210	125,129	18.0%	837,825	16,615	2.0%
Travel	180,500	224,000	43,500	24.1%	224,000	-	0.0%
Rent /Comm/Util	2,400	3,600	1,200	50.0%	3,600	-	0.0%
Administrative	2,000	10,000	8,000	400.0%	10,000	-	0.0%
Contracted Services	22,000	38,250	16,250	73.9%	38,250	-	0.0%
Total	**$ 2,974,675**	**$ 3,325,535**	**$ 350,860**	**11.8%**	**$ 3,405,687**	**$ 80,152**	**2.4%**

note: minor rounding differences may occur in totals.

OFFICE OF CONTINUITY AND SECURITY MANAGEMENT: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**12.0**	**12.0**	**-**	**-**	**12.0**	**-**	**-**
Employee Compensation	2,602,123	2,782,988	180,864	7.0%	2,856,178	73,190	2.6%
Salaries	1,920,838	2,020,314	99,476	5.2%	2,077,916	57,602	2.9%
Benefits	681,285	762,674	81,388	11.9%	778,262	15,589	2.0%
Travel	34,000	30,000	(4,000)	-11.8%	30,000	-	0.0%
Rent /Comm/Util	35,000	35,000	-	0.0%	35,000	-	0.0%
Administrative	30,000	36,000	6,000	20.0%	36,000	-	0.0%
Contracted Services	1,570,353	2,196,595	626,242	39.9%	2,196,595	-	0.0%
Total	**$ 4,271,476**	**$ 5,080,583**	**$ 809,106**	**18.9%**	**$ 5,153,773**	**$ 73,190**	**1.4%**

OFFICE OF MINORITY AND WOMEN INCLUSION: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**10.0**	**10.0**	**-**	**-**	**10.0**	**-**	**-**
Employee Compensation	2,300,654	2,271,894	(28,760)	-1.3%	2,324,721.8	52,827	2.3%
Salaries	1,707,197	1,653,089	(54,108)	-3.2%	1,694,989	41,900	2.5%
Benefits	593,457	618,805	25,348	4.3%	629,733	10,927	1.8%
Travel	75,000	157,349	82,349	109.8%	157,349	-	0.0%
Rent /Comm/Util	7,600	19,750	12,150	159.9%	19,750	-	0.0%
Administrative	141,658	211,067	69,409	49.0%	211,067	-	0.0%
Contracted Services	953,500	843,131	(110,369)	-11.6%	843,131	-	0.0%
Total	**$ 3,478,412**	**$ 3,503,191**	**$ 24,779**	**0.7%**	**$ 3,556,019**	**$ 52,827**	**1.5%**

OFFICE OF THE CHIEF ECONOMIST: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**8.0**	**8.0**	**-**	**-**	**8.0**	**-**	**-**
Employee Compensation	2,035,603	2,117,041	81,438	4.0%	2,172,882	55,841	2.6%
Salaries	1,521,399	1,552,568	31,170	2.0%	1,596,834	44,266	2.9%
Benefits	514,204	564,473	50,269	9.8%	576,048	11,575	2.1%
Travel	27,000	25,000	(2,000)	-7.4%	25,000	-	0.0%
Rent /Comm/Util	500	300	(200)	-40.0%	300	-	0.0%
Administrative	215,839	210,839	(5,000)	-2.3%	210,839	-	0.0%
Contracted Services	3,000	4,314	1,314	43.8%	4,314	-	0.0%
Total	**$ 2,281,942**	**$ 2,357,494**	**$ 75,552**	**3.3%**	**$ 2,413,335**	**$ 55,841**	**2.4%**

note: minor rounding differences may occur in totals.

OFFICE OF CONSUMER FINANCIAL PROTECTION: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**24.0**	**24.0**	**-**	**-**	**24.0**	**-**	**-**
Employee Compensation	4,809,476	5,051,759	242,283	5.0%	5,183,001	131,242	2.6%
Salaries	3,513,939	3,623,066	109,127	3.1%	3,726,364	103,298	2.9%
Benefits	1,295,537	1,428,694	133,157	10.3%	1,456,637	27,943	2.0%
Travel	340,946	384,423	43,477	12.8%	384,423	-	0.0%
Rent /Comm/Util	38,250	39,950	1,700	4.4%	39,950	-	0.0%
Administrative	31,293	20,815	(10,478)	-33.5%	20,815	-	0.0%
Contracted Services	32,004	29,659	(2,345)	-7.3%	29,659	-	0.0%
Total	**$ 5,251,969**	**$ 5,526,606**	**$ 274,637**	**5.2%**	**$ 5,657,848**	**$ 131,242**	**2.4%**

OFFICE OF THE CHIEF FINANCIAL OFFICER: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**54.0**	**54.0**	**-**	**0.0%**	**54.0**	**-**	**-**
Employee Compensation	8,149,574	7,918,394	(231,181)	-2.8%	8,563,934	645,540	8.2%
Salaries	5,056,963	4,469,797	(587,166)	-11.6%	4,670,066	200,269	2.5%
OCFO	7,606,963	8,016,797	409,834	5.4%	8,245,366	228,569	
Crosscutting	(2,550,000)	(3,547,000)	(997,000)	39.1%	(3,575,300)	(28,300)	
Benefits	3,092,611	3,448,597	355,986	11.5%	3,893,868	445,271	12.9%
OCFO	2,787,611	3,127,597	339,986	12.2%	3,189,268	61,671	
Crosscutting	305,000	321,000	16,000	5.2%	704,600	383,600	
Travel	74,000	90,000	16,000	21.6%	90,000	-	0.0%
OCFO	74,000	90,000	16,000	21.6%	90,000	-	
Crosscutting	-	-	-			-	
Rent /Comm/Util	2,048,000	2,095,500	47,500	2.3%	2,095,500	-	0.0%
OCFO	708,000	755,500	47,500	6.7%	755,500	-	
King Station Note	1,340,000	1,340,000	-	0.0%	1,340,000	-	
Administrative	1,875,000	1,347,000	(528,000)	-28.2%	1,747,000	400,000	29.7%
OCFO	1,050,000	940,000	(110,000)	-10.5%	940,000	-	
Crosscutting	825,000	407,000	(418,000)	-50.7%	807,000	400,000	
Contracted Services	8,258,000	8,521,595	263,595	3.2%	8,532,040	10,445	0.1%
OCFO	8,258,000	8,050,628	(207,372)	-2.5%	8,050,628	-	
Crosscutting		470,967	470,967		481,412	10,445	
Total	**$ 20,404,574**	**$ 19,972,489**	**$ (432,086)**	**-2.1%**	**$ 21,028,474**	**$ 1,055,985**	**5.3%**
OCFO Total	21,824,574	22,320,522	495,947	2.3%	22,610,762	290,240	1.3%
Crosscutting	(1,420,000)	(2,348,033)	(928,033)	65.4%	(1,582,288)	765,745	

note: minor rounding differences may occur in totals.

OFFICE OF THE CHIEF INFORMATION OFFICER: 2020–2021 BUDGET SUMMARY							
	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**44.0**	**44.0**	-	-	**44.0**	-	-
Employee Compensation	10,204,039	10,850,291	646,252	6.3%	11,134,988	284,697	2.6%
Salaries	7,572,503	7,910,059	337,556	4.5%	8,135,452	225,393	2.8%
Benefits	2,631,536	2,940,232	308,696	11.7%	2,999,536	59,304	2.0%
Travel	165,000	50,000	(115,000)	-69.7%	50,000	-	0.0%
Rent /Comm/Util	4,015,008	4,553,060	538,052	13.4%	4,553,060	-	0.0%
Administrative	2,978,445	4,500	(2,973,945)	-99.8%	4,500	-	0.0%
Contracted Services	20,466,221	23,812,771	3,346,550	16.4%	27,812,771	4,000,000	16.8%
Total	**$ 37,828,713**	**$ 39,270,622**	**$ 1,441,908**	**3.8%**	**$ 43,555,318**	**$ 4,284,697**	**10.9%**

OFFICE OF NATIONAL EXAMINATIONS AND SUPERVISION: 2020–2021 BUDGET SUMMARY							
	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**45.0**	**45.0**	-	-	**45.0**	-	-
Employee Compensation	10,402,148	10,852,318	450,169	4.3%	11,133,318	281,001	2.6%
Salaries	7,607,351	7,798,101	190,750	2.5%	8,020,435	222,334	2.9%
Benefits	2,794,797	3,054,216	259,419	9.3%	3,112,883	58,667	1.9%
Travel	1,600,000	1,455,000	(145,000)	-9.1%	1,455,000	-	0.0%
Rent /Comm/Util	21,012	14,500	(6,512)	-31.0%	14,500	-	0.0%
Administrative	52,201	36,429	(15,772)	-30.2%	36,429	-	0.0%
Contracted Services	624,455	519,000	(105,455)	-16.9%	519,000	-	0.0%
Total	**$ 12,699,816**	**$ 12,877,247**	**$ 177,430**	**1.4%**	**$ 13,158,247**	**$ 281,001**	**2.2%**

OFFICE OF CREDIT UNION RESOURCE AND EXPANSION: 2020–2021 BUDGET SUMMARY							
	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**36.0**	**36.0**	-	-	**36.0**	-	-
Employee Compensation	7,536,322	7,882,689	346,367	4.6%	8,087,926	205,237	2.6%
Salaries	5,533,197	5,674,658	141,461	2.6%	5,836,165	161,507	2.8%
Benefits	2,003,125	2,208,031	204,906	10.2%	2,251,761	43,730	2.0%
Travel	620,000	580,000	(40,000)	-6.5%	580,000	-	0.0%
Rent /Comm/Util	14,750	24,750	10,000	67.8%	24,750	-	0.0%
Administrative	30,750	30,000	(750)	-2.4%	30,000	-	0.0%
Contracted Services	257,000	277,627	20,627	8.0%	277,627	-	0.0%
Total	**$ 8,458,822**	**$ 8,795,066**	**$ 336,244**	**4.0%**	**$ 9,000,303**	**$ 205,237**	**2.3%**

note: minor rounding differences may occur in totals.

OFFICE OF EXAMINATION AND INSURANCE: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**54.0**	**56.0**	**2.0**	**3.7%**	**56.0**	**-**	**-**
Employee Compensation	11,464,514	12,028,189	563,675	4.9%	12,337,505	309,316	2.6%
Salaries	8,509,711	8,753,933	244,222	2.9%	8,998,904	244,971	2.8%
Benefits	2,954,803	3,274,255	319,453	10.8%	3,338,601	64,345	2.0%
Travel	995,000	1,008,244	13,244	1.3%	1,008,244	-	0.0%
Rent /Comm/Util	17,320	20,877	3,557	20.5%	20,877	-	0.0%
Administrative	621,500	805,317	183,817	29.6%	805,317	-	0.0%
Contracted Services	513,000	1,752,000	1,239,000	241.5%	1,752,000	-	0.0%
Total	**$ 13,611,334**	**$ 15,614,627**	**$ 2,003,293**	**14.7%**	**$ 15,923,942**	**$ 309,316**	**2.0%**

OFFICE OF GENERAL COUNSEL: 2020–2021 BUDGET SUMMARY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**47.0**	**47.0**	**-**	**0.0%**	**47.0**	**-**	**-**
Employee Compensation	11,496,869	12,025,265	528,396	4.6%	12,284,017	258,752	2.2%
Salaries	8,584,634	8,815,622	230,987	2.7%	9,020,055	204,433	2.3%
Benefits	2,912,235	3,209,643	297,409	10.2%	3,263,962	54,319	1.7%
Travel	150,000	150,000	-	-	150,000	-	0.0%
Rent /Comm/Util	-	500	500	-	500	-	0.0%
Administrative	1,500	1,500	-	-	1,500	-	0.0%
Contracted Services	325,000	202,500	(122,500)	-37.7%	202,500	-	0.0%
Total	**$ 11,973,369**	**$ 12,379,765**	**$ 406,396**	**3.4%**	**$ 12,638,517**	**$ 258,752**	**2.1%**

OFFICE OF HUMAN RESOURCES: 2019–2020 BUDGET SUMMARYY

	2019 Board Approved Budget	2020 Requested Budget	2019–2020 Change	Change Percent	2021 Requested Budget	2020–2021 Change	Change Percent
FTE	**43.0**	**43.0**	**-**	**-**	**43.0**	**-**	**-**
Employee Compensation	9,621,702	10,082,718	461,016	4.8%	10,319,402	236,684	2.3%
Salaries	6,359,464	6,556,141	196,677	3.1%	6,742,353	186,211	2.8%
Benefits	3,262,238	3,526,577	264,339	8.1%	3,577,050	50,473	1.4%
Travel	2,834,765	3,086,815	252,050	8.9%	2,416,448	(670,367)	-21.7%
Rent /Comm/Util	290,900	482,085	191,185	65.7%	261,885	(220,200)	-45.7%
Administrative	454,677	982,500	527,823	116.1%	832,300	(150,200)	-15.3%
Contracted Services	2,554,787	2,669,714	114,927	4.5%	2,669,714	-	0.0%
Total	**$ 15,756,831**	**$ 17,303,833**	**$ 1,547,002**	**9.8%**	**$ 16,499,749**	**$ (804,083)**	**-4.6%**

note: minor rounding differences may occur in totals.

OFFICE OF EXTERNAL AFFAIRS AND COMMUNICATION: 2020–2021 BUDGET SUMMARY							
	2019 Board Approved Budget	**2020 Requested Budget**	**2019–2020 Change**	**Change Percent**	**2021 Requested Budget**	**2020–2021 Change**	**Change Percent**
FTE	**11.0**	**11.0**	-	**0.0%**	**11.0**	-	-
Employee Compensation	1,613,383	2,263,316	649,932	40.3%	2,398,403	135,088	6.0%
Salaries	1,197,036	1,627,003	429,967	35.9%	1,731,350	104,347	6.4%
Benefits	416,348	636,313	219,965	52.8%	667,053	30,741	4.8%
Travel	12,000	36,000	24,000	200.0%	36,000	-	0.0%
Rent /Comm/Util	500	-	(500)	-	-	-	0.0%
Administrative	39,036	51,888	12,852	32.9%	51,888	-	0.0%
Contracted Services	176,975	297,675	120,700	68.2%	297,675	-	0.0%
Total	**$ 1,841,894**	**$ 2,648,879**	**$ 806,984**	**43.8%**	**$ 2,783,966**	**$ 135,088**	**5.1%**

note: minor rounding differences may occur in totals.

X. Appendix B. Capital Projects

NATIONAL CREDIT UNION ADMINISTRATION: CAPITAL INVESTMENT PROJECTS				
Description	**2019 Board Approved**	**2020 Board Approved**	**2020 Requested**	**2021 Requested**
IT software development investments				
Examination and Supervision Solution and Infrastructure Hosting	8,414,000	7,500,000	15,781,954	4,000,000
Data Collection Solution	200,000	2,400,000	-	5,000,000
Business Intelligence Tools and Capability Enhancement	1,920,000	-	-	-
Enterprise Central Data Repository	990,000	1,096,000	1,096,000	2,000,000
AMAC Servicing System Solution	600,000	600,000	-	-
Enterprise Data Program	600,000	450,000	450,000	-
Asset and Liabilities Management Application	3,167,000	3,600,000	2,073,587	-
Enterprise Learning Management System Replacement	550,000	112,000	1,000,000	-
GRC Tool: Managing Compliance Information	325,000	-	-	-
Integrated Financial Management System Analysis	350,000	-	400,000	400,000
Anticipated additional software development investments	-	-	-	2,000,000
Total, IT software development investments	**$ 17,116,000**	**$ 15,758,000**	**$ 20,801,541**	**$ 13,400,000**
Other Information technology investments				
Enterprise Laptop Lease	800,000	800,000	650,000	2,475,000
IT Infrastructure, Platform and Security refresh	2,350,000	-	2,000,000	2,000,000
Security management (Patch and Vulnerability)	342,000	-	-	-
Security management (Security Event/Incident Management)	327,000	-	-	-
Refresh End of Life VoIP Phone System	170,000	-	-	-
NCUA Website Development	-	-	100,000	100,000
Anticipated additional information technology investments	-	1,000,000	-	-
Total, Other Information technology investments	**$ 3,989,000**	**$ 1,800,000**	**$ 2,750,000**	**$ 4,575,000**
Capital building improvements and repairs				
Central Office Rennovations	-	-	500,000	3,000,000
Central Office HVAC System Replacement	750,000	750,000	750,000	500,000
Austin, TX Office Building Improvements	150,000	300,000	274,000	230,000
Total, Capital building improvements and repairs	**$ 900,000**	**$ 1,050,000**	**$ 1,524,000**	**$ 3,730,000**
Grand Total, Capital Projects	**$ 22,005,000**	**$ 18,608,000**	**$ 25,075,541**	**$ 21,705,000**

Project name	**Examination and Supervision Solution and Infrastructure Hosting (ESS&IH)/MERIT**					
Project sponsor	Office of Business Innovation and Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: E&I, ONES, All Field Program Offices, OCIO, CURE, OHR, and OCFP External: Credit Unions, State Supervisory Authorities (SSAs)					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$8,414	$15,782	$4,000	TBD	TBD
	Operations and Maintenance	$0	$0	TBD	TBD	TBD
Link to NCUA strategic goals	<u>Goal 1: Ensure a Safe and Sound Credit Union System.</u> ESS will enable credit union examiners to fulfill NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by providing a more effective and secure examination tool. <u>Goal 3: Maximize organizational performance to enable mission success.</u> ESS will enable credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation."					
Project Performance	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	<u>Release 1 (2019)</u>: Starting October 7, 2019, use MERIT to conduct examinations and supervision for all identified contacts.* <u>Release 2 (2020)</u>: Starting the fourth quarter, 2020, use MERIT to conduct examinations and supervision for all identified contacts.*	100% of contacts identified for Release 1* (achieved)	100% of contacts identified for Release 2**			

	Development Sprint completion: Estimate versus Actual	Within +/- 20% (Planned) Within +/- 10% (Actual)	Within +/- 20%			
	Testing Pass Rate: % of User Stories that Pass User Acceptance Testing on First attempt	90% (Planned) 72% (Actual)	90%			
	Production System Availability	99.9% (Planned) 99.9% (Actual)	99.9%	99.9%	99.9%	99.9%
	* Release 1 includes ESM Iterations 1-3: ONES natural person federal credit union exam Program (Contact Type 10, 11, 22, 23, 26, 27, and 28) and joint exam programs with two SSAs. ** Release 2 includes ESM Iteration 4: Core examination and supervision functionality including Consumer Complaints, Corporate CU, Fair Lending, Risk Focused Exam, ONES Quarterly, SCUEP, Bank Purchase, Compliance, Conservatorship Admin, Fraud, Liquidations, NFICU, Loan and Share ingest and analytics capability. Enhancements to core functionality will continue into operations and maintenance.					
Detailed project description	The ESS&IH projects will put access to the key examination and supervision capabilities into a streamlined toolset allowing the NCUA's Examiners and Supervisors to be more efficient, consistent and effective. The overarching ESS&IH project scope and key deliverables include a new, flexible, technical foundation to enable current and future NCUA business process modernization initiatives, a central user interface (CUI), which will serve as a common point of access for future ESM applications, secure transfer of data between the NCUA and third parties, and replacement of the NCUA's legacy exam system, AIRES, with new Commercial-Off-The-Shelf (COTS) solutions. This project represents the first deliverable of the NCUA's Enterprise System Modernization program. Investment objectives include: • Process Efficiency and Scalability – To enable the NCUA staff to effectively oversee all credit unions, from the smallest to the largest, with various types of examinations from a single platform;					

	• Process Flexibility and Adaptability – To adjust to new regulatory processes, demands, and priorities rapidly to an increasingly sophisticated credit union industry; • Improved Analytics – To enhance the ability to identify and evaluate risk in credit unions effectively through deep, detailed, "vertical" and "horizontal" analysis of credit unions using various analytical techniques and tools; • Robust and Flexible Data Collection – To securely collect and share financial and non-financial data with flexible workflows to automate manual processes and efficiently route work assignments; • Risk-based Examination Approach – To focus examiner resources on credit unions and asset portfolios that pose the most risk to the credit union industry; and, • Modern IT Infrastructure – To enable current and future business process modernization including a single point of entry to related IT services. Time Management System (TMS), Management Automated Resource System (MARS), and National Supervision Policy Manual (NSPM) tools are not in scope of this project. Replacement of these legacy systems will be included in future procurement efforts under the ESM program. Schedule updates reflect completion of the initial development of key deliverables in 2020, a year earlier than previously planned. Transition to an Operations and Maintenance (O&M) state, with ongoing enhancements to the examination solution, is anticipated to begin in the 3rd quarter of 2020.	
Quarterly project schedule and deliverables	March/2020	Release 2 – Complete system development for product increments 1-2 out of 3 and conduct a hands-on system demo.
	June/2020	Release 2 – Complete system development and system integration testing.
	August/2020	Release 2 – Examination and supervision functionality for all planned credit union contacts deployed and end user training started.
	December/2020	Release 2 – End User Training and transition to operations and maintenance support team is complete.
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If significant policy changes are made then the ESS configuration timelines and planned functionality may be impacted due to changing requirements.	Maintain regular monthly communications with Examination & Insurance team on the status, planned activities, and estimated timeline.
	If vendor discovery requirements and level of effort assumptions are incorrect, then costs, schedule, or scope could be impacted and additional funding would be required.	Validate Release 2 requirements and technical implementation in FY 19 Q4; prioritize important, complex functionality for development earlier in the schedule; down-scope R-2 functionality to fit budget; and preserve management reserve for most important needs.
	If Release 1 updates, enhancements, or support service levels are prioritized over Release 2 development then cost, schedule, scope could be impacted.	Only address the highest priority Release 1 updates, enhancements, and service level improvements required to preserve capacity for Release 2 development.

Project name	**Data Collection and Sharing (DCS) Solution.** Phase I: Analysis of Alternatives (AoA) Study
Project sponsor	Office of Business Innovation and Office of the Chief Information Officer
Customers/ beneficiaries	Internal: OCIO and OBI External: N/A

Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$200	$0*	$5,000	TBD	TBD
	Operations and Maintenance	$0	$0	TBD	TBD	TBD
	* 2019 budget remains available in 2020 for the AoA study.					

Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. DCS will enable credit union examiners to fulfill NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by implementing a solution that ingests data simply and with improved performance. Goal 3: Maximize organizational performance to enable mission success. DCS will assist credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by implementing a platform that will support the NCUA's requirements for data collection, workflow, document management, customer relationship management and records management thereby improving the NCUA's records management compliance.

Project Performance (note: ☑ indicates achievement of performance measure in year)	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Capture and Validate Requirements	☑	☑			
	Complete DCS AoA Solicitation Package		☑			
	Award DCS AoA contract			☑		
	Complete AoA Study			☑		
	Provide, Scope and Review 3-4 Viable Alternative Solutions			☑		
	Complete DCS Solution Solicitation Package			☑		
	Award DCS Solution Contract			☑		
	Develop and Implement DCS Solution				☑	☑

Detailed project description	DCS will deliver a common platform to securely request, collect and share periodically or on an *ad hoc* basis both financial and non-financial data including the following: data from natural person and corporate credit union call reports and profiles; data from NCUA regional offices; customer complaints and inquiries; share and loan downloads; low income designation data; Credit Union Service Organization (CUSO) registry data; grants and loan applications; and credit union charter, expansion, conversion, and merger data. DCS will enable data collection and sharing with increased efficiency, decreased errors, and reduced redundancy by integrating data systems to efficiently receive and share information collected through a single point of entry. The common platform will also provide flexible routing of incoming data, complaints, inquiries, or requests to appropriate points of contact and track assignments from initiation to completion. DCS will allow designing of prototypical forms and applications with context sensitive input of data, provide automatic notification to all stakeholders, and integrate with in-house and third party applications. DCS will support collection, management, and retention of information within the agency and facilitate a comprehensive view of each credit union. This initiative will enable the NCUA to efficiently collect and share data in support of enterprise reporting, analytics, and examination solutions. The scope for Phase I of the DCS project is to award and complete an AoA study to identify a solution or set of solutions to replace the following legacy systems: • Credit Union and Corporate Credit Union Online (CUOnline) • CUSO Registry • Generated Efficient National Information System for Insurance Services (GENISIS) • Field of Membership Internet Application (FOMIA) • Management Information System (MIS) In addition, the AoA will evaluate a solution or set of solutions to meet the following capabilities requirements: • Workflow Management • Case Management • Content Management • Customer Relationship Management (CRM) • Document and Records Management • Logging (Assignment and Transaction Tracking) • Secure File Sharing The purpose of Phase I is to provide the requirements needed to award and complete an AoA study. The AoA will provide insight into what solution the NCUA can acquire to improve

	operational effectiveness, suitability, and the risks and life-cycle costs of alternative solutions that will support the NCUA's capability requirements as outlined above. An AoA needs to be completed to evaluate tools available in the market and how they would meet the needs of the NCUA. Additionally, the project will provide a roadmap for acquiring and implementing a solution to meet the agency's needs. It will be followed by a subsequent project to solicit and implement the selected solution(s).	
Quarterly project schedule and deliverables	March/2020	Capture and Validate Requirements for AoA
	June/2020	Complete Requirements Capture for AoA
	September/2020	Complete DCS AoA Solicitation Package
	December/2020	Issue DCS AoA Solicitation to Vendors
Performance Benchmark for Investment	This is a pre-planning project, with the anticipated outcomes being 3-4 viable alternative solutions and an acquisition and implementation roadmap. The Return on Investment (ROI) for the solution will be determined as a part of the AoA study and will be provided as a part of the follow-on solicitation and implementation of the project. As a part of the AoA, the NCUA will perform market research to determine the best acquisition plan to meet the agency's requirements for a data collection and sharing solution. The NCUA will also leverage industry experts and research organizations to assess alternatives available to meet the document and data collection needs.	
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the scope and requirements of the DCS AoA study are not properly defined, then the study may not yield suitable alternatives and solutions for the NCUA's DCS project.	Project sponsor will engage in early collaboration with OCIO and OBI leadership to define the scope and requirements needed for the AoA study.

Project name	**Enterprise Central Data Repository (ECDR)**
Project sponsor	Office of the Chief Information Officer
Customers/ beneficiaries	Internal: All NCUA Offices External: Credit Unions, Credit Union members and the public will indirectly benefit from this project.

Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$990	$1,096	$2,000	TBD	TBD
	Operations and Maintenance	$0	$0	$2,709	$2,933	TBD

Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The ECDR project will enable credit union examiners to fulfill strategic objective 1.2, "provide high-quality and efficient supervision," by providing a data platform that will enable the NCUA to more accurately and cost-effectively assess risks to the credit union system. In turn, the system will enable the NCUA to better identify and evaluate credit union risk and more efficiently conduct its mission through data analytics. Goal 3: Maximize organizational performance to enable mission success. The ECDR project will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by providing the central data repository on which the agency's enterprise data analytics and ESM initiative will rely, and that will improve the integrity, security and business value of the NCUA's data.

Project Performance (note: ☑ indicates achievement of performance measure in year)	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Expand infrastructure to support legacy data required for MERIT	☑	☑			
	Continue to ingest ONES quarterly loan data	☑	☑	☑	☑	☑
	Eliminate duplicate data tables	☑	☑			
	Accurately categorize data (enterprise, analytics, etc.)	☑	☑			

	Migrate infrastructure to the cloud			☑	☑	
	Expand infrastructure to support DCS			☑	☑	☑
	Number of legacy data sources consolidated into ECDR	Establish Baseline # Tables	Call Report: 29 Tables	Exam Tables: # TBD	Member Financial Tables: # TBD	

Detailed project description	The ECDR project will implement a data repository that will serve as the enterprise data integration point for MERIT, ONES' analytic tools, the NCUA's legacy applications, the Data Collection and Sharing Solution (DCS), and provide a platform to support future data and analytic initiatives. The ECDR is an enterprise solution for the NCUA that will allow the organization to transition through a phased approach from the existing legacy databases to a cloud-based data repository while meeting the agency's requirements.

Quarterly project schedule and deliverables	March/2020	Phase 1: Support for MERIT Iteration 4 (Examination Data & Institutional Financial Data for All Credit Unions)
	June/2020	Phase 2: Member Financial Data ALM for Production
	September/2020	
	December/2020	Institutional Financial data (Call Report) migrated to ECDR for analytical purposes.

Performance Benchmark for Investment	• Improved data quality by governing enterprise data in one place, better ensuring consistency, accuracy and availability of data across the NCUA • Provides ability to access and analyze historical data allowing for more ease of in-depth analysis • The NCUA will build a central data repository to support enterprise data analytics leveraging lessons learned from federal agencies and private industry. • The data repository will be scalable to accommodate additional data requirements. • ALM integration with the ECDR will be automated so that ONES can directly access data from the ECDR to use in ALM models for stress testing.

Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If resources assigned to this project are needed to support high priority tasks, then there may be impacts to this project.	Continuous communication with OCIO Management on task prioritization and/or resource conflicts.
	If requirement changes are needed, then there may be impact to the schedule.	Hold regular status meetings with project team to keep requirements delivery on schedule. Escalate any requirements changes or expansion of requirements immediately to determine the impact of such changes.
	If there are schedule delays with the cloud environment, then additional storage may be required on premise.	Continue to communicate with the ESS team. Prepare for possible delays in moving to cloud by increasing storage by the time solution is scheduled to migrate to Test.

<table>
<tr><td>Project name</td><td colspan="6">Enterprise Data Program (EDP)
formerly Enterprise Data Analytics, Governance and Reporting Services</td></tr>
<tr><td></td><td colspan="6"></td></tr>
<tr><td>Project sponsor</td><td colspan="6">Office of Business Innovation</td></tr>
<tr><td></td><td colspan="6"></td></tr>
<tr><td>Customers/ beneficiaries</td><td colspan="6">Internal: All NCUA Offices
External: N/A</td></tr>
<tr><td></td><td colspan="6"></td></tr>
<tr><td rowspan="3">Budget</td><td>$ in thousands</td><td>2019</td><td>2020</td><td>2021</td><td>2022</td><td>2023</td></tr>
<tr><td>Acquisition</td><td>$600</td><td>$450</td><td>$0</td><td>$0</td><td>$0</td></tr>
<tr><td>Operations and Maintenance</td><td>$0</td><td>$0</td><td>$150</td><td>$150</td><td>$150</td></tr>
<tr><td>Link to NCUA strategic goals</td><td colspan="6"><u>Goal 1: Ensure a Safe and Sound Credit Union System.</u> The EDP will enable agency staff to better fulfill their responsibility to "provide high-quality and efficient supervision," which is NCUA strategic objective 1.2 by maturing data management practices in order to ensure the use of high-quality data in operations, reporting, and analytics.

<u>Goal 3: Maximize organizational performance to enable mission success.</u> The EDP will enable agency staff to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by managing enterprise data via effective collaboration among stakeholders on new data standards - as the lifecycle of data involves multiple offices across the agency.</td></tr>
<tr><td></td><td colspan="6"></td></tr>
<tr><td rowspan="7">Project Performance

(note: ☑ indicates achievement of performance measure in year)</td><td>Performance measure</td><td>2019</td><td>2020</td><td>2021</td><td>2022</td><td>2023</td></tr>
<tr><td>Provide training sessions for Data Stewards</td><td>☑</td><td>☑</td><td></td><td></td><td></td></tr>
<tr><td>Develop draft charter for review by Enterprise Data Council</td><td>☑</td><td></td><td></td><td></td><td></td></tr>
<tr><td>Establish and Operate the Enterprise Data Council</td><td>☑</td><td>☑</td><td>☑</td><td>☑</td><td>☑</td></tr>
<tr><td>Create Enterprise Data Instruction</td><td>☑</td><td></td><td></td><td></td><td></td></tr>
<tr><td>Validate Data Governance Framework</td><td>☑</td><td></td><td></td><td></td><td></td></tr>
<tr><td>Conduct Critical Data Element Inventory for Exam and Institutional Financial Data Domains</td><td>☑</td><td>☑</td><td></td><td></td><td></td></tr>
</table>

	Conduct Business Metadata Gap Assessment for Exam and Institutional Financial Data Domains		☑			
	Provide Data Governance training sessions for the Enterprise Data Council members	☑	☑			
	Implement data governance for initial data standards for Exam and Institutional Financial Data Domains	☑	☑			
	Develop initial business requirements for agency reporting and analytics		☑			
	Discovery and analysis on create/collect phase of data lifecycle		☑	☑		
	Implement data governance for additional data domains			☑	☑	☑
	Assess and align EDP with Federal Data Strategy and Evidence-Based Policy Making Act	☑	☑	☑	☑	☑
Detailed project description	The purpose is to establish and support the implementation of a data governance program under the OBI comprised of a policy, a data lead, data steward team, and a representative central data governing body. The primary goal is to enable the NCUA to manage enterprise data as a strategic asset through its full lifecycle (create/collect, manage/move, consume, dispose). The EDP will also facilitate the centralization, organization and storage of NCUA data with an authoritative source so analysis is more accurate, simple and easily distributed across the agency. The EDP will reduce risks facing the current data environment and improve NCUA's overall reporting and data analysis capabilities. Organized and governed data from legacy and new systems will allow for timely reporting (BI tools) to conduct risk analysis and target exams and supervision where needed to enhance the agency's ability to adapt to institution and industry conditions. The early emphasis is on the specific stakeholder-driven discovery results and related recommendations regarding the consumption lifecycle phase from the 2017-2018 Data Strategy & Framework project. Initial focus is on examination and credit union financial data domains. The first collaborative efforts will concentrate on enhancing clarity of enterprise data used in reporting and analytics for these two domains. This work will complement, not replace, other aspects of the agency's existing data management and					

	compliance processes (e.g. collection decisions, security, privacy, records management). The scope will evolve over time based on priorities and capacity.	
Quarterly project schedule and deliverables	March/2020	• Catalogue additional priority consumption issues in Institutional Financial and Exam Data Domains from Stakeholders/SMEs/Enterprise Data Governance Council (EDGC) • Plan and Operate the EDGC
	June/2020	• Develop business meta data glossary template
	September/2020	• Develop additional priority consumption standards for Institutional Financial and Exam Data Domains • Align data governance and software development requirements
	December/2020	• Complete updated data management maturity assessment • Assess pain points with internal representative working group regarding the create/collect data lifecycle phase
Performance Benchmark for Investment	• Create reporting and analysis efficiencies by reducing the time required to prepare data for analysis and correct data anomalies. • Reduce agency risk by improving accuracy in reporting and analytics. Standardizing critical data and driving increased consistency in reporting processes will mitigate risk of inconsistent reporting processes. • Enable advanced analytics to enhance risk assessment of credit unions.	
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the EDGC members are not adequately prepared to address data governance issues, or to participate with an enterprise perspective, the council's effectiveness will be limited and data governance objectives may not be fully met.	1. Brief Data SMEs on Data Issues and enlist their assistance in preparing EDGC members for EDGC meetings. 2. Solicit feedback on Data Issues from Data SMEs. 3. Develop clear and thorough Data Issue briefing materials. 4. Provide sufficient time for EDGC members to review Data Issue materials and appropriately engage their offices in advance of council meetings. 5. Emphasize timely engagement with the Enterprise Data Team.
	If the scope of the EDP is not appropriately managed, then the effectiveness may be compromised.	1. Work with the OED, OBI, and OCIO to build a roadmap to take on additional scope as the EDP matures and resources allow. 2. Work with the OED, OBI, OCIO and other stakeholders to manage the EDGC's scope, ensuring that the scope is not too narrow to limit its effectiveness, and not too broad to paralyze its decision-making ability.

Project name	**Asset & Liabilities Management (ALM) Application**					
Project sponsor	Office of National Examination and Supervision					
Customers/ beneficiaries	Internal: ONES External: Large and Corporate Credit Unions					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$3,167*	$2,074	$0	$0	$0
	Operations and Maintenance	$0	$0	$2,282	$3,600	$3,600
	* $1.4 million of 2019 capital funds will be carried over and programmed in 2020.					
Link to NCUA strategic goals	<u>Goal 1: Ensure a Safe and Sound Credit Union System.</u> The ALM Application will enable credit union examiners to fulfill their responsibility to achieve strategic objective 1.2, "provide high-quality and efficient supervision," by building internal analytical capabilities to run supervisory stress testing in house and to conduct quantitative risk assessments. <u>Goal 3: Maximize organizational performance to enable mission success.</u> The ALM Application will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation," by improving the NCUA's supervision tools and approaches, identifying material risks facing the covered credit unions, and tailoring resources to the material risks and risk focused exams.					
Project Performance (note: ☑ indicates achievement of performance measure in year)	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Procure ALM tool for Stress Testing	☑				
	Complete software development lifecycle deployment into production	☑				
	Perform data extraction and integration	☑				
	Identify remaining software tools	☑				
	Procure remaining tools	☑				
	Perform in-house stress testing to challenge credit		☑			

	unions' self-run Supervisory Stress Testing					
	Continue to perform in-house stress testing and risk assessments			☑	☑	☑

Detailed project description	This project will allow the NCUA to build internal analytical capabilities to run supervisory stress testing in house and to conduct regular quantitative risk assessments by procuring and configuring off-the-shelf analytical tools, models, and software used commonly in financial industry stress testing and other risk management activities. This effort delivers a complete solution that will focus on transforming the NCUA's supervision tools and approaches, identifying material risks facing the covered credit unions, and tailoring resources to the material risks and risk focused exams. This effort will allow the NCUA to reduce the existing third party contractor's role to only consultation while also improving the NCUA's ability to perform independent credit union risk assessments.

Quarterly project schedule and deliverables	March/2020	ALM Process Ready for In-House Stress Testing
	June/2020	Complete Stand-Up of In-House Stress Testing
	September/2020	
	December/2020	

Performance Benchmark for Investment	• Increased efficiencies by providing immediate access to the data required to perform risk assessment of credit unions • Increased Supervisory quality through improved ability to develop the NCUA's independent assessment of credit union risk • Reduction in cost of supervisory stress testing by removal of third party vendor contract

Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the ALM Tool provides results that are inaccurate, then the NCUA will need identify other tools for consideration.	Allow adequate time to validate results against existing third party vendor's results. Continue utilizing existing third party vendor contract to perform supervisory stress testing.

Project name	**Enterprise Learning Management System (LMS) Replacement**					
Project sponsor	Office of Human Resources					
Customers/ beneficiaries	Internal: All NCUA staff External: State Supervisory Authority (SSA) and Contractors					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$550*	$1,000*	$0	$0	$0
	Operations and Maintenance	$0	$0	$105	$112	$112
	*Note: 2019 funds reprogrammed in mid-session to support higher priority needs. If additional resources are required in 2020 to deliver the LMS project, additional project reprioritization may be required.					
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The LMS Replacement project will assist all NCUA employees to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.1, "attract, engage and retain highly-skilled, diverse workforce and cultivate an inclusive environment." The new LMS will be the NCUA's primary system for hosting and delivering eLearning courses and will allow for increased access to training and eLearning.					
Project Performance (note: ☑ indicates achievement of performance measure in year)	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Initiate and plan the acquisition of a new LMS	☑				
	Acquire a modern, cost-efficient cloud-based LMS that meets agency requirements		☑			
	Prepare and provide access to a new LMS and a full array of learning services to ~2,500 end users*		☑			
	* includes users from State Supervisory Authorities and contract staff.					
Detailed project description	The purpose of the LMS Replacement project is to initiate an acquisition, create a project management plan, and execute production implementation of a cost-effective, cloud-based solution and training services that provides the NCUA with the full-range of eLearning functionality associated with a modern LMS. This will allow for enhanced examiner utilization and accessibility driven by quality content, ease of use and system reliability. The new system will also support role-based interface or the ability to view					

	personalized pages by role, and allow for centralized content, adherence to federally mandated reporting requirements and adherence to records management best practices.		
Quarterly project schedule and deliverables	January/2020	Release package to vendors.	
	April/2020	Evaluations ongoing	
	June/2020	Award contract	
	December/2020	Implementation of LMS	
Performance Benchmark for Investment	The planned LMS will: • support collection of request, authorization, agreement, and certification of training • provide Single Sign-on (SSO) • provide a customized, automated Individual Development Plan (IDP) workflow • provide a competency management system to evaluate training needs within the agency		
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**
	If HTML 5 is not enabled in the agency's web browser to support Adobe Flash content in the current LMS, then the existing training system will not work. Support for Adobe Flash is scheduled to be discontinued in 2020.		Procure learning content constructed using modern web standards and that is compatible with the latest version of the agency web browser.
	If technical issues arise during the data migration process, it could result in the loss of training records, content or other data.		Assess data compatibility during market research and use compatibility as a qualifying factor.

Project name	**Integrated Financial Management System (IFMS) Analysis**					
Project sponsor	Office of Chief Financial Officer					
Customers/ beneficiaries	Internal: OCFO External: N/A					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$350*	$400	$400	TBD	TBD
	Operations and Maintenance	$0	$0	TBD	TBD	TBD
	*Funds reprogrammed in 2019 mid-session to support higher priority needs.					
Link to NCUA strategic goals	<u>Goal 3: Maximize organizational performance to enable mission success.</u> The primary purpose of the IFMS Analysis will be to plan for changes needed to efficiently implement a new IFMS or make improvements to the existing financial management services environment. To maximize performance and efficiency and to minimize long-term operational costs, the desired path is to update the NCUA's processes, practices and accounting structure so that they better align with the system capabilities and service offerings of a federal Shared Service Provider (SSP). The benefits of this would include leveraging processes that already exist and minimizing future upgrade costs since such costs will be shared among other government agencies.					
Project Performance	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Initiate and plan the IFMS Analysis	☑				
(note: ☑ indicates achievement of performance measure in year)	Acquire a vendor to conduct an analysis.		☑			
	Report on the feasibility, changes needed, costs, data migration strategy, and implementation recommendations.		☑			
Detailed project description	The IFMS Analysis will conduct a study of the NCUA's accounting operations, financial reporting, and budget and procurement processes for the purpose of determining and recommending changes needed, both to the NCUA's processes and to a target federal IFMS SSP. The project will include: • Business Analysis – Review and supplement the NCUA's requirements for a financial management system, contract writing and related services for budget, payments, receivables and reporting.					

	• Business Reengineering – Identification of business processes that may be candidates for modification to enable the efficient adoption of a recommended SSP. • SSP Research – Evaluate the NCUA's requirements against current offerings from SSPs. This includes assessing SSP processes to assess whether processes can be adopted by the NCUA with or without customization. • Lifecycle Cost Estimation and Analysis – Provide a cost breakdown for installation, training, hosting, operations and maintenance and disposition. Consider data migration costs, although assume historical transaction data is not migrated. • Risk Analysis –Identify risks and opportunities associated with SSP products or services as they relate to the NCUA.		
Quarterly project schedule and deliverables	March/2020	Release procurement and award contract for IFMS Analysis.	
	June/2020	Conduct analysis of the NCUA's IFMS requirements and business processes, assess offerings from federal SSPs.	
	September/2020		
	December/2020	Analysis complete.	
Performance Benchmark for Investment	1. The study of federal shared service providers will identify the capability of an IFMS to meet the NCUA's needs. 2. Make a determination of transition costs for Delphi to the recommended federal shared service provider. 3. Report will define the gaps between the NCUA's requirements and system capabilities.		
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**
	Vendor proposals exceed the estimated project costs.		Understand the underlying cost assumptions for vendors' proposals; identify lower-priority projects from which funding can be reallocated, if needed; descope project, if necessary.

<table>
<tr><td>Project name</td><td colspan="6">Enterprise Laptop Lease</td></tr>
<tr><td>Project sponsor</td><td colspan="6">Office of the Chief Information Officer</td></tr>
<tr><td>Customers/ beneficiaries</td><td colspan="6">Internal: All NCUA
External: State Supervisory Authority (SSA)</td></tr>
<tr><td rowspan="2">Budget</td><td>$ in thousands</td><td>2019</td><td>2020</td><td>2021</td><td>2022</td><td>2023</td></tr>
<tr><td>Acquisition</td><td>$800</td><td>$650</td><td>$2,475</td><td>$700</td><td>$700</td></tr>
<tr><td>Link to NCUA strategic goals</td><td colspan="6"><u>Goal 3: Maximize organizational performance to enable mission success.</u> The Enterprise Laptop Lease project will assist all employees to perform their work more effectively and efficiently, helping NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation." New hardware for NCUA's employees provides staff with new functionality and NCUA improved security features that enhance user productivity, increased mobile functionality, and lower IT administrative costs due to a decreased need for support services.</td></tr>
<tr><td rowspan="2">Project Performance</td><td>Performance measure</td><td>2019</td><td>2020</td><td>2021</td><td>2022</td><td>2023</td></tr>
<tr><td>N/A</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Detailed project description</td><td colspan="6">The purpose of the Enterprise Laptop Lease project is to provide the NCUA with a more efficient, mobile friendly, and secure tool to help better perform their jobs at a reasonable cost.

The project scope includes: (1) the selection of new, standard laptop configurations; (2) image and compatibility testing; (3) device acquisition; and (4) the managed deployment of the new devices to end users. Out year costs are associated with the required lease payments. All stakeholders who use the NCUA-provided and supported laptops to perform their work will receive the new laptops.

By including hardware and OS support into the lease agreement contract, and following a three-year replacement lifecycle, the NCUA will be able to keep pace with changes in workstation and OS technology in a cost effective manner.

The current lease for NCUA laptops ends in early 2021. During the last year of the current lease, the NCUA's staff will analyze options for the next laptop acquisition, comparing the lifecycle costs for leasing and purchasing of the equipment. Once the most cost-effective solution is determined, the NCUA will update this project with refined cost estimates. Programmed funding levels for 2021 and future years approximate spending on the current lease agreement.</td></tr>
<tr><td rowspan="4">Quarterly project schedule and deliverables</td><td>March/2020</td><td colspan="5">Make final payment for current laptop lease</td></tr>
<tr><td>June/2020</td><td colspan="5">Conduct analysis of 2021 laptop lease vs. purchase options.</td></tr>
<tr><td>September/2020</td><td colspan="5"></td></tr>
<tr><td>December/2020</td><td colspan="5">Issue request for proposals for new laptop acquisition.</td></tr>
<tr><td>Performance Benchmark for Investment</td><td colspan="6">The NCUA business requirements will be compared to device performance benchmarks to determine the necessary standard workstation configurations. The NCUA will follow the Office of Management and Budget's Category Management Policy guidance pertaining to the acquisition of desktops and laptops as applicable.</td></tr>
<tr><td rowspan="2">Project Risks and Mitigation Strategies</td><td colspan="3">Risk</td><td colspan="3">Mitigation</td></tr>
<tr><td colspan="3">If the NCUA does not adequately account for the changes in its operating processes and technology management approach, then it may spend more than required to acquire laptop computers.</td><td colspan="3">The NCUA staff will analyze the lifecycle cost for leasing and purchasing laptop computers to determine the most cost-effective approach.</td></tr>
</table>

Project name	**Information Technology (IT) Infrastructure, Platform and Security Refresh**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$2,350	$2,000	$2,000	TBD	TBD
	Operations and Maintenance	$0	$1,068	$1,068	$1,068	$1,068
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The IT Infrastructure, Platform and Security Refresh project will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by refreshing and/or replacing co-located (COLO) and Regional routers, switches, virtual servers, wireless infrastructure and equipment, virtual private networks, firewalls, security tools (endpoint protection, password managers, derived credential, security information and event management, governance and risk compliance (GRC), and data loss prevention (DLP)) and end-of-life and end-of-service components. Investment in these projects helps ensure business continuity and efficient operations by improving system availability and stability.					
Project Performance	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Reduce OCIO administrative overhead on end-of-life (EOL) and failing systems by 75 percent through: - eliminating ad hoc support for EOL equipment, - updating platforms with enhanced troubleshooting and management consoles, and	Developed baseline estimate of OCIO administrative overhead: 5% of total contract spending	Reduce OCIO administrative overhead to 3.75%	3.75%	3.75%	3.75%

	- reducing maintenance requirements. (note: administrative overhead to monitor and mitigate risk for EOL and failing systems estimated at approximately 5% of total OCIO contract spending)					
	Gain efficiencies through: - enhanced capabilities resulting in lower contract support costs , - greater integration from modernized interfaces and software, and - predictable upgrade and vulnerability management paths	Developed baseline support contract estimate of $5.25M/ year	Reduce support contract to $4.2M/ year	$4.2M/ year	$4.2M/ year	$4.2M/ year

Detailed project description	The purpose of the IT Infrastructure, Platform and Security Refresh project is to ensure that NCUA data is secure and operations are stable by refreshing and/or replacing COLO and Regional routers, switches, firewalls, virtual servers, wireless infrastructure and equipment, virtual private networks, security tools (including GRC and DLP) and other network end-of-life and end-of-service components.

Quarterly project schedule and deliverables	March/2020	Complete Phase I of refresh and/or replacement: Servers and Storage devices (Server 2008 replacement, potential cloud infrastructure initial implementation (M365)), and complete derived credentials capability for mobile device access to NCUA business applications
	June/2020	Complete the replacement of Network Security Scan devices and Cybersecurity tools (endpoint protection, GRC and DLP)
	September/2020	Complete Phase II of refresh and/or replacement: Network devices and switches
	December/2020	Complete the replacement of NCUA wide wireless antennas and routers

Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.	Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.
	If resources are assigned to other assignments, then the implementation schedule will be delayed.	Create integrated master schedule with clear process for resource prioritization and scheduling.

Project name	**NCUA Public Websites Updates**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: OEAC External: Visitors to NCUA Public Websites					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$0	$100*	$100	$100	$100
	*Note: web services contract will be re-competed and awarded in December 2019. New contract begins in January 2020.					
Link to NCUA strategic goals	<u>Goal 2: Provide a regulatory framework that is transparent, efficient and improves consumer access.</u> The web services program will assist the NCUA to share information with the public, credit unions, Congress, the media and NCUA employees about the agency and its functions, Board actions and other matters. The program will help the NCUA achieve strategic objective 2.1, "deliver an effective and transparent regulatory framework." The web services contract provides on-demand, agile support for the completion and delivery of special web projects and tasks requested by various NCUA offices of primary interest on behalf of the NCUA Chairman, Board members, Executive and Deputy Executive Director. <u>Goal 3: Maximize organizational performance to enable mission success.</u> The web services program will ensure that the NCUA is utilizing the efficient technology and business processes for managing the content of its public-facing websites.					
Project Performance	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	N/A					
Detailed project description	The purpose of the Web Services project is to serve the web-related needs of the internal NCUA stakeholders and the public. The project provides design, development, and maintenance of the NCUA.gov. The project scope includes: (1) support for NCUA special projects and tasks; (2) website publishing; (3) website operations and maintenance; (4) accessibility/Section 508 and usability; and, (5) Spanish website content translation.					
Quarterly project schedule and deliverables	March/2020	ITSS web services contract implemented				
	June/2020	High-priority projects implemented on a continuous basis on NCUA.gov				
	September/2020					
	December/2020					

Performance Benchmark for Investment	NCUA.gov includes redesigned website content, such as updated visual design, content that conforms with Section 508 an usability standards, and design documents that conform with NCUA web style guides.	
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	Urgent requests for website updates could result in content not compliant with approved style guides and accessibility standards.	OCIO will coordinate with OEAC to ensure content complies with requirements of the NCUA Communications manual, NCUA Web Style Guide, Section 508, and Web Content Accessibility Guides (WCAG). OCIO will follow the change request process by creating OneStop requests for every project or request.
	New high priority project requests may result in unfunded requirements exceeding the contract budget.	OCIO will work closely with OEAC to forecast potential projects.

<table>
<tr><td>Project name</td><td colspan="6">Central Office Renovations</td></tr>
<tr><td>Project sponsor</td><td colspan="6">Office of the Chief Financial Officer</td></tr>
<tr><td>Customers/ beneficiaries</td><td colspan="6">Internal: All NCUA Central Office Building Occupants
External: All NCUA Central Office Building Visitors</td></tr>
<tr><td rowspan="2">Budget</td><td>$ in thousands</td><td>2019</td><td>2020</td><td>2021</td><td>2022</td><td>2023</td></tr>
<tr><td>Acquisition</td><td>$0</td><td>$500</td><td>$3,000</td><td>TBD</td><td>TBD</td></tr>
<tr><td>Link to NCUA strategic goals</td><td colspan="6"><u>Goal 3: Maximize organizational performance to enable mission success</u>. The NCUA headquarters renovation project will improve overall space utilization in the NCUA-owned Central Office. The goal of the project is to improve operational efficiency while decreasing operating cost by discontinuing commercial office leases and consolidating all Washington-region operations within one owned building. The project will increase the NCUA headquarters building capacity by approximately 25%. Additionally, some offices currently on separate floors will be collocated onto one floor, increasing operational efficiency.</td></tr>
<tr><td rowspan="2">Project Performance</td><td>Performance measure</td><td>2019</td><td>2020</td><td>2021</td><td>2022</td><td>2023</td></tr>
<tr><td>Share of Central Office and Eastern Region employees in NCUA-owned office space</td><td>92%</td><td>96%</td><td>96%</td><td>100%</td><td>100%</td></tr>
<tr><td>Detailed project description</td><td colspan="6">As approved by the Board, the NCUA has financed the majority of its headquarters renovation project using unspent past years' collections. The remaining renovation of the headquarters building – space that was formerly leased to commercial tenants – is expected to be converted into a flexible mix of office and multi-purpose meeting space, enabling the agency to meet its future space needs while reducing its reliance on commercial leases in the Alexandria area. The project will include modest reconfiguration of the building entrances and lobby to fulfill modern accessibility and security requirements.</td></tr>
<tr><td rowspan="4">Quarterly project schedule and deliverables</td><td>March/2020</td><td colspan="5"></td></tr>
<tr><td>June/2020</td><td colspan="5">Complete final design for first floor space.</td></tr>
<tr><td>September/2020</td><td colspan="5">Issue request for proposals for construction.</td></tr>
<tr><td>December/2020</td><td colspan="5">Award construction contract for completion in 2021.</td></tr>
<tr><td>Performance Benchmark for Investment</td><td colspan="6">The Central Office renovation will improve the building space utilization ratio by an estimated 25%, which will reduce the general cost of ownership for NCUA facilities. Additionally by building multi-purpose meeting space in the NCUA's owned building, there will be potential annual savings in leasing and operating costs for external venues beginning in 2021.</td></tr>
<tr><td rowspan="3">Project Risks and Mitigation Strategies</td><td>Risk</td><td colspan="5">Mitigation</td></tr>
<tr><td>Cost. Construction cost may be higher than anticipated once construction bids are received.</td><td colspan="5">Adjust the scope or schedule of planned renovation work.</td></tr>
<tr><td>Schedule. Renovation may not be completed on schedule.</td><td colspan="5">The project has been phased to control schedule and to mitigate the impact of delays to specific phases rather than the overall project. Support services have been acquired to provide additional construction management and oversight.</td></tr>
</table>

Project name	**Central Office HVAC Replacement Project**					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	Internal: All NCUA Headquarters Building Occupants External: All NCUA Headquarters Building Visitors					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$750	$750	$500	$0	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The NCUA headquarters Heating, Ventilation, and Air Conditioning (HVAC) system replacement project will improve the operations of the agency's largest building while lowering utility costs by installing more energy-efficient systems, helping achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation." The current HVAC system is 24 years old, and by replacing it the NCUA will ensure its infrastructure meets all current codes for life safety, accessibility, and security. The new system will result in cost savings through and increased energy and operational efficiency and lower maintenance costs.					
Project Performance	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Energy Consumption (kWh/degree days)	1.8K	1.6K	=<1.55K	=<1.55K	=<1.55K
	System Outages (unscheduled repair visits)	<30	<20	<10	<10	<10
Detailed project description	The project will replace all HVAC systems in the headquarters building to include all cooling towers, air handlers, boilers and HVAC components. The current HVAC system is original to the facility, 24 years old and obsolete; some component parts are no longer available. HVAC systems are the biggest users of electricity in a facility, and the anticipated life span of these system's major components is approximately 20-25 years. The current system is at the end of its usable life and it is not working efficiently. Additionally the maintenance and operating costs have increased considerably and system components are failing more frequently, which are clear signs of decreased reliability. A design and proposal has been completed with the anticipated replacement of the first cooling tower during the spring of 2020. Additionally all building HVAC controls are in the					

	process of being replaced. Follow on phases include the replacement of the second cooling tower and boiler system.		
Quarterly project schedule and deliverables	March/2020	First cooling tower replaced	
	June/2020		
	September/2020		
	December/2020	Updates to 70% of thermostats and obsolete Variable Airflow Boxes	
Performance Benchmark for Investment	The replacement will improve building efficiency by an estimated 15%, which exceeds the 2011 Energy Code that mandates that requires, for existing nonresidential buildings 10,000 square feet and larger: (1) an energy efficiency audit has to be performed once every 5 years identifying specific cost-effective measures that would save energy; and (2) the reduction of energy consumption of 5% by the introduction of more efficient systems.		
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**
	Schedule. Headquarters renovation work will affect all floors and will be ongoing through 2020.		Project managers have developed an integrated master schedule for Headquarters Renovation and HVAC System Replacement to avoid scheduling conflicts for work.
	Ongoing existing system failures. In 2019 the NCUA headquarters building experienced over 28 HVAC isolated system failures due to aging equipment.		HVAC System Replacement plan encompasses replacing parts showing high levels of deterioration first to address the most common failure types

Project name	**Austin, TX Office Building Improvements**					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	Internal: All Austin, TX Building Occupants External: All Austin, TX Building Visitors					
Budget	**$ in thousands**	**2019**	**2020**	**2021**	**2022**	**2023**
	Acquisition	$150	$274	$230	$230	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success Repairs to NCUA's Austin, Texas office building will improve operations at the facility and help enable the agency to meet its strategic objective 3.3 "ensure sound corporate governance." Many of the systems and building elements in the Austin office building have not been adequately maintained, and this investment will ensure that facility infrastructure meets current building codes for life safety, accessibility, and security. Once the investments have been completed, replaced equipment and better management of maintenance schedules will result in increased energy and operational efficiency.					
Project Performance (note: ☑ indicates achievement of performance measure in year)	**Performance measure**	**2019**	**2020**	**2021**	**2022**	**2023**
	Repair Critical items identified in field assessments	☑	☑			
	Repair Potentially Critical items identified in field assessments		☑	☑	☑	
Detailed project description	The NCUA assessed the condition of its office building in Austin, Texas in 2018 and identified a significant amount of required improvements, such as replacing the fire alarm system, repairing and replacing doors and sensors, and installing fire-proof roofing. In addition, nearly all of the windows in the 30+ year old building required replacement in 2019. The 2020 investment of $274,000 will support repairing or replacing all of the items identified as critical and potentially critical. These capital improvements are required in order for the facility to continue routine and safe operations, and align with the life cycle replacement required for critical infrastructure. Future year budgets will fund additional major repair or replacement projects in a priority order.					

Quarterly project schedule and deliverables	March/2020	Repair of critical and potentially critical items, as identified in field assessments.
	June/2020	
	September/2020	
	December/2020	
Performance Benchmark for Investment	The repairs are expected to improve building efficiency by at least 20%, which will reduce the general cost of ownership for NCUA facilities.	
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	Facility systems will continue to fail due to lack of maintenance	Depending on priorities, resources may be reprogrammed to repair failing equipment
	Cost. Construction costs have increased while the economy strengthened.	Adjust the scope, schedule, or priority of planned renovation work.
	Schedule. Projects may not be delivered on time.	Contractor support services have been acquired to provide additional construction management and oversight.

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FEDERAL REGISTER

Part VI

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 243 and 381

Resolution Plans Required; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 243

[Regulation QQ; Docket No. R–1660]

RIN 7100–AF47

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 381

RIN 3064–AE93

Resolution Plans Required

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (Corporation).

ACTION: Final rule.

SUMMARY: The Board and the Corporation (together, the agencies) are jointly adopting this final rule implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). This final rule is intended to reflect improvements identified since the agencies finalized their joint resolution plan rule in November 2011 (2011 rule) and to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Through this final rule, the Board is also establishing risk-based categories for determining the application of the resolution planning requirement to certain U.S. and foreign banking organizations, consistent with section 401 of EGRRCPA. The final rule also extends the default resolution plan filing cycle, allows for more focused resolution plan submissions, and improves certain aspects of the resolution planning rule.

DATES: This rule is effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT:

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Corporation: Lori J. Quigley, Deputy Director, Institutions Monitoring Group, *lquigley@fdic.gov*; Robert C. Connors, Associate Director, Large Bank Supervision Branch, *rconnors@fdic.gov*; and Alexandra Steinberg Barrage, Associate Director, Resolution Strategy and Policy, Division of Complex Institution Supervision & Resolution, *abarrage@fdic.gov*; or David N. Wall, Assistant General Counsel, *dwall@fdic.gov*; Celia Van Gorder, Supervisory Counsel, *cvangorder@fdic.gov*; Dena S. Kessler, Counsel, *dkessler@fdic.gov*; or Ryan M. Rappa, Counsel, *rrappa@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

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B. Overview of the Proposed Rule
II. Overview of Comments
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I. Introduction

A. Background

Section 165(d) of the Dodd-Frank Act [1] and the 2011 rule [2] require certain financial companies (covered companies) to report periodically to the agencies their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The goal of the Dodd-Frank Act resolution planning process is to help ensure that a covered company's failure would not have serious adverse effects on financial stability in the United States. The Dodd-Frank Act and the 2011 rule require a covered company to submit a resolution plan for review by the agencies. The resolution planning process requires covered companies to demonstrate that they have adequately assessed the challenges that their structures and business activities pose to a rapid and orderly resolution in the event of material financial distress or failure and that they have taken action to address those challenges, including through the development of capabilities appropriate to the covered company's size and complexity.

Implementation of the 2011 rule has been an iterative process aimed at strengthening the resolvability and resolution planning capabilities of covered companies. Since finalization of the 2011 rule, the agencies have reviewed multiple resolution plan submissions and have provided feedback on individual resolution plans following their review by the agencies (firm-specific feedback) and guidance directed to groups of firms (general guidance) to assist covered companies in their development of subsequent resolution plan submissions.

EGRRCPA revised the resolution planning requirement as part of the changes the law made to application of the enhanced prudential standards in section 165 of the Dodd-Frank Act. Specifically, EGRRCPA raised the $50 billion minimum asset threshold for general application of the resolution planning requirement to $250 billion in total consolidated assets, and provided the Board with discretion to apply the resolution planning requirement to firms with $100 billion or more and less than $250 billion in total consolidated

[1] 12 U.S.C. 5365(d).

[2] 76 FR 67323 (November 1, 2011).

assets.[3] The threshold increase occurs in two stages. Immediately on the date of EGRRCPA's enactment, firms with total consolidated assets of less than $100 billion (for foreign banking organizations, $100 billion in total global assets) were no longer subject to the resolution planning requirement. Eighteen months after the date of EGRRCPA's enactment, the threshold increases to $250 billion in total consolidated assets. However, EGRRCPA provides the Board with the authority to apply resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets. Specifically, under section 165(a)(2)(C) of the Dodd-Frank Act, as revised by EGRRCPA, the Board may, by order or rule, apply the resolution planning requirement to any firm or firms with total consolidated assets of $100 billion (for foreign banking organizations, $100 billion in total global assets) or more.[4]

In May 2019, the agencies invited comment on a proposal to amend and restate the 2011 rule (the proposed rule or proposal).[5] The proposed rule was intended to address amendments to the Dodd-Frank Act made by the EGRRCPA and improve certain aspects of the 2011 rule based on the agencies' experience implementing the 2011 rule since its adoption. The agencies are now finalizing the proposed rule, with certain changes based on public comments on the proposed rule, as described in detail below.

The Board's Tailoring Rules

Consistent with section 401 of EGRRCPA, the Board finalized two separate proposals to revise the framework for determining the prudential standards that should apply to large U.S. banking organizations (domestic tailoring rule)[6] and to large foreign banking organizations (FBO tailoring rule[7] and together with the domestic tailoring rule, the tailoring rules). Among other provisions, the tailoring rules identify distinct standards applicable to firms for the purpose of calibrating requirements. The tailoring categories established in the tailoring rules are as follows:

- Category I standards will apply to:
  - Global systemically important bank holding companies (U.S. GSIBs),
- Category II standards will apply to:
  - U.S. firms that are not subject to Category I standards with (a) $700 billion or more in average total consolidated assets, or (b) $100 billion or more in average total consolidated assets that have $75 billion or more in average cross-jurisdictional activity, and
  - Foreign banking organizations with (a) $700 billion or more in average combined U.S. assets,[8] or (b) $100 billion or more in average combined U.S. assets that have $75 billion or more in average cross-jurisdictional activity measured based on the foreign banking organization's combined U.S. operations.[9]
- Category III standards will apply to:
  - U.S. firms that are not subject to Category I or Category II standards with (a) $250 billion or more in average total consolidated assets, or (b) $100 billion or more in average total consolidated assets that have $75 billion or more in any of the following risk-based indicators: Average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure, and
  - Foreign banking organizations that are not subject to Category II standards with (a) $250 billion or more in average combined U.S. assets, or (b) $100 billion or more in average combined U.S. assets that have $75 billion or more in any of the following risk-based indicators measured based on the combined U.S. operations: Average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure and
- Category IV standards will apply to:
  - U.S. firms with $100 billion or more in average total consolidated assets that do not meet any of the thresholds specified for Categories I through III, and
  - Foreign banking organizations with $100 billion or more in average combined U.S. assets that do not meet any of the thresholds specified for Categories II or III.

These categories form the basis for the final rule's framework for imposing resolution planning requirements, with adjustments where appropriate. The categories are also used to tailor the content of the resolution planning requirements, taking into account covered companies' particular geographic footprints, operations, and activities, as described below.

B. Overview of the Proposed Rule

Under the proposed rule, resolution planning requirements would have applied to (1) those firms that are statutorily required to submit resolution plans (*i.e.,* U.S. and foreign banking organizations with $250 billion or more in total consolidated assets, the U.S. GSIBs, and any non-bank financial company designated by the Financial Stability Oversight Council (Council) for supervision by the Board) and (2) firms with total consolidated assets of $100 billion or more and less than $250 billion that would have been subject to Category II or III standards under the notices of proposed rulemaking for the tailoring rules. In particular, the Board would have applied resolution planning requirements to firms with total consolidated assets of $100 billion or more and less than $250 billion that would have had $75 billion or more in any of the following four risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. In the case of a foreign banking organization, resolution planning requirements would only have applied if the firm also had combined U.S. assets equal to $100 billion or more, and the risk-based indicators would have been measured based on the firm's combined U.S. operations.

The proposed rule would have divided firms subject to resolution

[3] EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a U.S. global systemically important bank (U.S. GSIB) under the Board's U.S. GSIB surcharge rule shall be considered a bank holding company with $250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement. EGRRCPA section 401(f), Public Law 115 174, 132 Stat. 1296.

[4] 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). *See also* EGRRCPA section 401(g).

[5] 84 FR 21600 (May 14, 2019).

[6] Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, 83 FR 61408 (November 29, 2018). The Board's final rule is published elsewhere in this issue of the **Federal Register** and is also available on the Board's website at *https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-fr-notice-20191010a2.pdf*.

[7] Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies, 84 FR 21988 (May 15, 2019). The Board's final rule is published elsewhere in this issue of the **Federal Register** and is also available on the Board's website at *https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-fr-notice-20191010a2.pdf*.

[8] Combined U.S. assets means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)), if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on the FR Y–7Q.

[9] The combined U.S. operations of a foreign banking organization include any U.S. subsidiaries (including any U.S. intermediate holding company), U.S. branches, and U.S. agencies. In addition, for a foreign banking organization that is not required to form a U.S. intermediate holding company, combined U.S. operations refer to its U.S. branch and agency network and the U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2), if applicable) and any subsidiaries of such U.S. subsidiaries.

planning requirements into three categories for purposes of determining submission frequency and resolution plan content requirements. The U.S. GSIBs would have been required to submit a resolution plan every two years, alternating between full and targeted resolution plans. Firms subject to Category II or III standards under the notices of proposed rulemaking for the tailoring rules would have been required to submit a resolution plan every three years, alternating between full and targeted resolution plans. Other foreign banking organizations subject to the proposed rule but not subject to Category II or III standards would have been required to submit a resolution plan every three years, with their initial filing being a full resolution plan and each subsequent submission being a reduced resolution plan. The proposal would have generally maintained the same informational content requirements for full resolution plans as under the 2011 rule, but would have established a new process whereby covered companies could request a waiver from certain informational content requirements in their full resolution plans. Under the proposal, covered companies would have been required to include in targeted resolution plans and reduced resolution plans information about certain changes since their previous resolution plan submission. Targeted resolution plans would also have included information about certain resolution planning core elements and information responsive to the agencies' targeted information requests.

The proposed rule would also have made certain procedural changes to the provisions of the 2011 rule relating to the identification of critical operations. The proposal would have established formal processes for firms and the agencies to identify particular operations of covered companies as critical operations and to rescind prior critical operations identifications made by the agencies. In addition, the proposal would have specified a process for a covered company to request reconsideration of operations previously identified by the agencies as critical operations, and required that a covered company notify the agencies if it ceased to identify an operation as a critical operation.

II. Overview of Comments

The agencies received and reviewed 14 comment letters on the proposed rule. Commenters included various financial services trade associations, covered companies, public interest groups, and individuals. In addition, the agencies met with industry representatives at their request to discuss issues relating to the proposed rule. This section provides an overview of the general themes raised by commenters. Comments are addressed in further detail in the below sections describing the final rule, including any changes that the agencies have made to the proposed rule in response to comments.

General Support and Opposition

A number of commenters generally supported the proposed rule. These commenters supported the proposed rule's efforts to tailor resolution planning requirements to a firm's size, complexity, and risk profile, and asserted that the proposed rule would preserve and improve upon key elements of resolution planning while enhancing transparency and meaningfully reducing burden.[10]

Several commenters raised concerns about the proposed rule. These commenters generally asserted that the proposed rule would inappropriately weaken financial regulations put in place after the 2008 financial crisis and thereby increase systemic risk. In addition, certain commenters asserted that the proposed rule inappropriately relied on burden reduction as a rationale for the proposed changes, was inconsistent with administrative law because the agencies did not provide sufficient justification for reducing the frequency and content of resolution plans, and was inconsistent with the Dodd-Frank Act. One commenter questioned whether firms would reallocate resources no longer needed to comply with the current rule to activities considered to be more beneficial, and whether any such benefit would accrue to the public at large. One commenter also asserted that the agencies should delay modifying the 2011 rule until it has been tested in an economic downturn, and another commenter asserted that the agencies should be cognizant of the effect of regulations on non-financial companies and small business lending. As further explained below, the final rule would continue to apply appropriate requirements on firms based on the relative risk that a firm's failure would pose to U.S. financial stability, and would preserve and improve upon key elements of the resolution planning framework that were put in place after the 2008 financial crisis. The agencies believe that this approach is consistent with the Dodd-Frank Act, as amended by the EGRRCPA, which generally provides for the tailoring of enhanced prudential standards based on firms' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and other risk-related factors. Moreover, since the finalization of the 2011 rule, the agencies have reviewed multiple resolution plan submissions and have provided firm-specific feedback and general guidance to assist the covered companies in their development of subsequent resolution plan submissions. Consequently, covered companies' submissions and the agencies' firm-specific feedback and general guidance have matured over several resolution plan cycles, and the agencies believe this is an appropriate time to revise the 2011 rule to reflect improvements identified since it was originally adopted, including changes in the frequency and content of resolution plans, for the reasons stated in the proposal and this preamble.[11]

2019 and 2020 Plans

The agencies received several comments from covered companies and industry representatives requesting clarification regarding resolution plan filing requirements for 2019 and 2020. On July 26, 2019, the agencies informed (1) covered companies with resolution plans due in December 2019 that their next resolution plan submission dates were extended to July 1, 2021 or such other date that may be specified when the agencies adopt the final rule and (2) Barclays PLC, Credit Suisse, Deutsche Bank AG, and UBS AG that the informational requirements for their July 2020 resolution plans may be limited to changes they have made to their 2018 resolution plans to address shortcomings identified in those resolution plans, and they are required to submit their next full resolution plans on July 1, 2021 or such other date that

[10] Certain commenters also made assertions that characterized the agencies' views of prior resolution plan submissions under the 2011 rule or the agencies' rationale for proposing certain changes to the 2011 rule. The agencies are not responding to or endorsing these assertions in this preamble. The agencies' views regarding individual resolution plans are communicated to covered companies following the agencies' review of those resolution plans. Separately, certain commenters proposed strengthening regulatory requirements that are unrelated to the resolution planning rule. These comments are outside the scope of this rulemaking.

[11] With respect to the timing of these changes, the agencies also note that, due to the effective date of section 401 of the EGRRCPA, the agencies believe it is important to complete revisions to the rule prior to the date that, pursuant to EGRRCPA, the resolution plan submission threshold increases to $250 billion in total consolidated assets.

may be specified when the agencies adopt the final rule.[12]

Comments Related to the Corporation's IDI Rule

The agencies received several comments asserting that the filing cycle or resolution plan content requirements under the final rule should align with the requirements under the Corporation's rule requiring certain insured depository institutions to submit resolution plans (the IDI rule).[13] Some commenters also asserted that firms should be able to incorporate by reference information included in a resolution plan submitted pursuant to the IDI rule into a resolution plan submitted pursuant to the final rule. A commenter stated that the agencies should harmonize the informational content requirements for resolution plans under the final rule with resolution plans under the IDI rule for filers subject to Category III standards, and that doing so would permit these filers to focus their resolution planning efforts on a uniform resolution plan filing process.

The agencies have not modified the proposal on the basis of these comments. The agencies note that the final rule and the IDI rule are separate requirements with different purposes and goals, and that the IDI rule is administered by only the Corporation. In part because a resolution plan submitted pursuant to the IDI rule is submitted to only the Corporation, incorporating by reference such information into a resolution plan submitted pursuant to the final rule is more challenging than incorporation by reference of such information into a resolution plan submitted pursuant to the IDI rule. The agencies note that the Corporation has issued an advanced notice of proposed rulemaking regarding the IDI rule. That advanced notice of proposed rulemaking notes, ''[t]o promote efficiency and reduce burden, the [Corporation] is encouraging the use of incorporation by reference to [resolution plan submissions required under section 165(d) of the Dodd-Frank Act] where practicable.'' [14] As the Corporation works to amend the IDI rule, the Corporation will seek to reduce unnecessary duplication between the IDI rule and the final rule.

[12] *See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190726a.htm*; *https://www.fdic.gov/news/news/press/2019/pr19069.html.*

[13] 12 CFR 360.10.

[14] 84 FR 16620, 16625 (April 22, 2019).

Firms Subject to Resolution Planning Requirements

The agencies received several comments regarding the Board's proposed scope of application for the resolution planning requirement. Certain commenters supported the Board's proposal to rely on the risk-based indicators to identify those firms with $100 billion or more and less than $250 billion in total consolidated assets that would remain subject to resolution planning requirements under the final rule. However, some commenters recommended changes to the manner in which the risk-based indicators were proposed to be calculated or recommended that the Board further narrow the scope of coverage of the resolution planning requirement. Conversely, some commenters asserted that the proposed scope of coverage should be expanded so that more firms would be subject to the resolution planning requirement.

Filing Cycle

The agencies received comments in support of and opposed to the proposed filing cycle. Some commenters asserted that a less-than-annual requirement would allow sufficient time for covered companies to integrate firm-specific feedback, while other commenters raised concerns that significant changes to resolvability could occur between less frequent resolution plan submissions. Some commenters asserted that covered companies generally begin to prepare their resolution plans at least one year prior to submission and recommended related changes to the proposed filing cycle to enhance the predictability of the timing of producing a resolution plan. For example, these commenters asserted that the final rule should include a formal timeline for the agencies to provide firm-specific feedback to covered companies within one year following a resolution plan submission and advanced notice requirements when the agencies require submission of a full resolution plan or an interim update, or alter resolution plan submission dates.

Informational Content

Several commenters asserted that the proposal should further tailor informational content requirements among different categories and types of covered companies. Some of these commenters also expressed concern that certain covered companies within a category would have general guidance directed to them that is not appropriate for their category. Certain other commenters asserted that the proposed targeted resolution plans and reduced resolution plans would contain inadequate information. Some commenters supported the inclusion of a process by which covered companies would be able to request waivers from certain informational content requirements for their full resolution plans and asserted that it would help to streamline resolution plan submissions. However, some other commenters opposed the proposed firm-initiated waiver request process and asserted that it was unnecessary or would be subject to abuse by covered companies.

Critical Operations

Numerous commenters asserted that the proposed timeline for identification and de-identification of a critical operation should be modified to provide covered companies with additional notice of new identifications prior to a resolution plan submission date. Some commenters asserted that the final rule should automatically exempt from the requirement to have a process for identifying critical operations any covered company that does not currently have an identified critical operation.

The comments on the proposed rule and the agencies' related responses are discussed in further detail below.

III. Final Rule

A. Identification of Firms Subject to the Resolution Planning Requirement and Filing Groups

1. Firms Subject to the Resolution Planning Requirement

Following EGRRCPA, three types of firms are statutorily subject to the resolution planning requirement:

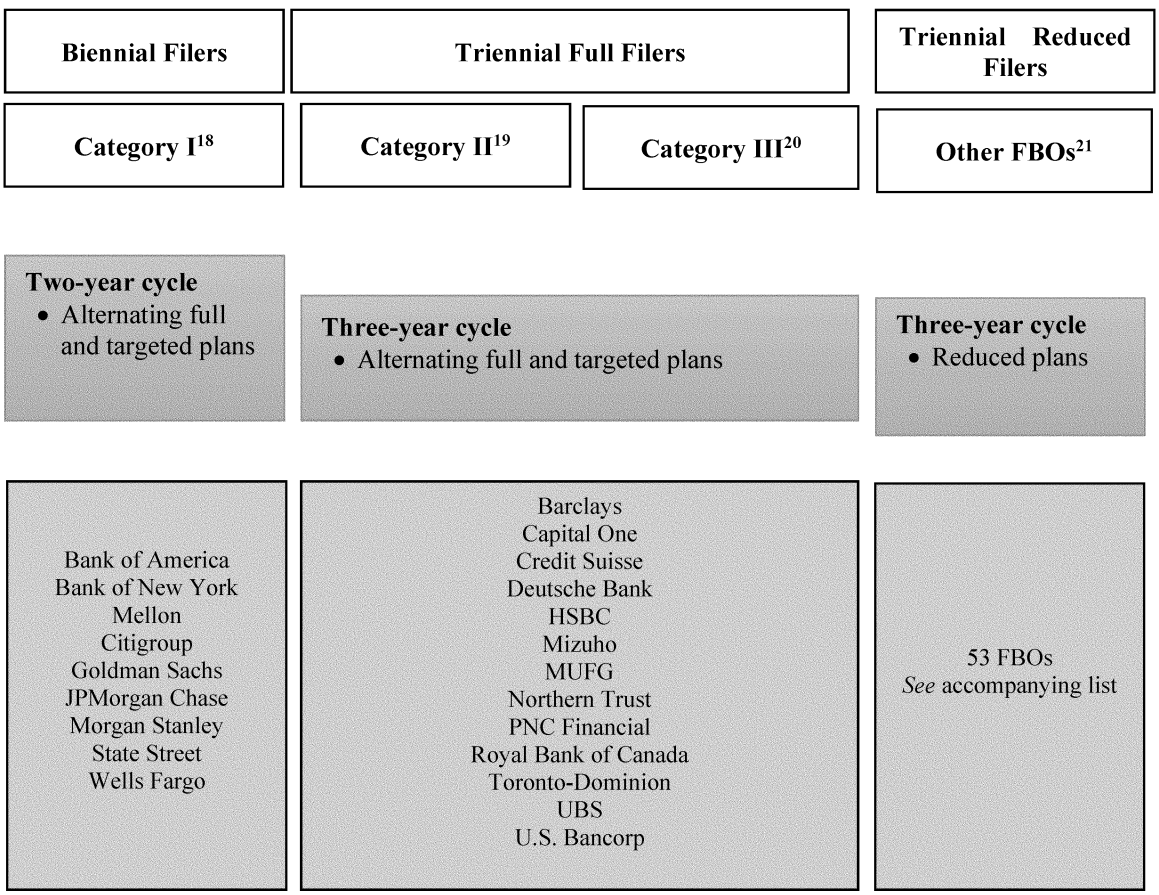
- U.S. and foreign banking organizations with $250 billion or more in total consolidated assets,
- U.S. banking organizations identified as U.S. GSIBs, and
- Any designated nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act should be supervised by the Board.

As discussed in the proposal, following EGRRCPA, the Board has the authority to apply the resolution planning requirement to firms with $100 billion or more and less than $250 billion in total consolidated assets.[15] In the proposal, the Board proposed to apply the risk-based indicators established in the notices of proposed rulemaking for the tailoring rules to

[15] 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). *See also* EGRRCPA section 401(g).

identify those U.S. firms with total consolidated assets equal to $100 billion or more and less than $250 billion that would be subject to a resolution planning requirement. Consistent with the notices of proposed rulemaking for the domestic tailoring rule, the Board proposed to apply resolution planning requirements to U.S. bank holding companies with (a) total consolidated assets equal to $100 billion or more and less than $250 billion and (b) $75 billion or more in any of the following risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure. Consistent with the notices of proposed rulemaking for the FBO tailoring rule, the Board proposed to apply resolution planning requirements to foreign banking organizations [16] with (a) total global assets equal to $100 billion or more and less than $250 billion, (b) combined U.S. assets equal to $100 billion or more, and (c) $75 billion or more in any of the risk-based indicators measured based on combined U.S. operations. In addition, the agencies proposed to use the risk-based indicators to divide U.S. and foreign firms into groups for the purposes of determining the frequency and informational content of resolution plan filings.

Expected Resolution Plan Filing Groups[17]



Foreign banking organizations that are expected to be triennial reduced filers

Agricultural Bank of China

Australia and New Zealand Banking Group

Banco Bradesco

Banco De Sabadell

Banco Do Brasil

Banco Santander

[16] Consistent with the 2011 rule and the proposal, for purposes of the final rule, a foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary.

[17] Projected categories are based on data for Q1 2019. Actual categories will be based on 4-quarter averages. For certain measures for foreign banks, conservative assumptions were used to estimate incomplete data.

[18] Firms subject to Category I standards will be the U.S. GSIBs. Any future Council-designated nonbank would file full and targeted plans on a two-year cycle, unless the agencies jointly determine the firm should file full and targeted plans on a three-year cycle.

[19] Firms subject to Category II standards will be: (1) U.S. firms with (a) ≥$700b average total consolidated assets; or (b) ≥$100b average total consolidated assets with ≥$75b in average cross-jurisdictional activity and (2) foreign banking organizations (FBOs) with (a) ≥$700b average combined U.S. assets; or (b) ≥$100b average combined U.S. assets with ≥$75b in average cross-jurisdictional activity.

[20] Firms subject to Category III standards will be: (1) U.S. firms with (a) ≥$250b and <$700b average total consolidated assets; or (b) ≥$100b average total consolidated assets with ≥$75b in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure and (2) FBOs with (a) ≥$250b and <$700b average combined U.S. assets; or (b) ≥$100b average combined U.S. assets with ≥$75b in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure.

[21] Other FBOs subject to resolution planning pursuant to statute are FBOs with ≥$250b global consolidated assets that are not subject to Category II or Category III standards.

Bank of China
Bank of Communications
Bank of Montreal
Bank of Nova Scotia
Bayerische Landesbank
BBVA Compass
BNP Paribas
BPCE Group
Caisse Federale de Credit Mutuel
Canadian Imperial Bank of Commerce
China Construction Bank Corporation
China Merchants Bank
CITIC Group Corporation
Commerzbank
Commonwealth Bank of Australia
Cooperative Rabobank
Credit Agricole Corporate and Investment Bank
DNB Bank
DZ Bank
Erste Group Bank AG
Hana Financial Group
Industrial and Commercial Bank of China
Industrial Bank of Korea
Intesa Sanpaolo
Itau Unibanco
KB Financial Group
KBC Bank
Landesbank Baden-Weurttemberg
Lloyds Banking Group
National Agricultural Cooperative Federation
National Australia Bank
Nordea Group
Norinchukin Bank
Oversea-Chinese Banking Corporation
Shinhan Bank
Skandinaviska Enskilda Banken
Societe Generale
Standard Chartered Bank
State Bank of India
Sumitomo Mitsui Financial Group
Sumitomo Mitsui Trust Holdings
Svenska Handelsbanken
Swedbank
UniCredit Bank
United Overseas Bank
Westpac Banking Corporation
Woori Bank

In the proposal, the Board noted that the thresholds and risk-based indicators identified in the categories were designed to take into account an individual firm's particular activities and organizational footprint that may present significant challenges to an orderly resolution. The Board proposed to apply a uniform threshold of $75 billion for each of these risk-based indicators, based on the degree of concentration this amount would represent for each firm and the proportion of the risk factor among all U.S. firms with $100 billion or more in total consolidated assets that would be included by the threshold.

In the proposal, the Board noted that increased levels of cross-jurisdictional activity could increase operational complexity and that it may be more difficult to resolve or unwind a firm's positions due to the multiple jurisdictions and regulatory authorities involved and potential legal or regulatory barriers to transferring financial resources across borders. Similarly, the Board noted that bank holding companies with significant nonbank assets would be more likely to be engaged in activities such as prime brokerage, or complex derivatives and capital markets activities. Where a firm has not engaged in planning to address these particular challenges, it is less likely the firm's resolution would proceed in an orderly manner without unduly impacting other firms. Regarding weighted short-term wholesale funding, the Board noted that firms particularly reliant on short-term funding sources may be more vulnerable to large-scale funding runs or ''fire sale'' effects on asset prices and therefore proposed to continue to apply resolution planning requirements to firms with higher levels of potential liquidity vulnerability, as measured by the firm's weighted short-term wholesale funding. Finally, the Board noted that where a firm's activities result in large off-balance sheet exposure, the firm may be more vulnerable to significant draws on capital and liquidity in times of stress. The proposal therefore would have continued to apply resolution planning requirements to firms with this risk-based indicator.

The agencies received several comments on the use of the four risk-based indicators and associated thresholds.[22] One commenter reiterated concerns that it described in its comment letter on the notices of proposed rulemaking for the tailoring rules and stated that its concerns regarding those notices applied equally to the proposed rule. Another commenter expressed general support for the risk-based indicator approach. Several commenters recommended changes to the calibration of U.S. assets and activity in the risk-based indicators for foreign banking organizations. One commenter argued against the inclusion of U.S. branches and agencies in the calculation of a foreign firm's combined U.S. assets or thresholds for risk-based indicators unless the operations of branches or agencies are significant to a critical operation. Instead, the commenter recommended that risk-based indicators be calculated consistent with how the strategic analysis requirements in the 2011 rule apply to U.S. branches, agencies, and offices. Another commenter argued against the use of U.S. branch assets in determining activity in risk-based indicators because branches are discrete entities from the U.S. intermediate holding companies and often have more stable funding.

The resolution planning requirement currently applies to a foreign banking organization's entire U.S. operations, including U.S. branches and agencies. U.S. branches and agencies constitute a significant share of these foreign banking organizations' presence in the United States. In addition, the agencies' experience reviewing resolution plans demonstrates that there are interconnections and dependencies between a foreign firm's U.S. branches, agencies, and offices and its U.S. subsidiaries, core business lines, and critical operations. The commenters' proposals to exclude certain U.S. branches, agencies, and offices from the calculation of the risk-based indicators or combined U.S. operations would not be consistent with the objective of measuring the full scope of potential risks to U.S. financial stability, including risks associated with operational complexity. Moreover, it is appropriate to tailor resolution planning requirements based on the size and complexity of a foreign firm's entire U.S. operations because the resolution planning requirement applies to a firm's entire U.S. operations. Accordingly, under the final rule, risk-based indicators and combined U.S. operations would be measured as proposed, including a foreign firm's U.S. branches, agencies, and offices.

Two commenters expressed concerns with the use of asset thresholds to determine a firm's category unless the asset threshold is indexed to inflation or total U.S. banking assets. As further explained in the notices of final rulemaking for the tailoring rules, the $100 billion and $250 billion size thresholds prescribed in the Dodd-Frank Act, as amended by EGRRCPA, are fixed by statute.[23] Indexing the other

[22] This preamble responds to comments received on the proposed rule regarding the risk-based indicators. Responses to comments received on the notices of proposed rulemaking for the tailoring rules and additional information concerning the basis for the risk-based indicators established under the tailoring rules are included in the notices of final rulemaking for the tailoring rules. *See* Board Final Rule, ''Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations'' published elsewhere in this issue of the **Federal Register**.

[23] Section 165 of the Dodd-Frank Act does provide the Board with discretion to establish a minimum asset threshold above the statutory

Continued

thresholds would add complexity, a degree of uncertainty, and potential discontinuity to the framework. The Board acknowledges the thresholds should be reevaluated over time to ensure they appropriately reflect growth on a macroeconomic and industry-wide basis, as well as to continue to support the objectives of the final rule. The Board plans to accomplish this by periodically reviewing the thresholds under the tailoring rules and proposing changes through notice and comment process, rather than including an automatic adjustment of thresholds based on indexing.

Several commenters discussed the criteria for being subject to Category II standards. Two commenters supported the calibration of these criteria as proposed and asserted that no additional risk-based indicators should be used to determine whether a firm would be subject to Category II standards. These commenters opposed the use of additional risk-based indicators (*e.g.,* weighted short-term wholesale funding, nonbank assets, or off balance-sheet exposure) and stated that such indicators would only be appropriate if the threshold were set to $210 billion. Another commenter stated that the criteria for being subject to Category II standards should not be based on exceeding the threshold for cross-jurisdictional activity only.

As further explained in the notices of final rulemaking for the tailoring rules, significant cross-border activity can indicate heightened interconnectivity and operational complexity. Cross-jurisdictional activity can add operational complexity in normal times and complicate the ability of a firm to undergo an orderly resolution in times of stress, generating risks to financial stability in the United States. In addition, cross-jurisdictional activity may present increased challenges in resolution because there could be legal or regulatory restrictions that prevent the transfer of financial resources across borders where multiple jurisdictions and regulatory authorities are involved. The cross-jurisdictional activity indicator and threshold is intended to identify firms with significant cross-border activities. Accordingly, the tailoring rules apply Category II standards to domestic and foreign banking organizations with cross-jurisdictional activity of $75 billion or more.

Alternative Scoping and Tailoring Criteria

In the proposal, the Board also proposed an alternative approach for assessing the risk profile and systemic footprint of a U.S. banking organization and of a foreign banking organization's combined U.S. operations or U.S. intermediate holding company: Using a single, comprehensive score. The Board uses an identification methodology (scoring methodology) to identify a U.S. bank holding company as a U.S. GSIB and apply risk-based capital surcharges to these firms. The Board proposed using the same scoring methodology to determine whether to apply the resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets.[24] The agencies also proposed using this same scoring methodology to divide U.S. and foreign firms into groups to determine the frequency and informational content of resolution plan filings.

One commenter directed agency staff to comments on the alternative scoping criteria in relation to the notices of proposed rulemaking for the tailoring rules. The comment generally expressed support for the risk-based indicator methodology rather than the alternative methodology, which the commenter described as flawed conceptually and in calibration.

Under the tailoring rules, the Board finalized an indicators-based approach for applying Category II, III, or IV standards to the firms, as this approach provides a simple framework that supports the objectives of risk sensitivity and transparency. To determine whether a firm with total consolidated assets equal to $100 billion or more and less than $250 billion is subject to resolution planning requirements, the Board is finalizing the same indicators-based approach, requiring any such firm that is subject to Category II or III standards to submit resolution plans. As under the proposal, and as further described below, the agencies are similarly finalizing the indicators-based approach for determining the scope of resolution planning requirements for firms other than the U.S. GSIBs and nonbank financial companies supervised by the Board. The Board will continue to use the scoring methodology to apply Category I standards to a U.S. GSIB and, as under the proposal, the final rule relies on this identification for determining the scope of resolution planning requirements for these firms.

U.S. Covered Companies With $100 Billion or More and Less Than $250 Billion in Total Consolidated Assets

Under the proposed rule, resolution planning requirements would not have applied to U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion whose activities did not exceed the threshold for any of the risk-based indicators (*i.e.,* cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure). In the proposal, the Board noted that it was less likely that one of these firms' failure would present a risk of serious adverse effects on U.S. financial stability and that requiring a plan for rapid and orderly resolution in bankruptcy from such a firm may impose burden without sufficient corresponding benefit.

The Board received several comments on this aspect of the proposal. One commenter expressed support for not applying the resolution planning requirements to U.S. firms subject to Category IV standards. Other commenters stated that the Board should apply resolution planning requirements to all firms with $100 billion or more and less than $250 billion in total consolidated assets. A further commenter expressed concern that the proposal would not apply resolution planning requirements to any firm with less than $250 billion in total consolidated assets. The commenter asserted that, instead, resolution planning should be required for all firms with more than $100 billion in total consolidated assets because the Corporation's resolution authority under the Federal Deposit Insurance Act does not extend beyond a covered company's insured depository institution subsidiary, and that the resolution plan process under the final rule should be coordinated with the IDI rule. Another commenter expressed concerns about removing the resolution planning requirements for large regional banks, asserting that the agencies did not explain sufficiently the rationale for removing the requirement for U.S. firms subject to Category IV standards.

The Board is finalizing this aspect of the proposal as proposed. In response to comments on this aspect of the final

thresholds for some, but not all, enhanced prudential standards. However, the Board may only utilize this discretion pursuant to a recommendation by the Financial Stability Oversight Council in accordance with section 115 of the Dodd-Frank Act. 12 U.S.C. 5365(a)(2)(B).

[24] As discussed in further detail in the proposal, the scoring methodology in the Board's regulations that is used to calculate a U.S. GSIB's capital surcharge includes two methods (12 CFR part 217, subpart H). The first method is based on the sum of a firm's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity (method 1). The second method is based on the sum of these same measures of risk, except that the substitutability measures are replaced with a measure of the firm's reliance on short-term wholesale funding (method 2).

rule, the Board notes that the proposal and final rule would continue to apply resolution planning requirements to some firms with $100 billion or more and less than $250 billion in total consolidated assets.[25] As explained above, the final rule relies on the risk-based indicators to apply resolution planning requirements to firms in this group. The Board believes the risk-based indicators are an effective means for identifying those firms with total consolidated assets of $100 billion or more and less than $250 billion whose material financial distress or failure would pose a threat to U.S. financial stability, for the reasons described above, in the proposal, and in the proposed and final tailoring rules. Where a firm's activities in one or more of the risk-based indicators exceed the $75 billion threshold, it is more likely that its failure could adversely affect U.S. financial stability; accordingly, the firm should be subject to resolution planning requirements. However, when a firm's activities do not exceed one or more of the risk-based indicators and its total consolidated assets are less than $250 billion, it is less likely that the firm's failure would have serious adverse effects on U.S. financial stability and, accordingly, to impose resolution planning requirements on such a firm would not yield a sufficient corresponding benefit.

Foreign-Based Covered Companies With $100 Billion or More and Less Than $250 Billion in Total Global Assets

In the proposal, the Board proposed applying resolution planning requirements to foreign banking organizations with (a) total global assets equal to $100 billion or more and less than $250 billion, (b) combined U.S. assets equal to $100 billion or more, and (c) $75 billion or more in any of the following risk-based indicators measured based on combined U.S. operations: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. The Board noted in the proposal that it would no longer require resolution plan submissions from foreign banking organizations with total global assets equal to $100 billion or more and less than $250 billion where (a) the firm has combined U.S. assets below $100 billion or (b) the firm does not have $75 billion or more in any of the risk-based indicators measured based on combined U.S. operations.

One commenter asserted that resolution planning requirements should be eliminated entirely for foreign firms with limited U.S. operations, regardless of their total global asset size, or, in the alternative, resolution planning requirements should apply to a foreign firm subject to Category IV standards only if it is a global systemically important financial institution. The commenter asserted that foreign firms should also be permitted to comply with resolution planning requirements pursuant to the final rule by certifying compliance with the home country resolution requirements.

The Board is finalizing this aspect of the proposal as proposed. The Board notes that the Dodd-Frank Act, as amended by EGRRCPA, requires all foreign banking organizations with $250 billion or more in total global assets to submit resolution plans, and a certification of home country compliance by itself would not satisfy this statutory standard. Moreover, as explained above, the Board believes that the risk-based indicators are an effective means for identifying those firms that should be subject to resolution planning requirements due to the potential effect on U.S. financial stability of their financial distress or failure.

Exiting Covered Company Status

The proposal would have updated the methodology for ascertaining when a firm ceased to be a covered company. With respect to a decrease in assets, under the proposal, a U.S. firm would have ceased to be a covered company when its total consolidated assets are less than $250 billion based on total consolidated assets for each of the four most recent calendar quarters (and it is not otherwise subject to Category II or Category III standards based on the risk-based indicators identified above). A foreign banking organization that files quarterly reports on Form FR Y–7Q similarly would have been assessed on the basis of its total global assets for each of the four most recent calendar quarters. A foreign banking organization that files the Y–7Q report annually rather than quarterly would have been assessed based on its total global assets over two consecutive years. The agencies would have retained the discretion to jointly determine that a firm is no longer a covered company at an earlier time than it would be pursuant to its quarterly or annual reports. Under the proposal, firms that would have ceased to be, or to be treated as, bank holding companies or that were de-designated by the Council for supervision by the Board would no longer have been covered companies and would not have had any further resolution planning requirements as of the effective date of the applicable action unless there were a subsequent change to their status. The agencies received no comments on this aspect of the proposal and are finalizing it as proposed, but have clarified in the final rule that a firm's total consolidated assets are determined on the basis of total consolidated assets as reported on each of its four most recent quarterly reports or two most recent annual reports.

2. Filing Groups and Filing Cycle

The proposal would have divided covered companies into three groups of filers: (a) Biennial filers; (b) triennial full filers; and (c) triennial reduced filers. Under the proposal, all covered companies would have had a July 1 submission date, instead of the current division between July 1 and December 31.

The agencies received comments offering general support for the longer filing cycle and asserting that it would allow filers sufficient time to consider firm-specific feedback. The agencies also received comments suggesting that the current annual filing requirement be retained to reflect the potential for rapid changes to firms' structure and financial condition that may cause resolution plans to become outdated.

The agencies note that the annual submission requirement has been a challenging constraint for both the firms and the agencies. The annual requirement did not provide sufficient time for the agencies to review the resolution plans and develop useful firm-specific feedback or general guidance, and for the firms to consider that firm-specific feedback or general guidance in their next resolution plan submissions. Independent of the proposal, the agencies have extended the resolution plan filing deadlines over the past few submission cycles to provide at least two years between resolution plan submissions. Accordingly, the agencies are finalizing an extended filing cycle, consistent with the proposal and described in more detail below.

The agencies received one comment regarding the proposal to move the submission date to July 1 for all filers. The commenter suggested that the 2011 rule's December 31 submission date be retained for triennial full filers subject to Category III standards as this would allow more efficient allocation of resources for resolution planning and other supervisory activities. The

[25] For this purpose, total consolidated assets are determined under the tailoring rules. Accordingly, a firm has total consolidated assets of $100 billion or more if the average of its total consolidated assets as reported on multiple regulatory reports, as specified in the tailoring rules, is $100 billion or more.

agencies are finalizing the July 1 submission date as proposed. Having one resolution plan submission date will simplify administration of the final rule for filers and the agencies, such as when filers change filing groups.

Biennial Filers

In the proposal, the biennial filers would have comprised firms subject to Category I standards, or the U.S. GSIBs, as well as any nonbank financial company supervised by the Board that has not been jointly designated as a triennial full filer by the agencies. The agencies noted that any such designation of a nonbank financial company would be made taking into account the relevant facts and circumstances, including the degree of systemic risk posed by the particular covered company's failure.

Since the failure of a firm in this group would pose the most serious threat to U.S. financial stability, the proposal would have applied the most stringent resolution planning requirements to biennial filers in terms of both submission frequency and informational content. Under the proposed rule, the biennial filers would have been required to submit a resolution plan every two years, alternating between a full resolution plan, subject to the waiver option, and a targeted resolution plan. The agencies noted that the U.S. GSIBs' resolution plans had matured over time and these firms had taken meaningful steps to develop the foundational capabilities necessary for the implementation of their resolution strategies. In addition, in recent years, the agencies have provided extensions under the 2011 rule to provide the biennial filers with two years between resolution plan submissions, so formalization of a two-year cycle would be consistent with established practice.

The agencies received two comments on this aspect of the proposal. One commenter stated that the U.S. GSIBs should be required to submit full resolution plans every two years. Another commenter expressed general opposition to the two-year cycle and asserted that it would be insufficient to capture important information about firms' resolvability due to the speed with which changes can occur.

The agencies are finalizing this aspect of the proposal as proposed. After several rounds of resolution plans, firm-specific feedback, and general guidance, the U.S. GSIBs' resolution plans have matured over time, making more frequent submissions generally unnecessary. In addition, experience under the 2011 rule has shown that an annual resolution plan submission schedule is too challenging a constraint for the reasons described above. The agencies note, however, that they retain the ability under the final rule to obtain key information between resolution plan submissions, including by requiring interim updates and receiving notices of extraordinary events, which will allow the agencies to remain informed of material developments affecting resolvability notwithstanding the less frequent filing cycle. The agencies also will have authority to require a full resolution plan instead of a targeted resolution plan and to move a resolution plan submission date.

Triennial Full Filers

The proposal identified the second filing group, triennial full filers, as firms subject to Category II or III standards under the notices of proposed rulemaking for the tailoring rules, as well as any nonbank financial company supervised by the Board that was designated as a triennial full filer by the agencies.

The agencies proposed that triennial full filers be on a three-year filing cycle rather than a two-year filing cycle because the failure of a triennial full filer would generally be less likely to pose a threat to U.S. financial stability as compared to the failure of a biennial filer. The proposal would have required triennial full filers to submit a resolution plan every three years, alternating between a full resolution plan and a targeted resolution plan.

The agencies received several comments on the proposed three-year filing cycle for triennial full filers. One commenter expressed support for the proposed three-year cycle, and alternating between full and targeted resolution plans for firms subject to Category III standards. Another commenter stated that these firms should be on a biennial schedule, alternating between full and targeted resolution plans. One commenter expressed general opposition to the three-year cycle and asserted that it would be insufficient to capture important information about firms' resolvability due to the speed at which change can occur. Another commenter stated that firms that would be triennial full filers under the proposal should be allowed to submit targeted resolution plans every three years, absent an extraordinary event.

The agencies are finalizing as proposed the three-year cycle for triennial full filers, alternating between full and targeted resolution plans. While the failure of a firm in this group could threaten U.S. financial stability, such failure is less likely to threaten U.S. financial stability as compared to the failure of a biennial filer. Accordingly, it is appropriate to tailor this group's requirements relative to the requirements for biennial filers. Given these firms' size and complexity, the agencies have determined that a triennial schedule is appropriate. In addition, as with biennial filers, the agencies would retain authority to require interim updates and full resolution plans, and to move resolution plan submission dates, and firms would be required to submit notices of extraordinary events, which would allow the agencies to remain informed of material developments affecting resolvability that occur between resolution plan submissions.

The agencies are not adopting commenters' recommendation to limit all resolution plan submissions from triennial full filers to targeted resolution plans absent an extraordinary event because the agencies believe that, given the potential risks inherent in firms in this group and because firms and markets change over time, it is appropriate for these firms to submit a full resolution plan at least every six years. In addition, the agencies note that a firm may apply for a waiver from certain informational content requirements in its full resolution plan and incorporate by reference information in a prior submission that remains accurate in all respects that is material to the covered company's resolution plan, as described further below. These aspects of the final rule should appropriately tailor the burden of preparing a full resolution plan.

In the proposal, the agencies also noted that the proposed triennial full filer group would have included foreign banking organizations that had previously received detailed general guidance from the agencies.[26] These firms have taken important steps to enhance their resolvability and facilitate their orderly resolution in bankruptcy and have significantly reduced the size and risk profiles of their U.S. operations since the passage of the Dodd-Frank Act and in response to the implementation of Regulation YY,[27] although the failure of one of these firms could potentially pose a threat to U.S. financial stability. The agencies stated that it was appropriate that these firms be part of

[26] *See, e.g.,* Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf, https://www.fdic.gov/resauthority/2018subguidance.pdf.*

[27] 12 CFR part 252.

the triennial full filer group and submit resolution plans on the three-year filing cycle because the preferred outcome for each of these foreign banking organizations is a successful home country resolution using a single point of entry resolution strategy, not the resolution strategy described in its U.S. resolution plan.

The agencies received one comment on this aspect of the proposal. The commenter asserted that the largest and most complex foreign banking organizations should submit resolution plans every two years, alternating between full and targeted resolution plans, because they pose similar risks to the U.S. financial system as the risks posed by the U.S. GSIBs. The commenter also stated that the rationale that these firms would be resolved through a home country single point of entry strategy was not compelling because the purpose of the resolution planning requirement is to plan for the failure of a U.S. entity.

The agencies note that the U.S. footprints of the larger and more complex foreign banking organizations are significantly smaller than those of, and do not present the same complexities as, the U.S. GSIBs. Consequently, while the failure of these operations may threaten the U.S. financial system, it is less likely than the failure of a U.S. GSIB, regardless of whether the global firm executes its preferred resolution strategy successfully. Accordingly, the agencies believe that a longer filing cycle is appropriate for these firms and are finalizing this aspect of the proposal as proposed.

Triennial Reduced Filers

The proposal identified a third group, triennial reduced filers, which would have consisted of any covered company that was not subject to Category I, II, or III standards and was not a nonbank financial company supervised by the Board. The proposal would have applied less stringent resolution planning requirements to firms in this group because they do not have the same size or complexity as firms that would have been subject to Category I, II, or III standards. Under the proposal, triennial reduced filers would have been required to submit reduced resolution plans every three years. The proposal also would have required a new triennial reduced filer to submit a full resolution plan as its initial submission and thereafter a reduced resolution plan every three years.

The agencies received one comment on this aspect of the proposal. The commenter asserted that some of the larger triennial reduced filers should be on a biennial schedule, alternating between full and targeted resolution plans, and supported applying a longer filing cycle to the U.S. operations of certain smaller foreign firms.

The agencies are finalizing the triennial reduced filer group and related filing cycle as proposed. Given the limited scope of these firms' U.S. operations and activities, the agencies have determined that it is appropriate for triennial reduced filers to submit reduced resolution plans on a three-year cycle; this requirement will appropriately tailor burden for these firms while ensuring that the agencies remain apprised of changes that could materially affect the firms' resolvability or resolution strategies. In addition, the failure of the U.S. operations of one of these firms may threaten the U.S. financial system, but failure of these operations poses a lower risk than the failure of a biennial filer or triennial full filer. Nonetheless, the agencies retain the ability to obtain additional information between resolution plan submissions, as mentioned above, and to require any firm to submit a full resolution plan, as described below.

Moving Submission Dates, Changing Plan Content, and Requiring Interim Updates

The proposal would have provided the agencies the flexibility to move covered companies' submission dates. The proposal would have required the agencies to notify a covered company that had previously submitted a resolution plan at least 180 days prior to the new submission date. A new covered company would have received at least 12 months' notice prior to the new submission date. Consistent with the 2011 rule, the proposal also would have allowed agencies to require covered companies to provide interim updates within a reasonable amount of time. In addition, the proposal would have allowed the agencies to jointly require that a covered company submit a full resolution plan within a reasonable period of time.

The agencies received several comments on these aspects of the proposal. Commenters asserted that the final rule should provide a minimum of 12 months' notice prior to requiring a full resolution plan or an off-cycle submission and six or 12 months' notice prior to an interim update. Commenters also asserted that the agencies should clarify that a ''reasonable amount of time'' for prior notice of a full resolution plan submission would be at least 12 months' notice. These commenters generally asserted that their proposed notice periods are necessary to provide covered companies with sufficient time to prepare their resolution plans.

The final rule contains certain changes from the proposal in response to these commenters. Under the final rule, the agencies will provide at least 12 months' notice prior to requiring a full resolution plan submission or an off-cycle submission (*i.e.,* a submission on a date other than the regularly scheduled date for the covered company's filing group).[28] The agencies believe that these changes will enhance the predictability of resolution plan submission dates, provide appropriate time for resolution plan preparation, and help facilitate covered companies' resource allocation decisions.

Consistent with the proposal and the 2011 rule, the final rule provides that the agencies may require a covered company to submit an interim update within a reasonable amount of time, as jointly determined by the agencies. An interim update is intended to be a flexible tool for the agencies to obtain information between resolution plan submission dates. When requiring an interim update, the agencies will specify the portions or aspects of a previously submitted resolution plan that a firm is required to update. Accordingly, the informational content requirements for an interim update are not fixed, making it difficult to identify a specific period that is necessary to prepare every interim update. While a six- or 12-month period may be appropriate in certain circumstances, a shorter time period may be appropriate in other circumstances, especially where an interim update would contain only limited information. Accordingly, the agencies do not believe that it would be appropriate to introduce a fixed notice period for an interim update.

The final rule provides that the agencies may require a covered company to submit a full resolution plan instead of a targeted or reduced resolution plan that the covered company is otherwise required to submit. The full resolution plan's submission date will be the submission date for the replaced targeted or reduced

[28] If the agencies were to require an off-cycle submission from a covered company, the covered company's next resolution plan submission date after the off-cycle submission date would be determined based on the off-cycle submission date. For example, if the agencies were to move a triennial full filer's submission date from July 1, 2027 to July 1, 2026, the covered company's next resolution plan submission date after July 1, 2026 would be July 1, 2029 (absent the agencies jointly moving the July 1, 2029 submission date). The agencies will consider the impact on the covered company's future resolution plan submission dates and any deadlines related to those submission dates when requiring an off-cycle submission.

resolution plan.[29] The submission of such a full resolution plan will not change the type of resolution plan that the covered company is otherwise thereafter required to submit.

The agencies do not expect to regularly exercise this authority. However, it may be necessary to require a full resolution plan instead of a targeted or reduced resolution plan under unusual circumstances, and the agencies have preserved this authority as a means for the agencies to receive additional information from firms when appropriate. The agencies could, for example, exercise their discretion to require a triennial reduced filer whose activities have evolved gradually (rather than as the result of a single material event) to submit full resolution plan in lieu of a reduced resolution plan if the aggregate effect of those changes might meaningfully increase the risk that the firm's failure could have serious adverse effects on U.S. financial stability.

B. Resolution Plan Content

1. General Guidance and Firm-Specific Feedback

The preamble to the proposal specified that general guidance previously directed to specific full resolution plan filers concerning the content of their upcoming submissions would continue to be directed to those individual firms.

The agencies received several comments related to prior resolution planning general guidance and firm-specific feedback. Some commenters suggested that existing resolution planning general guidance directed to some firms should be consolidated and tailored among the different categories of firms, that any future general guidance be subject to notice and public comment, and that the agencies commit to providing firm-specific feedback on resolution plans and any general guidance no later than 12 months prior to a covered company's resolution plan submission date. These commenters asserted in particular that covered companies subject to Category II or III standards should not receive general guidance that is similar to the general guidance that is directed to the U.S. GSIBs, which are subject to Category I standards. A few commenters suggested that the agencies clarify to whom existing general guidance is directed, and one commenter suggested incorporating existing general guidance into the final rule.

The final rule provides that, absent extenuating circumstances, the agencies will provide a firm with notice of any deficiency or shortcoming identified by the agencies and any other firm-specific feedback regarding its resolution plan no later than 12 months after the later of (1) the date when the firm submitted the resolution plan and (2) the date by which the firm was required to submit the resolution plan. The agencies recognize firms' strong interest in prompt firm-specific feedback from the agencies and in having sufficient time to respond thereto, and would expect to exercise their authority to provide such notice after the one-year period only when providing the notice within a year would be impractical due to circumstances outside the agencies' control. Absent extenuating circumstances, this approach will provide a firm with at least one year to consider any and all firm-specific feedback before it is next required to submit a resolution plan. However, the agencies would retain the authority to require a firm to submit within a shorter period a revised resolution plan that addresses deficiencies or an interim update.

In addition to firm-specific feedback that provides the agencies' views on a particular resolution plan,[30] the agencies may continue to issue general guidance regarding future resolution plan submissions. The firm-specific feedback letters sent to-date to firms are examples of the firm-specific feedback that the agencies will provide to firms within the 12-month period described in the previous paragraph. While both firm-specific feedback (other than a notice of a deficiency) and general guidance are meant to assist firms in preparing future resolution plans, general guidance outlines the agencies' expectations or priorities and articulates the agencies' general views regarding resolution plans more generally than firm-specific feedback, which presents the agencies' views on a particular resolution plan. The agencies will strive to provide final general guidance at least a year before the next resolution plan submission date of firms to which the general guidance is directed.

Existing general guidance, including its content and scope, is not modified by the final rule. Accordingly, the detailed general guidance that certain foreign banking organizations have received from the agencies (FBO guidance) [31] continues to be directed to only those firms and is not directed to all triennial full filers as a result of the changes from the 2011 rule reflected in the final rule. Likewise, general guidance directed to certain domestic banking organizations (domestic guidance) [32] continues to be directed to only those domestic banking organizations to which it was directed prior to adoption of the final rule. Because general guidance sets forth non-binding expectations as opposed to rule-based requirements, the agencies do not believe that it is necessary or appropriate to incorporate all general guidance into the final rule.

The agencies sought and received public comment on the domestic guidance in 2018. The notice and comment process allowed the agencies to gain valuable insight, which led to improvements and clarifications in the final domestic guidance. Similar to the domestic guidance, the agencies intend to consolidate and request public comment in the near future on all aspects of the FBO guidance, including the informational content expectations and the subset of firms to which it is directed. The agencies expect that this process will lead to similar benefits for the FBO guidance. Similarly, the agencies intend to make any future general guidance concerning resolution planning available for public comment, and will endeavor to finalize any such general guidance at least one year prior to the submission date for the first resolution plan submission to which it would apply. The agencies will continue to provide firm-specific feedback on resolution plan submissions without first making that firm-specific feedback available for notice and comment.

2. Material Changes and Extraordinary Events

The proposal would have revised and clarified the requirements for filing a notice of material events to reflect the creation of a material changes definition. A material change would have been defined as any event,

[29] Accordingly, a firm could be required to submit a full resolution plan while the other members of the firm's filing group are required to submit targeted or reduced resolution plans on that submission date. Thereafter, the firm that was required to submit a full resolution plan will revert to its filing group's regular resolution plan type submission schedule.

[30] The agencies may provide the same or substantially similar firm-specific feedback to more than one firm. For example, some elements of firm-specific feedback provided to the U.S. GSIBs may be the same or substantially similar when certain aspects of their resolution plans are substantially similar.

[31] *See* Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf, https://www.fdic.gov/resauthority/2018subguidance.pdf.*

[32] *See* Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438, 1449 (February 4, 2019).

occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have a material effect on the resolvability of the covered company, the covered company's resolution strategy, or how the covered company's resolution strategy is implemented. Full, targeted, and reduced resolution plans would have been required to include information about material changes since a covered company's previously submitted resolution plan and changes the covered company made to its resolution plan in response.

Because of the broad definition of ''material change,'' the agencies determined that a notice requirement triggered by the occurrence of a material change between resolution plan submissions was not appropriate and instead proposed the concept of an extraordinary event, which would have required such a notice. Under the proposed rule, a material merger, acquisition of assets or other similar transaction, or a fundamental change to a covered company's resolution strategy would have been an extraordinary event requiring notice to the agencies between resolution plan submissions.

One commenter supported the inclusion in the proposal of the terms ''material change'' and ''extraordinary event,'' while another commenter expressed concern that the proposal put too much reliance on firms self-identifying material changes.

The final rule includes the proposed provisions regarding ''material changes'' [33] and ''extraordinary events,'' with the clarification that a notice related to an extraordinary event must describe the event and explain how the event affects the resolvability of the firm. The agencies believe that firms can effectively identify these types of events, and note that the rule's requirement that the board of directors (or delegee in the case of a foreign firm) approve each resolution plan should help ensure that firms take appropriate steps to identify material changes. In addition, the final rule has been revised from the proposal to require that a firm affirmatively state in its resolution plan that no material change has occurred since its prior resolution plan submission if the resolution plan does not identify any material changes. The agencies believe that this clarification will further help to ensure that firms give due attention to the requirement to identify material changes.

3. Full Resolution Plans

The proposal would not have generally modified the components or informational content requirements of a full resolution plan. Through numerous resolution plan submissions, the agencies and firms have gained familiarity with the format and content of the information required to be submitted pursuant to the 2011 rule. The agencies also recognize the utility of the existing informational content requirements for full resolution plans. Focus on these items has facilitated resolution plan and resolvability improvements, particularly by the largest and most complex firms.

Several commenters suggested that the proposal tailor the full resolution plan informational content requirements between categories of firms, as well as among domestic and foreign firms based on their relative risk to U.S. financial stability. One commenter suggested that the contents of a full resolution plan should be further tailored for foreign firms, focus on critical operations in the United States, and include U.S. branches in the firm's strategic analysis only if they are significant to a critical operation. The commenter also suggested that the agencies should revise the definition of ''covered company'' to clarify that the strategy for a foreign firm need only focus on resolution of its U.S. core business lines, critical operations, and material entities. The commenter also suggested that the agencies confirm that foreign firms that have filed resolution plans under the 2011 rule will not be subject to requirements that impose greater burdens than applied previously, and that any new requirements be based on the occurrence of extraordinary events.

The agencies are not changing the informational content requirements of a full resolution plan in the final rule from the proposal, other than requiring an affirmation that no material change has occurred, if applicable. With respect to differentiation of requirements between domestic and foreign firms, section ____.5(a) of the final rule appropriately distinguishes between informational content requirements for domestic firms and foreign firms by focusing foreign firms' resolution plans on information related to their U.S. operations, consistent with the 2011 rule. The agencies do not believe that it is appropriate to limit resolution plan content to operations that are related to a critical operation because the Dodd-Frank Act's resolution planning requirement requires firms to plan generally for their rapid and orderly resolution. Similarly, nothing in the Dodd-Frank Act suggests that branches should be categorically excluded as suggested. However, the agencies note that, consistent with the 2011 rule, the final rule limits the strategic analysis requirements relating to material entities that are subject to an insolvency regime other than the Bankruptcy Code (including branches) by allowing covered companies to exclude such entities from their strategic analysis unless the entities have $50 billion or more in total assets or conduct a critical operation. The agencies have found this limitation to appropriately capture the need for information about material entities that may affect U.S. financial stability and accordingly are retaining it under the final rule.

Although the informational content requirements for resolution plans are not differentiated among filing groups in the final rule, the firm-initiated waiver request process will enable further tailoring of the informational content requirements of full resolution plans based on the attributes and risks posed by a particular covered company and the content of firms' most recent submissions. In addition, the agencies will retain the authority to tailor informational content requirements through waivers on the agencies' own initiative and will continue to communicate their tailored expectations for individual firms' resolution plans through firm-specific feedback. Moreover, as explained in more detail below, under the final rule the firm-initiated waiver request process would be available only to triennial full filers and triennial reduced filers. As a result, the final rule would keep in place all informational content requirements for biennial filers' full resolution plans unless the agencies grant a waiver on their own initiative. As explained below, this change to the process for covered companies to request waivers reflects that among all categories of covered companies, biennial filers' material financial distress or failure

[33] As noted in the proposal, such changes include the identification of a new critical operation or core business line; the identification of a new material entity or the de-identification of a material entity; significant increases or decreases in the business, operations, or funding of a material entity; or changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis. Other such changes include material changes in operational and financial interconnectivity, both those that are intra-firm and external. Examples of such operational interconnectivity include reliance on affiliates for access to key financial market utilities or critical services, or significant reliance on the covered company by other firms for certain Payments, Clearing, and Settlement (PCS) services, including agent bank clearing or nostro account clearing, or government securities settlement services. Examples of such financial interconnectivity include a material entity becoming reliant on an affiliate as a source for funding or collateral, or the covered company becoming a major over-the-counter derivatives dealer.

would be most likely to pose risks to U.S. financial stability, so their full resolution plans should, as a general matter, be the most comprehensive. The agencies believe that this procedural change is also responsive to commenters' concerns about the degree of tailoring of informational content requirements between biennial filers and triennial full filers. Accordingly, the agencies believe that the final rule reflects appropriate tailoring of informational content among different categories of covered companies.

4. Waivers of Informational Content Requirements

The proposal would have continued to permit the agencies to waive certain informational content requirements for one or more firms on the agencies' joint initiative, given that through a covered company's repeated resolution plan submissions, certain aspects of its resolution plan may reach a steady state or become less material such that regular updates would not be useful to the agencies in their review of the resolution plan. The proposal also introduced a process whereby a covered company that had previously submitted a resolution plan would have been able to apply for a waiver of certain informational content requirements of a full resolution plan. Under the proposal, firms would have been able to submit one waiver request per filing cycle, which would have included a public section containing the requirements sought to be waived. These requests would have been required to be submitted at least 15 months before the submission date and include all information necessary to support the request. A waiver request would have been automatically granted on the date that was nine months prior to the submission date for the resolution plan to which it related if the agencies did not jointly deny the waiver prior to that date. The proposal would have enabled the agencies to deny a waiver in their discretion.

Several commenters supported the firm-initiated waiver request process, noting that the process would help streamline submissions and that automatically approving waivers unless jointly denied would ensure that requests would not be unduly delayed. One of those commenters suggested that the waiver should be made automatic for filers that qualified to submit tailored resolution plans under the 2011 rule, while others, as discussed above, generally contended that different categories of filers should be subject to different levels of resolution plan informational content requirements. Other commenters expressed concern that the firm-initiated waiver request process was unnecessary or would inappropriately reduce resolution plan content requirements, increase burden on the agencies, and be biased in favor of approval. One commenter suggested that waivers should be required to be approved by both agencies. This commenter was further concerned that the agencies could grant waivers for multiple submission cycles, effectively undermining the proposed rule's limit of one waiver request per submission cycle. Another commenter stated that providing for automatic approval of waivers when the agencies do not jointly deny them could result in the loss of important information based on the challenges of coordinating joint agency action.

The final rule retains both the agencies' ability to waive certain informational content requirements on their joint initiative and the firm-initiated waiver request process introduced in the proposal, with some modifications. In response to concerns raised about the firm-initiated waiver request process, and to suggestions that the agencies should take additional steps to tailor the informational content requirements between biennial filers and triennial full filers, the agencies have revised the process for covered companies to request waivers. The agencies have determined that the firm-initiated waiver process should not be extended to biennial filers in light of the additional risks that these firms present. Because the concerns noted above outweigh the advantages of a firm-initiated waiver process for biennial filers, the agencies are limiting firm-initiated waiver requests to triennial full filers and triennial reduced filers.[34] As under the 2011 rule, the agencies have the authority to jointly waive one or more of the resolution plan requirements on their own initiative for any firm, including any biennial filer. This procedural change will help to address these commenters' concerns by ensuring that, absent the agencies granting a waiver on their own initiative, all full resolution plan informational content requirements will remain in place for biennial filers, whose material financial distress or failure would be most likely to pose a threat to U.S. financial stability.

The agencies believe that for triennial full filers and triennial reduced filers, waiver requests will be a useful means to tailor the informational content of resolution plans in a manner that will be both efficient for the agencies and transparent to the public and, accordingly, the final rule permits waiver requests from these firms.

Relative to the proposed rule, the final rule changes the procedure by which the agencies act on waiver requests. Under the proposal, a waiver request would have been automatically approved if the agencies did not jointly deny it before a certain date. Under the final rule, a waiver request is automatically denied if the agencies do not jointly approve it before a certain date. The agencies believe that this change from the proposal will be more consistent with other provisions of the final rule that require joint agency agreement. The agencies will nonetheless endeavor to respond to waiver requests in a timely manner.

Furthermore, safeguards are in place to ensure that firm-initiated waivers would not inappropriately reduce resolution plan content requirements or otherwise favor filers and that the firm-initiated waiver request process will not be unnecessarily burdensome for the agencies or inefficient. For example, firms can only request waivers for full resolution plans and firms can only submit one waiver request per full resolution plan submission. In addition, firm-initiated waivers are not permitted for some of the most critical informational content, including the core elements required for a targeted resolution plan, any information specifically required pursuant to section 165(d) of the Dodd-Frank Act, information about material changes, and information about deficiencies and shortcomings. Moreover, the timing for the agencies' processing of waiver requests has been structured to ensure that the agencies have sufficient opportunity to properly review and consider the requests.

This preamble describes below the kind of information that waiver requests should contain, which should help make the firm-initiated waiver request process more efficient and focused. Finally, notwithstanding the new firm-initiated waiver request process, the agencies have retained the ability under the final rule to obtain additional information in a timely manner through, for example, interim updates, notices of extraordinary events, and the ability to require off-cycle resolution plan submissions.

[34] Waiver requests will generally have limited application to triennial reduced filers under the final rule because waiver requests do not apply to a covered company's initial full resolution plan or reduced resolution plans. However, the firm-initiated waiver request process could apply to a triennial reduced filer if the agencies were to require it to submit a full resolution plan with at least 18 months' prior notice.

The agencies are also clarifying in the final rule that, while the agencies may waive requirements for one or more resolution plan submissions on their own initiative, firm-initiated waivers apply to the submission of only a single full resolution plan. The final rule also clarifies that the agencies may approve or deny a waiver request in whole or in part.

One commenter suggested changes to the firm-initiated waiver request process aimed at ensuring transparency and consistency in its application, including requirements that the agencies consider whether approved waivers should apply to similarly situated firms and that both the criteria used in waiver determinations and the agencies' waiver decisions be made public. To ensure transparency in the firm-initiated waiver request process, the agencies intend to make their decisions on waiver requests public, although the information made public may not be the complete response provided to a firm and would not include confidential information. The agencies also note that under the final rule they will be able to waive informational content requirements on their joint initiative, and they could elect to exercise this discretionary authority to waive informational content requirements for similarly situated firms if they deem it appropriate to do so. However, the final rule retains the agencies' ability to approve or deny waiver requests at their joint discretion. The proposal's preamble included clarifying examples of how the agencies expect to exercise this discretion to approve waivers in appropriate circumstances, and these examples also apply for the final rule. For example, a waiver may be appropriate to reduce informational content that would be of limited utility to the agencies, such as when the agencies have recently completed an in-depth review of a particular business line and are satisfied that they are in possession of current information relevant to a firm's ability to resolve that business line. More specifically, if the agencies have recently undertaken a comprehensive review of a firm's Payments, Clearing, and Settlement (PCS) activities, it may be appropriate to waive the requirement for that firm to submit information relevant to these activities in its next resolution plan submission. A waiver may also be appropriate for a firm that submitted a tailored resolution plan under the 2011 rule and requests a waiver that would limit the firm's required resolution plan content in a manner that is similar to the tailored resolution plan provisions. Additional circumstances may arise under the final rule where it is appropriate to grant or deny waivers, and the agencies believe it is therefore appropriate to maintain a flexible standard under the final rule.

A covered company should provide all information necessary to support its waiver request, including an explanation of why approval of the request would be appropriate, why the information for which a waiver is sought would not be relevant to the agencies' review of the firm's resolution plan, and confirmation that the request meets the eligibility requirements for a waiver under the final rule (*i.e.,* that it is not a core element, not related to an identified deficiency that has not been adequately remedied, etc.). To ensure that the agencies have the information necessary to evaluate a waiver request, the final rule provides that covered companies would be required to explain why the information sought to be waived would not be relevant to the agencies' review of the covered company's next full resolution plan and why a waiver of the requirement would be appropriate. Failure to provide appropriate explanation or any information requested by the agencies in a timely manner could lead the agencies to deny a waiver request on the basis that insufficient explanation or a lack of information makes it impossible to determine that the information sought to be waived would not be relevant to their review of the resolution plan. A full resolution plan should specify content omitted due to a waiver request that was granted.

Two commenters suggested that the deadline for a waiver request to be jointly denied by the agencies should be moved from nine months to 12 months prior to the submission deadline to better align with filers' resolution plan preparation timelines. These commenters suggested that the rule should provide for waiver requests to be submitted 15 months prior to a full resolution plan submission date and allow the agencies 90 days within which to consider and act upon waiver requests, thereby reducing the time period for agency review from six months to 90 days.

The agencies recognize that a firm may require more than nine months to prepare a full resolution plan taking into account an approved waiver request. Therefore, the final rule provides that a waiver request is automatically denied on the date that is 12 months prior to the submission date for the resolution plan to which it related if the agencies do not jointly approve the waiver request prior to that date. However, the agencies continue to believe that a minimum of six months is the appropriate period for the agencies to review a waiver request. Accordingly, the final rule requires a waiver request to be submitted at least 18 months before the related resolution plan submission date. If the agencies waive informational content requirements for one or more firms on the agencies' own initiative, the agencies will endeavor to provide those firms with notice of the waiver at least 12 months before their next resolution plan submission date.

5. Targeted Resolution Plans

The proposal included a new type of resolution plan: A targeted resolution plan. The agencies proposed the targeted resolution plan to strike the appropriate balance between providing a means for the agencies to continue receiving updated information on structural or other changes that may impact a firm's resolution strategy while not requiring submission of information that remains largely unchanged since the previous submission. Under the proposed rule, the targeted resolution plan would have been a subset of a full resolution plan and would have included the following components: The information required to be included in a full resolution plan regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy (*i.e.,* the core elements); a description of material changes since the covered company's previously submitted resolution plan and changes the covered company has made to its resolution plan in response; a description of changes in response to firm-specific feedback provided by the agencies, general guidance issued by the agencies, or legal or regulatory changes; a public section; and information responsive to targeted areas of interest identified by the agencies at least 12 months prior to the submission.

The agencies received several comments regarding the proposed targeted resolution plan. One commenter asserted that the agencies should further tailor the contents of the targeted resolution plan based on firms' structures, business models, and activities in the risk-based indicators and that the targeted resolution plan requirement should apply differently to foreign filers subject to Category II or III standards. Another commenter expressed concern that the targeted resolution plan did not include significant elements, such as booking and trading practices for derivatives, trading exposure limits, and relationships with counterparties, and that targeted resolution plans are untested. Another commenter expressed concerns that the proposal's requirement for biennial filers and triennial full filers to alternate between full and targeted resolution plans would not be sufficient to capture important information about resolvability given the speed with which firms can change. Another commenter suggested that the agencies clarify that targeted areas of interest identified by the agencies would not require information that is wider in scope or depth than the information required for a full resolution plan.

The agencies are finalizing the elements of the targeted resolution plan as proposed, other than requiring a firm to affirm that no material change has occurred, if applicable, and clarifying that a targeted information request will be made in writing.[35] Regarding the request for further tailoring of the targeted resolution plan requirement, the targeted resolution plan is already tailored to capture the core elements and key informational content most critical to helping ensure orderly resolution in bankruptcy, and to the extent additional tailoring is needed, the agencies can provide it through agency-initiated waivers and targeted information requests. Accordingly, the agencies believe that the final rule will facilitate appropriate tailoring of informational content requirements. The agencies also note that they will continue to communicate their tailored expectations for resolution plan content through firm-specific feedback.

Regarding commenters' concerns that the targeted resolution plan does not include certain important elements, the agencies have found, based on their experience reviewing resolution plans, that the information that would be contained in the proposed targeted resolution plan is the information that is most important to assessing firms' resolvability, including the information that has the tendency to change with the most frequency. While information about other topic areas may be relevant to resolvability, the agencies believe it is appropriate to receive this other information on a less frequent basis through full resolution plan submissions. The agencies note that targeted resolution plans must also address material changes. Accordingly, a covered company that experiences material changes relating to, for example, its booking and trading practices for derivatives, trading exposure limits, relationships with counterparties, or other activities or characteristics, would be required to include such information in its targeted resolution plan. In addition, the agencies have designed the targeted resolution plan to ensure that they will receive important information that would allow them to review and evaluate potential problem areas, including by allowing the agencies to require firms to respond to targeted information requests, while permitting less frequent submission of information that may have a tendency to remain materially unchanged over time. The agencies' ability to make targeted information requests, require full resolution plan submissions and interim updates, move resolution plan submission dates, and receive notices of extraordinary events provides further means for the agencies to receive additional information from these firms.

Regarding one commenter's request for clarification in relation to the targeted information requests element of the targeted resolution plan, consistent with the proposal, the agencies note that a targeted resolution plan is a subset of a full resolution plan. Accordingly, the information to be provided regarding areas of focus within a targeted resolution plan would not require submission of information wider in scope than what a full resolution plan requires.

The agencies may, however, request information in greater depth than the firm chose to provide in prior submissions.

6. Reduced Resolution Plans

The proposal would have formalized the informational content requirements for the reduced resolution plan. For foreign banking organizations with relatively limited U.S. operations, the reduced resolution plan components were proposed to include: A description of (1) material changes experienced by the covered company since the filing of the covered company's previously submitted resolution plan and (2) changes to the strategic analysis that was presented in the firm's previously submitted resolution plan resulting from material changes, firm-specific feedback provided by the agencies, general guidance issued by the agencies, or legal or regulatory changes. Reduced resolution plans would also contain a public section. The agencies noted that receiving updates of this information would permit them to continue to monitor significant changes in a firm's structure or activities while appropriately focusing the informational components of these firms' resolution plans.

The agencies received several comments on the reduced resolution plan. One commenter suggested that reduced resolution plans would not provide the agencies sufficient information and that agencies may not be able to assess whether a change is material as a result of triennial reduced filers not filing full resolution plans after their initial submissions. Another commenter suggested that firms that had previously been resolution plan filers should not be required to submit a new full resolution plan upon once again becoming a covered company and a new triennial reduced filer. Another commenter suggested that the agencies clarify when triennial reduced filers would be required to submit full resolution plans under the final rule.

The agencies are finalizing the reduced resolution plan as proposed, other than requiring an affirmation that no material change has occurred, if applicable. Taking into account the relative degree of risk posed by these firms, the agencies believe that the reduced resolution plan as proposed generally would capture the information necessary for the agencies to assess triennial reduced filers' resolvability.

[35] The proposal's preamble included clarifying examples of how the agencies expect firms to respond to the core elements informational content requirement, and these examples also apply for the final rule. For firms that have received general guidance from the agencies applicable to their upcoming submissions regarding capital, liquidity, and governance mechanisms, the targeted resolution plans should address these elements consistent with that general guidance. For example, a targeted resolution plan could discuss changes to a firm's methodology for modeling liquidity needs for its material entities during periods of financial stress, as well as changes to the firm's means for providing capital and liquidity to such entities as would be needed to successfully execute the firm's resolution strategy. These updates could, for example, involve changes to triggers upon which the firm relies to execute a recapitalization, including triggers based on capital or liquidity modeling. *See, e.g.,* Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies, 84 FR 1438, 1449 (February 4, 2019); Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf, https://www.fdic.gov/resauthority/2018subguidance.pdf.* The firms that received this general guidance would be expected to address Resolution Capital Adequacy and Positioning (RCAP), Resolution Liquidity Execution Need (RLEN), and governance mechanisms as part of their updates concerning capital, liquidity, and any plans for executing a recapitalization, respectively. A firm that has not received general guidance is required to describe the capital and liquidity needed to execute the firm's resolution strategy consistent with § __.5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) of the final rule and, to the extent its resolution plan contemplates recapitalization, the covered company's plan for executing the recapitalization consistent with § __.5(c)(5) of the final rule.

The material change requirement in the reduced resolution plan is designed to capture important information relevant to the firm's resolvability, its resolution strategy, and implementation of the resolution strategy. In addition, and as discussed above, the final rule has been revised from the proposal to require that a firm affirmatively state in its resolution plan that no material change has occurred since its prior resolution plan submission if the resolution plan does not identify any material change. The agencies believe this clarification will further help to ensure that firms give due attention to the requirement to identify material changes. Finally, the agencies' ability to require full resolution plan submissions and interim updates, move resolution plan submission dates, and receive notices of extraordinary events provides further means for the agencies to receive additional information from triennial reduced filers.

The final rule also retains the requirement that any firm that was not a covered company on the effective date of the final rule but becomes a triennial reduced filer after the effective date of the final rule submit a full resolution plan as its initial submission, even if the firm was at some point previously subject to resolution planning requirements (*e.g.,* under the 2011 rule). There could be an extended period of time between a firm's previous full resolution plan submission and the time when it again becomes subject to the final rule, rendering the earlier full resolution plan less relevant to the firm's current operations, activities, and structure. The agencies note, however, that a firm would be able to incorporate by reference information from its prior resolution plan that meets the final rule's standard for incorporation by reference. In addition, the agencies are clarifying that full resolution plans filed under the 2011 rule by firms that would continue to be covered companies under the final rule and would be triennial reduced filers under the final rule would be grandfathered for purposes of determining compliance with the requirement that a triennial reduced filer's initial submission be a full resolution plan. Accordingly, those firms would be required to submit reduced resolution plans going forward but would not be required to resubmit a new full resolution plan absent other relevant changes in their circumstances (*e.g.,* becoming subject to Category II or Category III standards).

7. Tailored Resolution Plans

Under the 2011 rule, a tailored resolution plan was a means for certain bank-centric firms to request that their resolution plan submissions focus on nonbank activities that may pose challenges to executing the firm's resolution strategy. Pursuant to the 2011 rule's tailored resolution plan notice requirement, firms were required to apply to the agencies to submit a tailored resolution plan rather than a full resolution plan every year that a submission was required. The agencies' proposal would have eliminated the tailored resolution plan in light of the introduction of the firm-initiated waiver request process and the targeted resolution plan as effective substitutes. The agencies also noted in the proposal that many of the covered companies that were eligible under the 2011 rule to file a tailored resolution plan would no longer be subject to the resolution planning requirement under the final rule or would become triennial reduced filers.

One commenter expressed concern regarding the proposal to eliminate the tailored resolution plan. In particular, the commenter stated that previous tailored resolution plan filers should be grandfathered so that they would not need to apply for a waiver to continue to submit similar submissions under the final rule. As an alternative, the commenter proposed that the agencies limit the scope of these firms' full and targeted resolution plan submissions to nonbank operations. Another commenter asserted that the proposal should be modified to allow for automatic waiver, upon request, from certain informational content requirements for filers that qualified to submit tailored resolution plans under the 2011 rule.

The agencies are finalizing the proposal to eliminate the tailored resolution plan type. As explained in the proposal, the agencies expect that the firm-initiated waiver request process and targeted resolution plan requirements will be effective substitutes for the tailored resolution plan and will allow the agencies to appropriately tailor informational content requirements, taking into account the relative mix of banking and non-banking activities for particular filers. Accordingly, the agencies believe that it is unnecessary to retain the tailored resolution plan in the final rule.

C. Critical Operations Methodology and Reconsideration Process

Under the final rule, and consistent with the 2011 rule, a critical operation is an operation the failure or discontinuance of which would pose a threat to the financial stability of the United States. The 2011 rule provides for critical operations to be identified by the firms or at the agencies' joint direction. As part of their rule implementation and supervision efforts, the agencies have developed a process and methodology for jointly identifying critical operations and have made certain critical operations identifications. In recognition that financial markets and firms change over time, the agencies proposed establishing a periodic, comprehensive review of critical operations identifications by both the agencies and covered companies to ensure that resolution planning reflects current operations and markets and appropriately focuses on areas vital to financial stability.

1. Identification by Covered Companies and Methodology Requirement

Many covered companies have incorporated into their resolution planning frameworks a procedure for identifying critical operations, and the agencies proposed requiring biennial filers and triennial full filers to maintain a process for identifying critical operations on a scale that reflected the nature, size, complexity, and scope of their operations. The proposal would have required this process for self-identification to occur at least as frequently as a covered company's resolution plan submission cycle and be documented in the covered company's corporate governance policies and procedures. In addition, the proposal would have established a process whereby firms that did not currently have identified critical operations could request a waiver from the requirement to maintain a self-identification process and methodology. Firms that self-identified a critical operation would have been required to notify the agencies if they ceased to identify an operation as a critical operation. Finally, the agencies proposed a conforming definitional change.[36]

Two commenters suggested that the agencies clarify that the requirement that firms have a process to self-identify critical operations is presumptively waived for any covered company that has previously submitted resolution plans and does not currently have an identified critical operation. Finally, one commenter recommended either eliminating or clarifying the use of the term ''economic functions'' in the

[36] The agencies proposed including a new definition, ''identified critical operations,'' to clarify that critical operations can be identified by either the covered company or jointly identified by the agencies and that until such an operation has been identified by either method, the operation does not need to be addressed as a critical operation in a resolution plan.

agencies' description of a firm's methodology for identifying critical operations.

Consistent with the proposal, under the final rule, biennial filers and triennial full filers must establish and implement a process designed to identify their critical operations. However, after July 1, 2022, the final rule also requires a triennial reduced filer that has an identified critical operation to establish and implement a process designed to identify its critical operations. As under the proposal, in all cases, that process must contain a methodology and consider the nature, size, complexity, and scope of the covered company's operations.

Under the final rule, triennial reduced filers with identified critical operations will be required to establish and implement a process to identify critical operations, but only after they are required to submit their next resolution plans in 2022. Where a firm has an identified critical operation, it may be the case that it has additional critical operations such that a periodic review by the firm of its operations that is appropriate to the nature, size, complexity, and scope of its operations could be beneficial. This timing will provide the agencies the opportunity to complete their first joint review of critical operations under the final rule and triennial reduced filers with the opportunity to request reconsideration of any currently identified critical operation in anticipation of their next resolution plan submission.

Also consistent with the proposal, the final rule allows a covered company that has previously submitted a resolution plan and does not have an identified critical operation to request a waiver of the requirement to have a process and methodology to identify its critical operations if it does not have an identified critical operation as of the date the waiver request is submitted.[37] Under the proposal, the covered company would have needed to apply for such a waiver at least 15 months before the submission date for that resolution plan, and waivers would have been automatically granted on the date that was nine months prior to the date that the resolution plan it relates to was due if the agencies did not jointly deny the waiver prior to that date.

Consistent with the changes to the firm-initiated waiver request process for informational content requirements, under the final rule, a request for a waiver from the critical operations process and methodology requirement will be automatically denied on a certain date unless the agencies have jointly approved it before that date. Requiring joint approval of waiver requests will be more consistent with other provisions of the final rule that require joint agency approval.

The agencies recognize that a firm may require more than nine months to prepare a resolution plan taking into account any critical operation the covered company newly identifies and, accordingly, a covered company may need to complete its process more than nine months before its next resolution plan is due. Therefore, the final rule provides that a waiver request is automatically denied on the date that is 12 months prior to the submission date for the resolution plan to which it related if the agencies do not jointly approve the waiver prior to that date. However, the agencies continue to believe that a minimum of six months is the appropriate period for the agencies to review a waiver request. Accordingly, the final rule requires a waiver request to be submitted at least 18 months before the submission date. This timing is consistent with the timing for firm-initiated waiver requests of informational content requirements under the final rule. However, to provide firms with an appropriate period to prepare a waiver request after the agencies' adoption of the final rule with respect to a resolution plan due on or before July 1, 2021, the final rule provides that a waiver request must be submitted at least 17 months before that submission date.

The proposal would have required a covered company to submit a waiver request with respect to each resolution plan submission. The agencies recognize that a covered company that does not have an identified critical operation and has been granted a waiver may not experience any changes between resolution plan submissions that would increase the likelihood of it having a critical operation. Accordingly, to balance the benefits of covered companies engaging in a process to identify their critical operations with the burden placed on covered companies, the final rule provides that if a critical operations waiver request is granted, the waiver will remain effective until the covered company is required to submit its next full resolution plan. For example, if a triennial full filer submits a waiver request in connection with a full resolution plan that is due on or before July 1, 2024 and the request is approved, the waiver would be effective for the July 1, 2024 full resolution plan submission and the firm's next regularly scheduled targeted resolution plan due on or before July 1, 2027. To continue the effectiveness of the waiver, the covered company would need to submit a new waiver request at least 18 months before its next regularly scheduled full resolution plan due on or before July 1, 2030. Similarly, if a triennial full filer submits a waiver request in connection with a targeted resolution plan and the request is granted, the waiver would be effective for only that targeted resolution plan and not its next full resolution plan.

The agencies recognize a foreign firm may not first determine the category of standards to which it is subject (and, accordingly, whether it is a triennial full filer or a triennial reduced filer) until after the date by which a triennial full filer would need to submit a waiver request with respect to its resolution plan due on or before July 1, 2021. Therefore, the final rule exempts each foreign triennial full filer from the requirement to establish and implement a process and methodology designed to identify their critical operations with respect to its resolution plan due on or before July 1, 2021 if the foreign firm does not have an identified critical operation as of the date by which the waiver would have had to be submitted for this resolution plan submission (*i.e.,* 17 months before the resolution plan submission date).

In addition, the agencies are clarifying the final rule by eliminating usage of the term ''economic function,'' as suggested by the commenter. However, consistent with the preamble to the proposed rule, the agencies note that the types of operations that may be critical operations include, but are not limited to, the core banking functions of deposit taking; lending; payments, clearing and settlement; custody; wholesale funding; and capital markets and investment activities. In general, an operation is most likely to be a critical operation of the firm where both (a) a market or activity engaged in by the firm is significant to U.S. financial stability and (b) the firm is a significant provider or participant in such a market or activity. Factors relevant for determining whether a market or activity is significant to U.S. financial stability, or

[37] The proposal's preamble included clarifying examples of why a waiver may be appropriate, and these examples also apply for the final rule. For example, for a covered company that has not experienced any significant changes in its business, operations, or organizational structure since its most recent resolution plan, a waiver request that so states, with reasonable supporting detail, could provide sufficient information for the agencies to evaluate the request. Alternatively, if one of a covered company's operations gained significant market share since it submitted its most recent resolution plan submission, the waiver request should include this information, a description of the operation, and a discussion of why this change would not warrant the development of a methodology for identifying critical operations.

whether a firm is a significant provider or participant in such a market or activity, may include substitutability, market concentration, interconnectedness, and the impact of cessation. The firm's analysis should focus on the significance of the activity to U.S. financial stability, not whether a particular activity is significant for a foreign parent or other foreign affiliates of the firm.[38] The process undertaken by a firm in completing such an analysis should be commensurate with the nature, size, complexity, and scope of its operations.[39]

2. Identification by Agencies and Requests for Reconsideration

Under the proposal, the agencies would have reviewed the operations of covered companies at least every six years to determine whether any new operations should be identified as critical or any prior identifications should be rescinded. The proposal provided that, when the agencies identified an operation as critical, the covered company would have been required to treat the operation as an identified critical operation in future resolution plans, unless the identification occurred within six months of a firm's resolution plan submission date. In addition, the proposal would have permitted a covered company to request that the agencies reconsider a jointly made critical operation identification. The agencies generally would have been required to complete their assessment of the request within 90 days after receipt of the request, if the request were made at least 270 days before the firm's next resolution plan submission deadline.

Commenters were generally supportive of efforts to codify the critical operations identification processes. Some commenters suggested that the agencies modify the timeline for de-identification of a critical operation identified by the agencies.[40] A commenter also suggested that the deadline for the agencies to be able to identify a new critical operation be 12 months prior to a submission deadline, instead of six months, as proposed.

The agencies are adopting the proposed provisions related to the identification of critical operations by the agencies with revisions that address certain concerns raised by commenters.[41] Consistent with the proposal, the final rule permits the joint identification and rescission of critical operations by the agencies at any time and the agencies will review all identified critical operations and the operations of firms for consideration as critical operations at least every six years. The agencies recognize that a firm may require time to revise its resolution plan to take into account a newly identified critical operation. Therefore, consistent with commenters' feedback, a covered company will be required to treat a critical operation as an identified critical operation only if the joint identification is made at least 12 months before the resolution plan submission date. The agencies believe 12 months is a reasonable period for a firm to assess the identified critical operation and adjust its resolution plan. To align with this notice period, the agencies will endeavor to complete their first joint review under the final rule of the operations of covered companies at least 12 months prior to the 2021 resolution plan submission date.

Finally, the agencies are adopting a modified process whereby firms can request that the agencies reconsider a jointly identified critical operation. Under the final rule, a firm may request reconsideration of a jointly identified critical operation at any time. If a firm requests reconsideration at least 18 months prior to its next resolution plan submission date, the agencies will generally complete their review no later than 12 months before that resolution plan submission date. However, the agencies may request additional information, in which case the agencies will complete their review no later than the later of (a) 90 days after the submission of all requested information and (b) 12 months before the resolution plan submission date. This generally aligns the timing for requests for reconsideration with the timing under the final rule for waiver requests of the requirement to establish and implement a process designed to identify critical operations and firm-initiated waiver requests of informational content requirements.

The agencies retain discretion to defer consideration of a reconsideration request submitted less than 18 months before a resolution plan submission date until after the covered company's next submission. If the agencies do not defer consideration of the reconsideration request, the agencies intend to communicate with the firm regarding the timing of the agencies' response. If the agencies defer consideration of a request submitted less than 18 months before a resolution plan submission date, the agencies will generally complete their review no later than 12 months before the next resolution plan submission date that follows that resolution plan submission date.

The agencies understand commenters' concerns regarding the de-identification timeline, and have revised and lengthened the process to provide covered companies with additional notice of new identifications prior to a resolution plan submission date. However, the agencies decline to adopt the commenters' request for an automatic rescission of a critical operations identification if a request is submitted at least 15 months before the firm's next resolution plan is due and the agencies have not acted within three months. A firm's initial request for de-identification may be incomplete or unclear, and critical operations identifications may raise complex issues that require substantial time to consider. Accordingly, the agencies may require more than 90 days to make an informed decision regarding whether an operation should be de-identified. The agencies believe the final rule adequately balances covered companies' need for certainty prior to a resolution plan submission date with the need to carefully assess critical operations identifications.

D. Clarifications to the 2011 Rule

1. Resolution Strategy for Foreign-based Covered Companies

The 2011 rule does not specify the assumptions a foreign banking organization should make with respect to how resolution actions it takes outside of the United States should be addressed in its resolution plan. The proposal, consistent with general guidance that the agencies have previously provided,[42] would have

[38] Where a firm's operation, such as U.S. dollar deposit taking, is significant to the firm, but the failure or discontinuance of that activity would not pose a threat to the financial stability of the United States, that operation would not be an identified critical operation under the final rule.

[39] For a foreign firm, the critical operations identification process and methodology should be commensurate with the nature, size, complexity, and scope of its U.S. operations.

[40] Specifically, the commenters suggested requiring a request for de-identification to be filed no later than 15 months before the next resolution plan submission is due; mandating that the agencies make a decision within 90 days of receipt of the request; and deeming the request approved if not denied by one year prior to the resolution plan submission date.

[41] The agencies are also adopting the proposed term, ''identified critical operations.''

[42] *See* Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf,* p. 4, *https://www.fdic.gov/resauthority/2018subguidance.pdf,* p. 4 and *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180129a.htm, https://www.fdic.gov/news/news/press/2018/pr18006.html.*

clarified that covered companies that are foreign banking organizations should not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

One commenter asserted that the agencies should better align U.S. resolution planning with home country resolution strategy by recognizing the development of single point of entry strategies, total loss absorbing capacity, and other improved resolvability measures implemented by international banks. Although the agencies recognize that foreign banking organizations may have home-country resolution strategies under which U.S. entities are not planned to enter resolution, the Dodd-Frank Act requires firms to plan for the failure of their U.S. operations. General guidance and firm-specific feedback have taken into account resolution plan resolvability improvements made by foreign banking organizations. Accordingly, the final rule includes this clarification as proposed.

2. Covered Company in Multi-Tier Foreign Banking Organization Holding Companies

The definition of covered company in the 2011 rule includes the top tier entity in a multi-tier holding company structure of any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978. There is no benefit to the agencies in obtaining resolution plan information relating to a top tier holding company that is, for example, a government, sovereign entity, or family trust. The agencies previously addressed this issue on a case-by-case basis and proposed including a formal process in the proposal by which the agencies would identify a subsidiary in a multi-tiered FBO holding company structure to serve as the covered company that would be required to submit the resolution plan. The agencies did not receive comment on this provision and are adopting the clarification as proposed.

3. Removal of the Incompleteness Concept and Related Review

The 2011 rule includes a requirement that the agencies review a resolution plan within 60 days of submission and jointly inform the covered company if the resolution plan is informationally incomplete or additional information is required to facilitate review of the resolution plan. This process has not led to resubmissions in recent years, and the proposal would have removed it. The agencies received one comment in support of this provision, and the agencies are removing the incompleteness concept and related review as proposed for the reasons stated in the proposal.

4. Assessment of New Covered Companies

The 2011 rule provides that covered company status for a foreign banking organization may be based on annual or quarterly reports, depending on availability of such reports, but does not clarify whether firms that file quarterly reports would be assessed for covered company status on a quarterly or annual basis. The proposal would have clarified that a foreign banking organization's status as a covered company would be assessed quarterly for foreign banking organizations that file the Federal Reserve's Form FR Y–7Q (FR Y–7Q) on a quarterly basis and annually for foreign banking organizations that file the Y–7Q on an annual basis only. In each case, the assessment would have been based on total consolidated assets as averaged over the preceding four calendar quarters as reported on the FR Y–7Q.

In addition, the proposal would also have addressed the process for assessing a firm whose assets have grown due to a merger, acquisition, combination, or similar transaction for covered company status. Under these circumstances, the agencies would have the discretion to alternatively consider, to the extent and in the manner the agencies jointly consider appropriate, the relevant assets reflected on the one or more of the four most recent reports of the pre-combination entities (the FR Y–9C in the case of a U.S. firm and the FR Y–7Q in the case of a foreign banking organization). The agencies did not receive comment on these provisions and are adopting the clarifications as proposed.

5. Timing of New Filings, Firms That Change Filing Categories

To address the new filing cycles for biennial, triennial full, and triennial reduced filers, the proposal included related modifications to the timing of the initial submission for new filers. The proposal also included a reservation of authority permitting the agencies to require the initial resolution plan earlier than the date of the filing group's next filing, so long as the submission deadline would have been at least 12 months from the date on which the agencies jointly determined to require the covered company to submit its resolution plan. Similarly, the proposal specified the timing and type of resolution plan a firm would be required to submit if it changed groups (*e.g.,* a triennial reduced filer becomes a triennial full filer or a triennial full filer becomes a triennial reduced filer). The agencies received no comments on these changes and are finalizing them as proposed with technical changes to clarify that the relevant date for these timing provisions is the date as of which the covered company became a covered company or a member of a filing group.

6. Clarification of the Mapping Expectations for Foreign Banking Organizations

The proposal would have amended the language governing the expectations regarding the mapping of intragroup interconnections and interdependencies by foreign banking organizations. The proposal also would have clarified that foreign banking organizations would be expected to map (a) the interconnections and interdependencies among their U.S. subsidiaries, branches, and agencies, (b) the interconnections and interdependencies between these U.S. entities and any critical operations and core business lines, and (c) the interconnections and interdependencies between these U.S. entities and any foreign-based affiliates. The agencies did not receive comment on these provisions and are adopting the clarifications regarding mapping expectations for foreign banking organizations as proposed.

7. Standard of Review

In reviewing resolution plans, the agencies have identified ''deficiencies'' and ''shortcomings'' in resolution plans and have issued firm-specific feedback letters to covered companies describing the rationale for the findings and suggesting potential alternatives for how the identified deficiencies and shortcomings could be addressed. While the agencies have defined these terms in a public statement,[43] they are not defined in the 2011 rule. To provide an opportunity for public comment on these terms and a clearer articulation of the standards the agencies apply in identifying deficiencies and shortcomings, the agencies proposed defining a deficiency and a shortcoming. In addition, the agencies proposed continuing to require a covered company that was assessed to have a deficiency to submit a revised resolution plan to the agencies addressing the deficiency within 90

[43] Resolution Plan Assessment Framework and Firm Determinations (2016), April 13, 2016, *https://www.fdic.gov/news/news/press/2016/pr16031a.pdf.*

days of receiving notice of the deficiency, consistent with the 2011 rule. The agencies received one comment in support of the proposal's timeline for requiring a firm to respond to a notice of deficiency, and the agencies are adopting the definitions of deficiency and shortcoming, and the related standard of review, as proposed.

8. Deletion of ''Deficiencies'' Relating to Management Information Systems

The 2011 rule requires a resolution plan to include information about a covered company's management information systems, including a description and analysis of the system's ''deficiencies, gaps or weaknesses'' in the system's capabilities. The proposal would have deleted the term ''deficiencies'' from this informational content requirement solely to avoid confusion with the proposal's new definition of ''deficiencies'' in the proposal, and not to change the informational content requirement relating to a covered company's management information systems. The agencies did not receive comment on this provision and are adopting the clarification as proposed.

9. Incorporation by Reference

Similar to the 2011 rule, the proposal would have continued to allow a covered company to incorporate by reference information from its previously submitted resolution plans, subject to certain restrictions. The proposal would have required the referenced information to remain accurate in all respects that are material to the covered company's resolution plan, and the incorporated information would remain subject to the contemporaneous certification requirement. The agencies intended that this clarification regarding the material accuracy of referenced information provide covered companies greater flexibility in their ability to incorporate by reference information, thereby reducing duplication and further streamlining the resolution planning process. One commenter supported this clarification and the proposed expanded ability of firms to utilize incorporation by reference, and the agencies are adopting the clarification as proposed.

E. Technical and Conforming Changes From the Proposal

In addition to the changes to the proposal described above, the final rule includes technical and conforming changes for purposes of clarity and consistency. For example, the final rule clarifies that firms are required to submit a resolution plan on or before the applicable submission date. The technical and conforming changes have no substantive effect on the final rule as compared to the proposal.

F. Board Delegation of Authority

The Board has delegated to its Director of Supervision and Regulation, or his or her delegatee, in consultation with the General Counsel, or his or her delegatee, the authority to identify on behalf of the Board a holding company in a multi-tiered holding company to satisfy the requirements that apply to a covered company under the final rule, to the extent such identification is consistent with the criteria specified in the final rule and does not raise any significant legal, policy, or supervisory concerns.

IV. Effective Date and Transition Period

The effective date of the final rule is [60 days after publication in the **Federal Register**]. Financial institutions that are covered companies under the final rule are required to comply with the final rule beginning on the effective date.

The requirements for covered companies' initial resolution plans under the final rule will be determined based on their categorization under the tailoring rules on October 1, 2020, which is after the first date foreign banking organizations are required to submit reports including data for purposes of their categorization based on their combined U.S. operations under the tailoring rules.[44] In particular, firms that are covered companies as of the effective date of the final rule are required to submit their initial and subsequent resolution plans under the final rule as follows:

Biennial filers (all firms subject to Category I standards): Covered companies that are biennial filers on October 1, 2020 are required to submit their next resolution plans on or before July 1, 2021, unless a firm changes its filing group before July 1, 2021. This submission will be a targeted resolution plan. Thereafter, the biennial filers will alternate between filing full and targeted resolution plans on a biennial basis.

Triennial full filers (all firms subject to Category II or Category III standards): Covered companies that are triennial full filers on October 1, 2020 are required to submit targeted resolution plans on or before July 1, 2021, unless a firm changes its filing group before July 1, 2021. The proposal would have required these firms to submit a full resolution plan on or before July 1, 2021. The agencies recognize a foreign firm may not first determine the category of standards to which it is subject (and, accordingly, whether it is a triennial full filer or a triennial reduced filer) until after the date by which a triennial full filer would need to submit a firm-initiated waiver request of informational content requirements for a full resolution plan due on or before July 1, 2021. To provide clarity to covered companies during this transition period, the final rule requires all triennial full filers to submit a targeted resolution plan on or before July 1, 2021. Thereafter, the triennial full filers will alternate between filing full and targeted resolution plans on a triennial basis.

For firms with outstanding shortcomings or deficiencies, the agencies' expectations regarding remediation and related timelines established by the agencies continue to apply. For example, the four foreign banking organizations that received firm-specific feedback letters on December 20, 2018 (Barclays plc, Credit Suisse Group AG, Deutsche Bank AG, and UBS Group AG) are expected to address their shortcomings and complete their respective project plans by July 1, 2020, as provided in the agencies' firm-specific feedback letters. Consistent with prior communications to these firms, they are required to submit resolution plans on or before July 1, 2020 that may be limited to describing changes that the firms have made to their July 2018 resolution plans to address shortcomings identified in those resolution plans.[45]

Likewise, consistent with previous communications to Northern Trust Corporation, it is required to provide an interim update, as specified in the agencies' joint March 29, 2019 firm-specific feedback letter, concerning its projects to address the liquidity shortcoming identified in its 2015 resolution plan.

Triennial reduced filers (all other filers): Covered companies that are triennial reduced filers on October 1, 2020 must submit their initial reduced resolution plans under the final rule on

[44] Top-tier foreign banking organizations will report the FR Y–15 on behalf of their U.S. intermediate holding company and combined U.S. operations using data as of June 30, 2020.

[45] As the final rule makes clear, the requirement to submit a resolution plan on or before July 1, 2020 does not affect the timing or type of resolution plans required to be submitted as described above. The applicable date for completion of the following activities remains July 1, 2020: (i) The resolvability enhancement initiatives identified in the agencies' 2018 firm-specific feedback letters, and (ii) any additional enhancement initiatives identified in the July 2018 resolution plan submission or in writing by firm management during the 2018 resolution plan review. In connection with their July 1, 2020 submissions, the firms should provide an update concerning these initiatives.

or before July 1, 2022, unless a firm changes its filing group before July 1, 2022. Thereafter, they are required to submit reduced resolution plans on a triennial basis.

V. Impact Analysis

The final rule will modify the expected costs imposed by the 2011 rule while seeking to preserve the benefits to U.S. financial stability provided by the 2011 rule. The economic effects of the final rule are driven by the changes in the reporting costs related to resolution plan submissions.

Consistent with EGRRCPA, the final rule changes the asset thresholds at which all firms are required to file resolution plans from $50 billion to $250 billion in total consolidated assets. The final rule also requires the submission of resolution plans by certain firms with $100 billion or more and less than $250 billion in total consolidated assets, including those that have certain risk-based indicators. As of March 31, 2019, firms with $50 billion or more and less than $100 billion in total consolidated assets accounted for less than 2 percent of total U.S. industry assets, and firms with $100 billion or more and less than $250 billion in total consolidated assets accounted for 18 percent of total U.S. industry assets.[46] The net impact of these threshold changes would reduce the number of U.S. filers from 23 to 12 and the number of foreign banking organization filers from 86 to 62.[47] This reduction in resolution plan filers decreases costs as fewer firms would be required to prepare plans.

The final rule also seeks to minimize the impact of this change on benefits to U.S. financial stability provided from resolution plan filings by maintaining filing requirements for certain firms with $100 billion or more and less than $250 billion in total consolidated assets, including those that have certain risk-based indictors.

The final rule also reduces the frequency of required resolution plan submissions for the remaining resolution plan filers, including the largest and most complex resolution plan filers, by extending the default filing cycle between resolution plan submissions. The final rule modifies the filing cycle to every two years for the U.S. GSIBs and certain systemically important nonbank financial companies and to every three years for all other resolution plan filers. This change formalizes a practice that has developed over time to extend firms' resolution plan submission dates to allow at least two years between resolution plan submissions and should reduce costs.

In the August 2018 proposal to extend mandatory Reporting Requirements Associated with Regulation QQ, the estimate of total annual burden for resolution plan filings was estimated to be 1,137,797 hours for 111 resolution plan filers.[48] Since then, the number of resolution plan filers has declined to 109, with a current total annual burden of 1,066,086 hours.[49] Under the final rule, the revised estimated annual burden, incorporating proposed modifications to the resolution plan rule, is 425,525 hours.[50] At an estimated mean wage of $56.05 per hour,[51] this reduction in the estimated burden hours has an estimated wage savings of approximately $35,903,444 per year. Reductions in submission frequency and content could potentially reduce the preparedness of covered companies to execute a rapid and orderly resolution in the event of material financial distress or failure. However, this potential economic effect would be ameliorated by the agencies' authority to require a firm to submit a full resolution plan, interim update, or alter resolution plan submission dates. This authority would address circumstances where the agencies determine that waiting for a firm to submit on its regular submission cycle could present excess risk.

Finally, the final rule is expected to improve efficiency by streamlining the information requirements for the resolution plan submissions: The final rule includes a mechanism for certain firms to request a waiver from certain informational requirements in full resolution plan submissions; introduces a new, more focused resolution plan submission (*i.e.,* targeted resolution plan); and formalizes the conditions and content for reduced resolution plans. These resolution plan modifications are appropriate because the firms' resolution plans have matured and become more stable through multiple submissions. Further, the resolution plan modifications should reduce the costs of preparing and reviewing the resolution plans without having a material impact on the benefits provided by the resolution plans.

In short, as detailed in this section, the proposal would provide estimated wage savings, to the institutions affected by it, totaling $35,903,444 due to the reduction of an estimated 640,561 burden hours needed to comply with the final rule. Moreover, firms could reallocate the estimated 640,561 hours used to comply with the final rule to other activities considered to be more beneficial.[52] Thus, the total economic benefits of the proposal could be greater than the dollar amount estimated.

VI. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the final rule and determined that it would revise the reporting requirements that have been previously approved by the Board under OMB control number 7100–0346 (Reporting Requirements Associated with Regulation QQ; FR QQ). The Board's information collection will be extended for three years, with revision.

Since the original rule was adopted in 2011, the Board's PRA clearance has accounted for the entire burden associated with the rule even though the Board and the Corporation are both legally authorized to receive and review the Resolution Plans. The agencies have decided to now equally account for the burden associated with this final rule. As a result, the Corporation has submitted to OMB a request to implement, for three years, an information collection in connection with the final rule Resolution Plan submissions that accounts for half of the estimated burden associated with the final rule.

The Corporation has submitted its request to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of

[46] Assets as reported on form FR Y–9C for the quarter ending March 31, 2019.

[47] Upon enactment of EGRRCPA on May 24, 2018, firms with total consolidated assets of less than $100 billion were automatically no longer subject to the resolution planning requirement, reducing the number of U.S. filers and foreign banking organizations filers.

[48] Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 83 FR 42296 (August 21, 2018).

[49] As of March 31, 2019.

[50] *See* Section VI.A. for estimated annual hourly burden details.

[51] Mean hourly wages retrieved from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages May 2017, published March 30, 2018 *https://www.bls.gov/oes/2017/may/oes_nat.htm.*

[52] A commenter asserted that firms would likely eliminate (and not repurpose) compliance jobs, resulting in cost savings to the firms, and that these savings will likely only benefit the firms' shareholders and executives. The agencies note that it is speculative how firms will utilize resources no longer needed to comply with the final rule.

OMB's implementing regulations (5 CFR 1320). The Corporation submitted the information collection requirements to OMB at the proposed rule stage. OMB filed a comment assigning the Corporation OMB control number 3064–0210 and requested that the Corporation make a submission to OMB after the proposed rule is finalized. The Board has reviewed the final rule under the authority delegated to the Board by OMB. The agencies did not receive any comments on the PRA.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Resolution Planning.

Agency Form Number: FR QQ.

OMB Control Number: 7100–0346.

Frequency of Response: Biennially, Triennially.

Respondents: Bank holding companies [53] with assets of $250 billion or more, bank holding companies with $100 billion or more with certain characteristics specified in the preamble, and nonbank financial firms designated by the Council for supervision by the Board.

FR QQ	Number of respondents [54]	Annual frequency	Estimated average hours per response	Estimated annual burden hours
Current [55]				
Reduced Reporters	71	1	60	4,260
December Filers:				
Tailored Reporters:				
Domestic	12	1	9,000	108,000
Foreign	5	1	1,130	5,650
Full Reporters:				
Domestic	3	1	26,000	78,000
Foreign	6	1	2,000	12,000
Complex Filers:				
Domestic	8	1	[56] 79,522	636,176
Foreign	4	1	55,500	222,000
Current Total				1,066,086
Final Rule				
Triennial Reduced	53	1	20	1,060
Triennial Full:				
Complex Foreign	4	1	13,135	52,540
Foreign and Domestic	9	1	5,667	51,003
Biennial Filers:				
Domestic	8	1	40,115	320,920
Waivers [57]	2	1	1	2
Proposed Total				425,525
Change				−640,561

The agencies did not receive any comments on their proposed revisions to this information collection. Accordingly, with the exception of minor technical adjustments, the information collection revisions are adopted as proposed in the proposal and replicated in the chart above.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.[58] However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[59] For the reasons described below and under section 605(b) of the RFA, the agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities. As of March 31, 2019, there were 4,004

[53] This includes any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978, and meets the relevant total consolidated assets threshold.

[54] Of these respondents, none are small entities as defined by the Small Business Administration (*i.e.,* entities with less than $600 million in total assets) *www.sba.gov/document/support-table-size-standards.*

[55] As of March 31, 2019.

[56] This estimate captures the annual time that complex domestic filers will spend complying with this collection, given that these filers will only submit two resolution plans over the three-year period covered by this notice. The estimate therefore represents two-thirds of the time these firms are estimated to spend on each resolution plan submission.

[57] The agencies cannot reasonably estimate how many of the firms that file resolution plans may submit waiver requests, nor how long it would take to prepare a waiver request. Accordingly, the agencies are including this line as a placeholder. To facilitate the split of the burden between the agencies, this placeholder has been adjusted to two estimated annual burden hours in the final rule.

[58] 5 U.S.C. 601 *et seq.*

[59] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* 13 CFR 121.201 as amended by Small Business Size Standards: Adjustment of Monetary-Based Size Standards for Inflation, 84 FR 34261 (July 18, 2019) (effective August 19, 2019). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." *See* 13 CFR 121.103. Following these regulations, the agencies use a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

insured depository institutions and approximately 3,198 bank holding companies that would fit the SBA's current definition of ''small entity'' for purposes of the RFA.

As discussed in detail above, section 165(d) of the Dodd-Frank Act requires certain financial companies to report periodically to the agencies their plans for rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure. This provision of the Dodd-Frank Act was amended by EGRRCPA in 2018. Specifically, EGRRCPA raised the $50 billion minimum asset threshold for general application of the resolution planning requirement to $250 billion in total consolidated assets, and provided the Board with discretion to apply the resolution planning requirement to firms with $100 billion or more and less than $250 billion in total consolidated assets. EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a U.S. GSIB under the Board's U.S. GSIB surcharge rule shall be considered a bank holding company with $250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement.

In accordance with section 165(d) of the Dodd-Frank Act as amended by EGRRCPA, the Board is amending Regulation QQ [60] and the Corporation is amending part 381 [61] to amend the requirement that a covered company periodically submit a resolution plan to the Board and Corporation.[62] The final rule also modifies the procedures for joint review of a resolution plan by the agencies. The reasons and justification for the final rule are described in the preamble.

As discussed in the preamble, the final rule applies to covered companies, which include only bank holding companies and foreign banking organizations with at least $100 billion in total consolidated assets, and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. The assets of a covered company substantially exceed the $600 million asset threshold under which a banking organization is considered a ''small entity'' under SBA regulations.[63]

The final rule also applies to a nonbank financial company designated by the Council for supervision by the Board under section 113 of the Dodd-Frank Act, regardless of such a company's asset size. As of the date of the adoption of the final rule, there are no such nonbank financial companies supervised by the Board. Although the asset size of nonbank financial companies may not be the sole determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is one consideration.[64] It therefore may be unlikely that a financial firm that is at or below the $600 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act.

Because the final rule is not likely to apply to any company with assets of $600 million or less, it is not expected to apply to any small entity for purposes of the RFA. The agencies do not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules.

In light of the foregoing, the Board and the Corporation certify that the final rule will not have a significant economic impact on a substantial number of small entities supervised.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[65] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[66]

Because the final rule would not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of the RCDRIA therefore does not apply.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [67] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner, and did not receive any comments on plain language.

E. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[68] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[69]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[70]

The OMB has determined that the final rule is not a ''major rule'' within the meaning of the Congressional Review Act. As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

Text of the Common Rules

(All Agencies)

■ The text of the common rules appears below:

[60] 12 CFR part 243.

[61] 12 CFR part 381.

[62] 12 U.S.C. 5365(d).

[63] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the asset threshold for the application of the resolution planning requirements. 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

[64] 12 CFR 1310.11.

[65] 12 U.S.C. 4802(a).

[66] 12 U.S.C. 4802.

[67] 12 U.S.C. 4809(a).

[68] 5 U.S.C. 801 *et seq.*

[69] 5 U.S.C. 801(a)(3).

[70] 5 U.S.C. 804(2).

PART [ ]—RESOLUTION PLANS

Sec.
____.1 Authority and scope.
____.2 Definitions.
____.3 Critical operations.
____.4 Resolution plan required.
____.5 Informational content of a full resolution plan.
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____.7 Informational content of a reduced resolution plan.
____.8 Review of resolution plans; resubmission of deficient resolution plans.
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____.10 Consultation.
____.11 No limiting effect or private right of action; confidentiality of resolution plans.
____.12 Enforcement.

§ ____.1 Authority and scope.

(a) *Authority.* This part is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 1426–1427), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174, 132 Stat. 1296) (the *Dodd-Frank Act*), 12 U.S.C. 5365(d)(8), which requires the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (Corporation) to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act.

(b) *Scope.* This part applies to each covered company and establishes rules and requirements regarding the submission and content of a resolution plan, as well as procedures for review by the Board and Corporation of a resolution plan.

§ ____.2 Definitions.

For purposes of this part:

Bankruptcy Code means Title 11 of the United States Code.

Biennial filer is defined in § ____.4(a)(1).

Category II banking organization means a covered company that is a category II banking organization pursuant to § 252.5 of this title.

Category III banking organization means a covered company that is a category III banking organization pursuant to § 252.5 of this title.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization, but does not include any organization, the majority of the voting securities of which are owned by the United States.

Control. A company controls another company when the first company, directly or indirectly, owns, or holds with power to vote, 25 percent or more of any class of the second company's outstanding voting securities.

Core business lines means those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value.

Core elements mean the information required to be included in a full resolution plan pursuant to § ____.5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy.

Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

Covered company—(1) *In general.* A covered company means:

(i) Any nonbank financial company supervised by the Board;

(ii) Any global systemically important BHC;

(iii) Any bank holding company, as that term is defined in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and part 225 of this title (the Board's Regulation Y), that has $250 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q of the companies that were party to the merger, acquisition, combination or similar transaction;

(iv) Any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and that has $250 billion or more in total consolidated assets, as determined annually based on the foreign bank's or company's most recent annual or, as applicable, quarterly based on the average of the foreign bank's or company's four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q of the companies that were party to the merger, acquisition, combination or similar transaction; and

(v) Any additional covered company as determined pursuant to § 243.13.

(2) *Cessation of covered company status for nonbank financial companies supervised by the Board and global systemically important BHCs.* Once a covered company meets the requirements described in paragraph (1)(i) or (ii) of this definition of covered company, the company shall remain a covered company until it no longer meets any of the requirements described in paragraph (1) of this definition of covered company.

(3) *Cessation of covered company status for other covered companies.* Once a company meets the requirements described in paragraph (1)(iii) or (iv) of this definition of covered company, the company shall remain a covered company until—

(i) In the case of a covered company described in paragraph (1)(iii) of this definition of covered company or a covered company described in paragraph (1)(iv) of this definition of covered company that files quarterly Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, the company has reported total consolidated assets that are below $250 billion for each of four consecutive quarters, as determined based on its total consolidated assets as reported on each of its four most recent Consolidated Financial Statements for Holding Companies on the Federal Reserve's Form FR Y–9C or Capital and

Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, as applicable; or

(ii) In the case of a covered company described in paragraph (1)(iv) of this definition of covered company that does not file quarterly Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, the company has reported total consolidated assets that are below $250 billion for each of two consecutive years, as determined based on its total consolidated assets as reported on each of its two most recent annual Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, or such earlier time as jointly determined by the Board and the Corporation.

(4) *Multi-tiered holding company.* In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company unless the Board and the Corporation jointly identify a different holding company to satisfy the requirements that apply to the covered company. In making this determination, the Board and the Corporation shall consider:

(i) The ownership structure of the foreign banking organization, including whether the foreign banking organization is owned or controlled by a foreign government;

(ii) Whether the action would be consistent with the purposes of this part; and

(iii) Any other factors that the Board and the Corporation determine are relevant.

(5) *Asset threshold for bank holding companies and foreign banking organizations.* The Board may, pursuant to a recommendation of the Council, raise any asset threshold specified in paragraph (1)(iii) or (iv) of this definition of covered company.

(6) *Exclusion.* A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a covered company hereunder.

Critical operations means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

Deficiency is defined in § ____.8(b).

Depository institution has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

Foreign banking organization means—

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

Foreign-based covered company means any covered company that is not incorporated or organized under the laws of the United States.

Full resolution plan means a full resolution plan described in § ____.5.

Functionally regulated subsidiary has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

Global systemically important BHC means a covered company that is a global systemically important BHC pursuant to § 252.5 of this title.

Identified critical operations means the critical operations of the covered company identified by the covered company or jointly identified by the Board and the Corporation under § ____.3(b)(2).

Material change means an event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on:

(1) The resolvability of the covered company;

(2) The covered company's resolution strategy; or

(3) How the covered company's resolution strategy is implemented. Such changes include, but are not limited to:

(i) The identification of a new critical operation or core business line;

(ii) The identification of a new material entity or the de-identification of a material entity;

(iii) Significant increases or decreases in the business, operations, or funding or interconnections of a material entity; or

(iv) Changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis.

Material entity means a subsidiary or foreign office of the covered company that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the covered company.

Material financial distress with regard to a covered company means that:

(1) The covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(2) The assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or

(3) The covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

Nonbank financial company supervised by the Board means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

Rapid and orderly resolution means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.

Reduced resolution plan means a reduced resolution plan described in § ____.7.

Shortcoming is defined in § ____.8(e).

Subsidiary means a company that is controlled by another company, and an indirect subsidiary is a company that is controlled by a subsidiary of a company.

Targeted resolution plan means a targeted resolution plan described in § ____.6.

Triennial full filer is defined in § ____.4(b)(1).

Triennial reduced filer is defined in § ____.4(c)(1).

United States means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ ____.3 Critical operations.

(a) *Identification of critical operations by covered companies*—(1) *Process and methodology required.* (i) Each biennial filer and triennial full filer shall establish and implement a process designed to identify each of its critical operations. After July 1, 2022, each triennial reduced filer that has any identified critical operation shall establish and implement a process designed to identify each of its critical operations. The scale of the process must be appropriate to the nature, size, complexity, and scope of the covered company's operations. The covered company must review its process periodically and update it as necessary to ensure its continued effectiveness. The covered company shall describe its process and how it is applied as part of its corporate governance relating to resolution planning under § ____.5(d)(1). The covered company must conduct the process described in this paragraph (a)(1) sufficiently in advance of its next resolution plan submission so that the covered company is prepared to submit the information required under §§ ____.5 through ____.7 for each identified critical operation.

(ii) The process required under paragraph (a)(1)(i) of this section must include a methodology for evaluating the covered company's participation in activities and markets that may be critical to the financial stability of the United States. The methodology must be designed, taking into account the nature, size, complexity, and scope of the covered company's operations, to identify and assess:

(A) The markets and activities in which the covered company participates or has operations;

(B) The significance of those markets and activities with respect to the financial stability of the United States; and

(C) The significance of the covered company as a provider or other participant in those markets and activities.

(2) *Waiver requests.* A covered company that has previously submitted a resolution plan under this part may request a waiver of the requirement to have a process and methodology under paragraph (a)(1) of this section by submitting a waiver request in accordance with this paragraph (a)(2) if the covered company does not have an identified critical operation as of the date it submits the waiver request.

(i) Each waiver request shall be divided into a public section and a confidential section. A covered company shall segregate and separately identify the public section from the confidential section. A covered company shall include in the confidential section of a waiver request its rationale for why a waiver of the requirement would be appropriate, including an explanation of why the process and methodology are not likely to identify any critical operation given its business model, operations, and organizational structure. A covered company shall describe in the public section of a waiver request that it is seeking to waive the requirement.

(ii) Any waiver request must be made in writing no later than 18 months before the date by which the covered company is required to submit its next resolution plan. Notwithstanding the foregoing, with respect to any resolution plan that a covered company is required to submit on or before July 1, 2021, any waiver request must be made in writing no later than 17 months before that date.

(iii) The Board and Corporation may jointly approve or deny a waiver request in their discretion. Unless the Board and the Corporation have jointly approved a waiver request, the waiver request will be deemed denied on the date that is 12 months before the date by which the covered company is required to submit the resolution plan that immediately follows submission of the waiver request.

(iv) An approved waiver request under this paragraph (a)(2) is effective for the resolution plan submission that immediately follows submission of the waiver request and for any resolution plan submitted thereafter until, but not including, the covered company's next full resolution plan submission.

(3) *Limited exemption.* A foreign-based covered company is exempt from the requirement to have a process and methodology under paragraph (a)(1) of this section in connection with any requirement to submit a resolution plan on or before July 1, 2021 if the foreign-based covered company does not have an identified critical operation as of the date that is 17 months before the date by which the covered company is required to submit the resolution plan.

(b) *Joint identification of critical operations by the Board and the Corporation.* (1) The Board and the Corporation shall, not less frequently than every six years, jointly review the operations of covered companies to determine whether to jointly identify critical operations of any covered company in accordance with paragraph (b)(2) of this section, or to jointly rescind any currently effective joint identification in accordance with paragraph (b)(3) of this section.

(2) If the Board and the Corporation jointly identify a covered company's operation as a critical operation, the Board and the Corporation shall jointly notify the covered company in writing. A covered company is not required to include the information required under §§ ____.5 through ____.7 for the identified critical operation in any resolution plan that the covered company is required to submit within 12 months after the joint notification unless the operation had been identified by the covered company as a critical operation on or before the date the Board and the Corporation jointly notified the covered company.

(3) The Board and the Corporation may jointly rescind a joint identification under paragraph (b)(2) of this section by providing the covered company with joint notice of the rescission. Upon the notification, the covered company is not required to include the information regarding the operation required for identified critical operations under §§ ____.5 through ____.7 in any subsequent resolution plan unless:

(i) The covered company identifies the operation as a critical operation; or

(ii) The Board and the Corporation subsequently provide a joint notification under paragraph (b)(2) of this section to the covered company regarding the operation.

(4) A joint notification provided by the Board and the Corporation to a covered company before [effective date of final rule] that identifies any of its operations as a critical operation and not previously jointly rescinded is deemed to be a joint identification under paragraph (b)(2) of this section.

(c) *Request for reconsideration of jointly identified critical operations.* A covered company may request that the Board and the Corporation reconsider a joint identification under paragraph (b)(2) of this section in accordance with this paragraph (c).

(1) *Written request for reconsideration.* The covered company must submit a written request for reconsideration to the Board and the Corporation that includes a clear and complete statement of all arguments and all relevant, material information that the covered company expects to have considered. If a covered company has previously requested reconsideration regarding the operation, the written request must also describe the material differences between the new request and the most recent prior request.

(2) *Timing.* (i) If a covered company submits a request for reconsideration on or before the date that is 18 months before the date by which it is required to submit its next resolution plan, the Board and the Corporation will complete their reconsideration no later than 12 months before the date by which the covered company is required to submit its next resolution plan. Notwithstanding the foregoing, if the Board and the Corporation jointly find that additional information from the covered company is required to complete their reconsideration, the Board and the Corporation will jointly request in writing the additional information from the covered company.

The Board and the Corporation will then complete their reconsideration no later than the later of:

(A) Ninety (90) days after receipt of all additional information from the covered company; and

(B) Twelve (12) months before the date by which the covered company is required to submit its next resolution plan.

(ii) If a covered company submits a request for reconsideration less than 18 months before the date by which it is required to submit its next resolution plan, the Board and the Corporation may, in their discretion, defer reconsideration of the joint identification until after the submission of that resolution plan, with the result that the covered company must include the identified critical operation in that resolution plan and the Board and the Corporation will complete their reconsideration in accordance with paragraph (c)(2)(i) of this section as though the covered company had submitted the request after the date by which the covered company is required to submit that resolution plan.

(3) *Joint communication following reconsideration.* The Board and the Corporation will communicate jointly the results of their reconsideration in writing to the covered company.

(d) *De-identification by covered company of self-identified critical operations.* A covered company may cease to include in its resolution plans the information required under §§ ____.5 through ____.7 regarding an operation previously identified only by the covered company (and not also jointly by the Board and the Corporation) as a critical operation only in accordance with this paragraph (d).

(1) *Notice of de-identification.* If a covered company ceases to identify an operation as a critical operation, the covered company must notify the Board and the Corporation of its de-identification. The notice must be in writing and include a clear and complete explanation of:

(i) Why the covered company previously identified the operation as a critical operation; and

(ii) Why the covered company no longer identifies the operation as a critical operation.

(2) *Timing.* Notwithstanding a covered company's de-identification, and unless otherwise notified in writing jointly by the Board and the Corporation, a covered company shall include the applicable information required under §§ ____.5 through § ____.7 regarding an operation previously identified by the covered company as a critical operation in any resolution plan the covered company is required to submit during the period ending 12 months after the covered company notifies the Board and the Corporation in accordance with paragraph (d)(1) of this section.

(3) *No effect on joint identifications.* Neither a covered company's de-identification nor notice thereof under paragraph (d)(1) of this section rescinds a joint identification made by the Board and the Corporation under paragraph (b)(2) of this section.

§ ____.4 Resolution plan required.

(a) *Biennial filers*—(1) *Group members.* Biennial filer means:

(i) Any global systemically important BHC; and

(ii) Any nonbank financial company supervised by the Board that has not been jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section or that has been jointly re-designated a biennial filer by the Board and the Corporation under paragraph (a)(2) of this section.

(2) *Nonbank financial companies.* The Board and the Corporation may jointly designate a nonbank financial company supervised by the Board as a triennial full filer in their discretion, taking into account facts and circumstances that each of the Board and the Corporation in its discretion determines to be relevant. The Board and the Corporation may in their discretion jointly re-designate as a biennial filer a nonbank financial company that the Board and the Corporation had previously designated as a triennial filer, taking into account facts and circumstances that each of the Board and the Corporation in its discretion determines to be relevant.

(3) *Frequency of submission.* Biennial filers shall each submit a resolution plan to the Board and the Corporation every two years.

(4) *Submission date.* Biennial filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(5) *Type of resolution plan required to be submitted.* Biennial filers shall alternate submitting a full resolution plan and a targeted resolution plan.

(6) *New covered companies that are biennial filers.* A company that becomes a covered company and a biennial filer after [effective date of final rule] shall submit a full resolution plan on or before the next date by which the other biennial filers are required to submit resolution plans pursuant to paragraph (a)(4) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be of the type required to be submitted by the other biennial filers.

(b) *Triennial full filers*—(1) *Group members.* Triennial full filer means:

(i) Any category II banking organization;

(ii) Any category III banking organization; and

(iii) Any nonbank financial company supervised by the Board that is jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section.

(2) *Frequency of submission.* Triennial full filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial full filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(4) *Type of resolution plan required to be submitted.* Triennial full filers shall alternate submitting a full resolution plan and a targeted resolution plan.

(5) *New covered companies that are triennial full filers.* A company that becomes a covered company and a triennial full filer after [effective date of final rule] shall submit a full resolution plan on or before the next date by which the other triennial full filers are required to submit resolution plans pursuant to paragraph (b)(3) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be of the type required to be submitted by the other triennial full filers.

(c) *Triennial reduced filers*—(1) *Group members.* Triennial reduced filer means any covered company that is not a global systemically important BHC, nonbank financial company supervised by the Board, category II banking organization, or category III banking organization.

(2) *Frequency of submission.* Triennial reduced filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial reduced filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(4) *Type of resolution plan required to be submitted.* Triennial reduced filers shall submit a reduced resolution plan.

(5) *New covered companies that are triennial reduced filers.* A company that becomes a covered company and a triennial reduced filer after December 31, 2019 shall submit a full resolution plan on or before the next date by which

the other triennial reduced filers are required to submit resolution plans pursuant to paragraph (c)(3) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be reduced resolution plans.

(d) *General*—(1) *Changing filing groups.* If a covered company that is a member of a filing group specified in paragraphs (a) through (c) of this section (''original group filer'') becomes a member of a different filing group specified in paragraphs (a) through (c) of this section (''new group filer''), then the covered company shall submit its next resolution plan as follows:

(i) If the next date by which the original group filers are required to submit their next resolution plans is the same date by which the other new group filers are required to submit their next resolution plans and:

(A) That date is less than 12 months after the date as of which the covered company became a new group filer, the covered company shall submit its next resolution plan on or before that date. The resolution plan may be the type of resolution plan that the original group filers are required to submit on or before that date or the type of resolution plan that the other new group filers are required to submit on or before that date.

(B) That date is 12 months or more after the date as of which the covered company became a new group filer, the covered company shall submit on or before that date the type of resolution plan the other new group filers are required to submit on or before that date.

(ii) If the next date by which the original group filers are required to submit their next resolution plans is different from the date by which the new group filers are required to submit their next resolution plans, the covered company shall submit its next resolution plan on or before the next date by which the other new group filers are required to submit a resolution plan that occurs no earlier than 12 months after the date as of which the covered company became a new group filer. The covered company shall submit the type of resolution plan that the other new group filers are required to submit on or before the date the covered company is required to submit its next resolution plan.

(iii) Notwithstanding paragraph (d)(1)(i) or (ii) of this section, any triennial reduced filer that becomes a biennial filer or a triennial full filer shall submit a full resolution plan on or before the next date by which the other new group filers are required to submit their next resolution plans that occurs no earlier than 12 months after the date as of which the covered company became a new group filer. After submitting a full resolution plan, the covered company shall submit, on or before the next date that the other new group filers are required to submit their next resolution plans, the type of resolution plan the other new group filers are required to submit on or before that date.

(2) *Altering submission dates.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly determine that a covered company shall submit its resolution plan on or before a date other than as provided in paragraphs (a) through (c) or paragraph (d)(1) of this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(2) no later than 12 months before the date by which the covered company is required to submit the resolution plan.

(3) *Authority to require interim updates.* The Board and the Corporation may jointly require that a covered company submit an update to a resolution plan submitted under this part, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall notify the covered company of its requirement to submit an update under this paragraph (d)(3) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(4) *Notice of extraordinary events*—(i) *In general.* Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after any material merger, acquisition of assets, or similar transaction or fundamental change to the covered company's resolution strategy. Such notice must describe the event and explain how the event affects the resolvability of the covered company. The covered company shall address any event with respect to which it has provided notice pursuant to this paragraph (d)(4)(i) in the following resolution plan submitted by the covered company.

(ii) *Exception.* A covered company shall not be required to submit a notice under paragraph (d)(4)(i) of this section if the date by which the covered company would be required to submit the notice under paragraph (d)(4)(i) of this section would be within 90 days before the date by which the covered company is required to submit a resolution plan under this section.

(5) *Authority to require a full resolution plan submission.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly require a covered company to submit a full resolution plan instead of a targeted resolution plan or a reduced resolution plan that the covered company is otherwise required to submit under this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(5) no later than 12 months before the date by which the covered company is required to submit the full resolution plan. The date on or before which a full resolution plan must be submitted under this paragraph (d)(5) will be the date by which the covered company would otherwise be required to submit its upcoming targeted resolution plan or reduced resolution plan under paragraphs (a) through (c), or (d)(1) or (2) of this section. The requirement to submit a full resolution plan under this paragraph (d)(5) does not alter the type of resolution plan the covered company will subsequently be required to submit under this section.

(6) *Waivers*—(i) *Authority to waive requirements.* The Board and the Corporation may jointly waive one or more of the resolution plan requirements of § ____.5, § ____.6, or § ____.7 for one or more covered companies for any number of resolution plan submissions. A request pursuant to paragraph (d)(6)(ii) of this section is not required for the Board and Corporation to exercise their authority under this paragraph (d)(6)(i).

(ii) *Waiver requests by covered companies.* In connection with the submission of a full resolution plan, a triennial full filer or triennial reduced filer that has previously submitted a resolution plan under this part may request a waiver of one or more of the informational content requirements of § ____.5 in accordance with this paragraph (d)(6)(ii).

(A) A requirement to include any of the following information is not eligible for a waiver at the request of a triennial full filer or triennial reduced filer:

(*1*) Information specified in section 165(d)(1)(A) through (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A) through (C));

(*2*) Any core element;

(*3*) Information required to be included in the public section of a full resolution plan under § ____.11(c)(2);

(*4*) Information about the remediation of any previously identified deficiency or shortcoming unless the Board and the Corporation have jointly determined that the triennial full filer or triennial reduced filer has satisfactorily remedied the deficiency or addressed the shortcoming before its submission of the waiver request; or

(*5*) Information about changes to the triennial full filer or triennial reduced filer's last submitted resolution plan resulting from any:

(*i*) Change in law or regulation;

(*ii*) Guidance or feedback from the Board and the Corporation; or

(*iii*) Any material change experienced by the triennial full filer or triennial reduced filer since it submitted that resolution plan.

(B) Each waiver request shall be divided into a public section and a confidential section. A triennial full filer or triennial reduced filer shall segregate and separately identify the public section from the confidential section.

(*1*) The triennial full filer or triennial reduced filer shall include in the confidential section of a waiver request a clear and complete explanation of why:

(*i*) Each requirement sought to be waived is not a requirement described in paragraph (d)(6)(ii)(A) of this section;

(*ii*) The information sought to be waived would not be relevant to the Board's and Corporation's review of the triennial full filer or triennial reduced filer's next full resolution plan; and

(*iii*) A waiver of each requirement would be appropriate.

(*2*) The triennial full filer or triennial reduced filer shall include in the public section of a waiver request a list of the requirements that it is requesting be waived.

(C) A triennial full filer or triennial reduced filer may not make more than one waiver request for any full resolution plan submission and any waiver request must be made in writing no later than 18 months before the date by which the triennial full filer or triennial reduced filer is required to submit the full resolution plan.

(D) The Board and Corporation may jointly approve or deny a waiver request, in whole or in part, in their discretion. Unless the Board and the Corporation have jointly approved a waiver request, the waiver request will be deemed denied on the date that is 12 months before the date by which the triennial full filer or triennial reduced filer is required to submit the full resolution plan to which the waiver request relates.

(E) An approved waiver request under this paragraph (d)(6)(ii) is effective for only the full resolution plan that immediately follows submission of the waiver request.

(e) *Access to information.* In order to allow evaluation of a resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. In order to facilitate review of any waiver request by a covered company under §____.3(a)(2) or paragraph (d)(6)(ii) of this section, or any joint identification of a critical operation of a covered company under §____.3(b), each covered company must provide such information and access to personnel of the covered company as the Board and the Corporation jointly determine is necessary to evaluate the waiver request or whether the operation is a critical operation. The Board and the Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(f) *Board of directors approval of resolution plan.* Before submission of a resolution plan under paragraphs (a) through (c) of this section, the resolution plan of a covered company shall be approved by:

(1) The board of directors of the covered company and noted in the minutes; or

(2) In the case of a foreign-based covered company only, a delegee acting under the express authority of the board of directors of the covered company to approve the resolution plan.

(g) *Resolution plans provided to the Council.* The Board shall make the resolution plans and updates submitted by the covered company pursuant to this section available to the Council upon request.

(h) *Required and prohibited assumptions.* In preparing its resolution plan, a covered company shall:

(1) Take into account that the material financial distress or failure of the covered company may occur under the severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B);

(2) Not rely on the provision of extraordinary support by the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company, including any resolution actions taken outside the United States that would eliminate the need for any of a covered company's U.S. subsidiaries to enter into resolution proceedings; and

(3) With respect to foreign banking organizations, not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

(i) *Point of contact.* Each covered company shall identify a senior management official at the covered company responsible for serving as a point of contact regarding the resolution plan of the covered company.

(j) *Incorporation of previously submitted resolution plan information by reference.* Any resolution plan submitted by a covered company may incorporate by reference information from a resolution plan previously submitted by the covered company to the Board and the Corporation, provided that:

(1) The resolution plan seeking to incorporate information by reference clearly indicates:

(i) The information the covered company is incorporating by reference; and

(ii) Which of the covered company's previously submitted resolution plan(s) originally contained the information the covered company is incorporating by reference and the specific location of the information in the covered company's previously submitted resolution plan; and

(2) The covered company certifies that the information the covered company is incorporating by reference remains accurate in all respects that are material to the covered company's resolution plan.

(k) *Initial resolution plans after effective date.* (1) Notwithstanding anything to the contrary in paragraphs (a) through (c) or (d)(1) of this section, each company that is a covered company as of December 31, 2019 is required to submit its initial resolution plan after December 31, 2019, as provided in this paragraph (k). The submission date and resolution plan type for each subsequent resolution plan will be determined pursuant to paragraphs (a) through (d) of this section.

(i) *Biennial filers.* Each covered company that is a biennial filer on October 1, 2020 and remains a biennial filer as of July 1, 2021, is required to submit a targeted resolution plan pursuant to paragraph (a)(4) of this section on or before July 1, 2021.

(ii) *Triennial full filers.* Each covered company that is a triennial full filer on October 1, 2020 and remains a triennial full filer as of July 1, 2021 is required to submit a targeted resolution plan pursuant to paragraph (b)(3) of this section on or before July 1, 2021.

(iii) *Triennial reduced filers.* Each covered company that is a triennial reduced filer on October 1, 2020 and remains a triennial reduced filer as of July 1, 2022 is required to submit a reduced resolution plan pursuant to paragraph (c)(3) of this section on or before July 1, 2022.

(2) With respect to any company that is a covered company as of December 31, 2019, and changes filings groups specified in paragraphs (a) through (c) of this section after October 1, 2020 and before the date by which it would be required to submit a resolution plan under paragraph (k)(1) of this section, the requirements for its initial resolution plan after it changes filing groups will be determined pursuant to paragraph (d)(1) of this section.

(3) Notwithstanding anything to the contrary in this paragraph (k), a covered company that has been jointly directed by the Board and the Corporation before December 31, 2019, to submit a resolution plan on or before July 1, 2020 describing changes it has made to its most recent resolution plan submission to address each shortcoming the agencies identified in that resolution plan shall submit a responsive resolution plan on or before July 1, 2020 in addition to any resolution plan that such covered company is otherwise required to submit under this section. The requirement to submit such a resolution plan on or before July 1, 2020 does not alter the timing or type of resolution plan any such covered company is required to submit under this section after July 1, 2020.

§ ____.5 Informational content of a full resolution plan.

(a) *In general*—(1) *Domestic covered companies.* A full resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

(2) *Foreign-based covered companies.* A full resolution plan of a covered company that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is a foreign banking organization shall include:

(i) The information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries, branches and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States. With respect to the information specified in paragraph (g) of this section, the resolution plan of a foreign-based covered company shall also identify, describe in detail, and map to legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches, and agencies, and between those entities and:

(A) The identified critical operations and core business lines of the foreign-based covered company; and

(B) Any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and identified critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

(b) *Executive summary.* Each full resolution plan of a covered company shall include an executive summary describing:

(1) The key elements of the covered company's strategic plan for rapid and orderly resolution in the event of material financial distress at or failure of the covered company;

(2) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred);

(3) Changes to the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(2) of this section; and

(4) Any actions taken by the covered company since filing of the previous resolution plan to improve the effectiveness of the covered company's resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to effective and timely execution of the resolution plan.

(c) *Strategic analysis.* Each full resolution plan shall include a strategic analysis describing the covered company's plan for rapid and orderly resolution in the event of material financial distress or failure of the covered company. Such analysis shall:

(1) Include detailed descriptions of the:

(i) Key assumptions and supporting analysis underlying the covered company's resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan;

(ii) Range of specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, and its identified critical operations and core business lines in the event of material financial distress or failure of the covered company;

(iii) Funding, liquidity and capital needs of, and resources available to, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines, in the ordinary course of business and in the event of material financial distress at or failure of the covered company;

(iv) Covered company's strategy for maintaining operations of, and funding for, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines;

(v) Covered company's strategy in the event of a failure or discontinuation of a material entity, core business line or identified critical operation, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States; provided, however, if any such material entity is subject to an insolvency regime other than the Bankruptcy Code, a covered company may exclude that entity from its strategic analysis unless that entity either has $50 billion or more in total assets or conducts an identified critical operation; and

(vi) Covered company's strategy for ensuring that any insured depository institution subsidiary of the covered company will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution);

(2) Identify the time period(s) the covered company expects would be needed for the covered company to successfully execute each material aspect and step of the covered company's plan;

(3) Identify and describe any potential material weaknesses or impediments to effective and timely execution of the covered company's plan;

(4) Discuss the actions and steps the covered company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified by the covered company, including a timeline for the remedial or other mitigatory action; and

(5) Provide a detailed description of the processes the covered company employs for:

(i) Determining the current market values and marketability of the core business lines, identified critical operations, and material asset holdings of the covered company;

(ii) Assessing the feasibility of the covered company's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the covered company's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the covered company, its material entities, identified critical operations and core business lines.

(d) *Corporate governance relating to resolution planning.* Each full resolution plan shall:

(1) Include a detailed description of:

(i) How resolution planning is integrated into the corporate governance structure and processes of the covered company;

(ii) The covered company's policies, procedures, and internal controls governing preparation and approval of the covered company's resolution plan;

(iii) The identity and position of the senior management official(s) of the covered company that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the covered company's resolution plan and for the covered company's compliance with this part; and

(iv) The nature, extent, and frequency of reporting to senior executive officers and the board of directors of the covered company regarding the development, maintenance, and implementation of the covered company's resolution plan;

(2) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the covered company since the date of the covered company's most recently filed resolution plan to assess the viability of or improve the resolution plan of the covered company; and

(3) Identify and describe the relevant risk measures used by the covered company to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to the covered company's appropriate Federal regulator.

(e) *Organizational structure and related information.* Each full resolution plan shall:

(1) Provide a detailed description of the covered company's organizational structure, including:

(i) A hierarchical list of all material entities within the covered company's organization (including legal entities that directly or indirectly hold such material entities) that:

(A) Identifies the direct holder and the percentage of voting and nonvoting equity of each legal entity and foreign office listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity and foreign office identified;

(ii) A mapping of the covered company's identified critical operations and core business lines, including material asset holdings and liabilities related to such identified critical operations and core business lines, to material entities;

(2) Provide an unconsolidated balance sheet for the covered company and a consolidating schedule for all material entities that are subject to consolidation by the covered company;

(3) Include a description of the material components of the liabilities of the covered company, its material entities, identified critical operations and core business lines that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, the secured and unsecured liabilities, and subordinated liabilities;

(4) Identify and describe the processes used by the covered company to:

(i) Determine to whom the covered company has pledged collateral;

(ii) Identify the person or entity that holds such collateral; and

(iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the covered company;

(5) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the covered company and its material entities, including a mapping to its identified critical operations and core business lines;

(6) Describe the practices of the covered company, its material entities and its core business lines related to the booking of trading and derivatives activities;

(7) Identify material hedges of the covered company, its material entities, and its core business lines related to trading and derivative activities, including a mapping to legal entity;

(8) Describe the hedging strategies of the covered company;

(9) Describe the process undertaken by the covered company to establish exposure limits;

(10) Identify the major counterparties of the covered company and describe the interconnections, interdependencies and relationships with such major counterparties;

(11) Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the covered company; and

(12) Identify each trading, payment, clearing, or settlement system of which the covered company, directly or indirectly, is a member and on which the covered company conducts a material number or value amount of trades or transactions. Map membership in each such system to the covered company's material entities, identified critical operations and core business lines.

(f) *Management information systems.* (1) Each full resolution plan shall include:

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the covered company and its material entities. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application, service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to the material entities, identified critical operations and core business lines of the covered company that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the covered company, its material entities, identified critical operations and core business lines use to monitor the financial health, risks, and operation of the covered company, its material entities, identified critical operations and core business lines;

(iv) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified in paragraph (f) of this section; and

(v) A description and analysis of:

(A) The capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company, and to the Board, the information and data underlying the resolution plan; and

(B) Any gaps or weaknesses in such capabilities, and a description of the actions the covered company intends to take to promptly address such gaps, or weaknesses, and the time frame for implementing such actions.

(2) The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy the requirements of paragraph (f)(1)(v) of this section. The Board will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

(g) *Interconnections and interdependencies.* To the extent not provided elsewhere in this part, each full resolution plan shall identify and map to the material entities the interconnections and interdependencies among the covered company and its material entities, and among the identified critical operations and core business lines of the covered company that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its identified critical operations or core business lines. Such interconnections and interdependencies may include:

(1) Common or shared personnel, facilities, or systems (including information technology platforms, management information systems, risk management systems, and accounting and recordkeeping systems);

(2) Capital, funding, or liquidity arrangements;

(3) Existing or contingent credit exposures;

(4) Cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions, and cross-affiliate netting agreements;

(5) Risk transfers; and

(6) Service level agreements.

(h) *Supervisory and regulatory information.* Each full resolution plan shall:

(1) Identify any:

(i) Federal, state, or foreign agency or authority (other than a Federal banking agency) with supervisory authority or responsibility for ensuring the safety and soundness of the covered company, its material entities, identified critical operations and core business lines; and

(ii) Other Federal, state, or foreign agency or authority (other than a Federal banking agency) with significant supervisory or regulatory authority over the covered company, and its material entities and identified critical operations and core business lines.

(2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and identified critical operations or core business lines of the covered company; and

(3) Include contact information for each agency identified in paragraphs (h)(1) and (2) of this section.

§ ____.6 Informational content of a targeted resolution plan.

(a) *In general.* A targeted resolution plan is a subset of a full resolution plan and shall include core elements of a full resolution plan and information concerning key areas of focus as set forth in this section.

(b) *Targeted resolution plan content.* Each targeted resolution plan of a covered company shall include:

(1) The core elements;

(2) Such targeted information as the Board and Corporation may jointly identify pursuant to paragraph (c) of this section;

(3) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred); and

(4) A description of changes to the covered company's previously submitted resolution plan resulting from any;

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(3) of this section.

(c) *Targeted information requests.* No less than 12 months before the date by which a covered company is required to submit a targeted resolution plan, the Board and Corporation may jointly identify in writing resolution-related key areas of focus, questions, and issues that must also be addressed in the covered company's targeted resolution plan.

(d) *Deemed incorporation by reference.* If a covered company does not include in its targeted resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted resolution plan, such information from its previously submitted resolution plan are incorporated by reference into its targeted resolution plan.

§ ____.7 Informational content of a reduced resolution plan.

(a) *Reduced resolution plan content.* Each reduced resolution plan of a covered company shall include:

(1) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred); and

(2) A description of changes to the strategic analysis that was presented in the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (a)(1) of this section.

(b) *Deemed incorporation by reference.* If a covered company does not include in its reduced resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted resolution plan, such information from its previously submitted resolution plan are incorporated by reference into its reduced resolution plan.

§ ____.8 Review of resolution plans; resubmission of deficient resolution plans.

(a) *Review of resolution plans.* The Board and Corporation will seek to coordinate their activities concerning the review of resolution plans, including planning for, reviewing, and assessing the resolution plans, as well as such activities that occur during the periods between resolution plan submissions.

(b) *Joint determination regarding deficient resolution plans.* If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under § ____.4 is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation shall jointly notify the covered company in writing of such determination. Any joint notice provided under this paragraph (b) shall be provided pursuant to paragraph (f) of this section and shall identify the deficiencies identified by the Board and Corporation in the resolution plan. A deficiency is an aspect of a covered company's resolution plan that the

Board and Corporation jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the covered company's resolution plan.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (b) of this section, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company shall submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation, and that discusses in detail:

(1) The revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation;

(2) Any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and

(3) Why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

(d) *Extensions of time.* Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time period under this section. Each extension request shall be supported by a written statement of the covered company describing the basis and justification for the request.

(e) *Joint determination regarding shortcomings in resolution plans.* The Board and Corporation may also jointly identify one or more shortcomings in a covered company's resolution plan. A shortcoming is a weakness or gap that raises questions about the feasibility of a covered company's resolution plan, but does not rise to the level of a deficiency for both the Board and Corporation. If a shortcoming is not satisfactorily explained or addressed before or in the submission of the covered company's next resolution plan, it may be found to be a deficiency in the covered company's next resolution plan. The Board and the Corporation may identify an aspect of a covered company's resolution plan as a deficiency even if such aspect was not identified as a shortcoming in an earlier resolution plan submission.

(f) *Feedback.* Following their review of a resolution plan, the Board and the Corporation will jointly send a notification to each covered company that identifies any deficiencies or shortcomings in the covered company's resolution plan (or confirms that no deficiencies or shortcomings were identified) and provides any feedback on the resolution plan. The Board and the Corporation will jointly send the notification no later than 12 months after the later of the date on which the covered company submitted the resolution plan and the date by which the covered company was required to submit the resolution plan, unless the Board and the Corporation jointly determine in their discretion that extenuating circumstances exist that require delay.

§ ____.9 Failure to cure deficiencies on resubmission of a resolution plan.

(a) *In general.* The Board and Corporation may jointly determine that a covered company or any subsidiary of a covered company shall be subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the covered company or the subsidiary if:

(1) The covered company fails to submit a revised resolution plan under § ____.8(c) within the required time period; or

(2) The Board and the Corporation jointly determine that a revised resolution plan submitted under § ____.8(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under § ____.8(b).

(b) *Duration of requirements or restrictions.* Any requirements or restrictions imposed on a covered company or a subsidiary thereof pursuant to paragraph (a) of this section shall cease to apply to the covered company or subsidiary, respectively, on the date that the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____.8(b).

(c) *Divestiture.* The Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as are jointly identified by the Board and Corporation if:

(1) The Board and Corporation have jointly determined that the covered company or a subsidiary thereof shall be subject to requirements or restrictions pursuant to paragraph (a) of this section; and

(2) The covered company has failed, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions under paragraph (a) of this section was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____.8(b); and

(3) The Board and Corporation jointly determine that the divestiture of such assets or operations is necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company was to fail.

§ ____.10 Consultation.

Before issuing any notice of deficiencies under § ____.8(b), determining to impose requirements or restrictions under § ____.9(a), or issuing a divestiture order pursuant to § ____.9(c) with respect to a covered company that is likely to have a significant impact on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board—

(a) Shall consult with each Council member that primarily supervises any such subsidiary; and

(b) May consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

§ ____.11 No limiting effect or private right of action; confidentiality of resolution plans.

(a) *No limiting effect on bankruptcy or other resolution proceedings.* A resolution plan submitted pursuant to this part shall not have any binding effect on:

(1) A court or trustee in a proceeding commenced under the Bankruptcy Code;

(2) A receiver appointed under title II of the Dodd-Frank Act (12 U.S.C. 5381 *et seq.*);

(3) A bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or

(4) Any other authority that is authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

(b) *No private right of action.* Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

(c) *Form of resolution plans*—(1) *Generally.* Each full, targeted, and reduced resolution plan of a covered company shall be divided into a public section and a confidential section. Each covered company shall segregate and separately identify the public section from the confidential section.

(2) *Public section of full and targeted resolution plans.* The public section of a full or targeted resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing and settlement systems;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) A description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities, and its core business lines.

(3) *Public section of reduced resolution plans.* The public section of a reduced resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) The identities of the principal officers; and

(iv) A description, at a high level, of the covered company's resolution strategy, referencing the applicable resolution regimes for its material entities.

(d) *Confidential treatment of resolution plans.* (1) The confidentiality of resolution plans and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules).

(2) Any covered company submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to section 18(x) of the Federal Deposit Insurance Act (12 U.S.C. 1828(x)).

§ ____.12 Enforcement.

The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under § ____.9(a) or (c). The Board, in consultation with the Corporation, may take any action to address any violation of this part by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

[END OF COMMON TEXT]

List of Subjects

12 CFR Part 243

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

12 CFR Part 381

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Resolution plans.

Adoption of the Common Rule Text

The adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System revises part 243 to 12 CFR chapter II as set forth in the text of the common rule at the end of the preamble and further amends 12 CFR part 243 as follows:

PART 243—RESOLUTION PLANS (REGULATION QQ)

■ 1. The authority citation for part 243 continues to read as follows:

Authority: 12 U.S.C. 5365.

■ 2. The heading of part 243 is revised to read as set forth above.

■ 3. In § 243.1, amend paragraph (a) by adding a sentence at the end to read as follows:

§ 243.1 Authority and scope.

(a) * * * The Board is also issuing this part pursuant to section 165(a)(2)(C) of the Dodd-Frank Act.

* * * * *

■ 4. Add § 243.13 to read as follows:

§ 243.13 Additional covered companies.

An additional covered company is any bank holding company or any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) that is:

(a) Identified as a category II banking organization pursuant to § 252.5 of this title;

(b) Identified as a category III banking organization pursuant to § 252.5 of this title; or

(c) Made subject to this part by order of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation revises part 381 to 12 CFR chapter III as set forth in the text of the common rule at the end of the preamble and further amends 12 part 381 as follows:

PART 381—RESOLUTION PLANS

■ 5. The authority citation for part 381 continues to read as follows:

Authority: 12 U.S.C.5365(d).

§ 381.2 [Amended]

■ 6. In § 381.2, in paragraph (1)(v) of the definition of ''covered company'', add the words ''of this title'' after the phrase ''pursuant to § 243.13''.

By order of the Board of Governors of the Federal Reserve System, October 23, 2019.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 15, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–23967 Filed 10–31–19; 8:45 am]

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Part VII

Department of Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 50, 217 et al.

Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements; Final Rule

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 50

[Docket ID OCC–2019–0009]

RIN 1557–AE63

FEDERAL RESERVE SYSTEM

12 CFR Parts 217 and 249

[Regulations Q, WW; Docket No. R–1628]

RIN 7100–AF21

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 329

RIN 3064–AE96

Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (together, the agencies) are adopting a final rule to revise the criteria for determining the applicability of regulatory capital and liquidity requirements for large U.S. banking organizations and the U.S. intermediate holding companies of certain foreign banking organizations. The final rule establishes four risk-based categories for determining the applicability of requirements under the agencies' regulatory capital rule and liquidity coverage ratio (LCR) rule. Under the final rule, such requirements increase in stringency based on measures of size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. The final rule applies tailored regulatory capital and liquidity requirements to depository institution holding companies and U.S. intermediate holding companies with $100 billion or more in total consolidated assets as well as to certain depository institutions. Separately, the Board is adopting a final rule that revises the criteria for determining the applicability of enhanced prudential standards for large domestic and foreign banking organizations using a risk-based category framework that is consistent with the framework described in this final rule, and makes additional modifications to the Board's company-run stress test and supervisory stress test rules. In addition, the Board and the FDIC are separately adopting a final rule that amends the resolution planning requirements under section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act using a risk-based category framework that is consistent with the framework described in this final rule.

DATES: The final rule is effective December 31, 2019.

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I. Introduction

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (together, the agencies) are finalizing the framework set forth under the agencies' recent proposals to change the applicability thresholds under the regulatory capital and liquidity requirements for U.S. banking organizations (domestic proposal) and the U.S. operations of foreign banking organizations (foreign bank proposal, and together, the proposals), with certain adjustments in response to comments.[1] The final rule establishes four risk-based categories for determining the regulatory capital and liquidity requirements applicable to large U.S. banking organizations and the U.S. intermediate holding companies of foreign banking organizations, which apply generally based on indicators of size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure.[2] The final rule measures these indicators based on the risk profile of the top-tier banking organization.[3] For the largest and most systemic and interconnected U.S. bank holding companies, the final rule retains the identification methodology in the Board's global systemically important bank holding company (GSIB) surcharge rule.[4] Under the final rule, the capital and liquidity requirements that apply to U.S. intermediate holding companies and their depository institution subsidiaries generally align with those applicable to similarly situated U.S. banking organizations.

II. Background: Regulatory Capital and Liquidity Framework

In 2013, the agencies adopted a revised capital rule that, among other things, addressed weaknesses in the regulatory framework that became apparent during the financial crisis.[5] The revised capital rule strengthened the regulatory capital requirements applicable to banking organizations supervised by the agencies, including U.S. intermediate holding companies and depository institution subsidiaries of foreign banking organizations, by improving both the quality and quantity of regulatory capital and enhancing the risk sensitivity of capital requirements.[6] In 2014, the agencies adopted the liquidity coverage ratio (LCR) rule to improve the banking sector's resiliency to liquidity stress by requiring large U.S. banking organizations to be more actively engaged in monitoring and managing liquidity risk.[7] The LCR rule generally applies to large depository institution holding companies, certain of their depository institution subsidiaries, and large depository institutions that do not have a parent holding company.[8] Banking organizations subject to the LCR rule must maintain an amount of high-quality liquid assets (HQLA) equal to or greater than their projected total net cash outflows over a prospective 30-calendar-day period.[9] In addition, in June 2016, the agencies invited comment on a proposal to implement a net stable funding ratio (NSFR) requirement that would apply to the same U.S. banking organizations, including U.S. intermediate holding companies, as are subject to the LCR rule.[10] The NSFR proposed rule would establish a quantitative metric to measure and help ensure the stability of a banking organization's funding profile over a one-year time horizon. During the same period, the Board implemented enhanced prudential standards for large bank holding companies and foreign banking organizations.[11]

These and other post-crisis financial regulations have resulted in substantial gains in the resiliency of individual banking organizations and the financial system as a whole. U.S. banking organizations, including the U.S. operations of foreign banking organizations, hold higher levels of high-quality capital and liquidity than before the financial crisis. Robust regulatory capital, stress testing, and liquidity regulations for large banking organizations operating in the United States have helped to ensure that they are better positioned to continue lending and perform other financial intermediation functions through periods of economic stress and market turbulence.

The agencies regularly review their regulatory framework, including capital and liquidity requirements, to ensure it is functioning as intended. These efforts include assessing the impact of regulations as well as exploring alternatives that achieve regulatory objectives and promote safe and sound practices while improving the simplicity, transparency, and efficiency of the regulatory regime. The final rule is the product of such a review. The final rule revises the applicability of requirements for U.S. banking organizations and U.S. intermediate holding companies in a way that enhances the risk sensitivity and efficiency of the agencies' capital and liquidity regulations, maintains the fundamental reforms of the post-crisis framework, and supports banking organizations' resilience. Thus, the final rule seeks to better align the regulatory requirements for large banking

[1] *See* ''Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements,'' 83 FR 66024 (December 21, 2018); ''Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries,'' 84 FR 24296 (May 24, 2019). The final rule combines these two proposals into a single final rule.

[2] The Board's rules require foreign banking organizations with $50 billion or more in U.S. non-branch assets to establish a U.S. intermediate holding company and to hold its ownership interest in all U.S. subsidiaries (other than companies whose assets are held pursuant to section 2(h)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(h)(2) and DPC branch subsidiaries) through its U.S. intermediate holding company. *See* 12 CFR 252.153.

[3] A ''top tier banking organization'' means the top-tier bank holding company, U.S. intermediate holding company, savings and loan holding company, or depository institution domiciled in the United States. As of the date of this final rule, no depository institution that is not also a subsidiary of a bank holding company, U.S. intermediate holding company, or savings and loan holding company meets any risk-based indicator threshold. Accordingly, references to ''top tier banking organization'' in this Supplementary Information as a practical matter refer to holding companies, including U.S. intermediate holding companies.

[4] *See* ''Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies,'' 80 FR 49082 (Aug. 14, 2015).

[5] The Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). The FDIC adopted the interim final rule as a final rule with no substantive changes on April 14, 2014 (79 FR 20754).

[6] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, appendix C, and 12 CFR 238.9), excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[7] *See* 79 FR 61440 (October 10, 2014), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[8] The LCR rule applies to depository institutions with $10 billion or more in total consolidated assets that are subsidiaries of a holding company subject to the full requirements of the agencies' LCR rule.

[9] For certain depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in on-balance sheet foreign exposure, the Board separately adopted a modified LCR requirement. *See* 12 CFR part 249, subpart G.

[10] *See* ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements,'' 81 FR 35124 (Proposed June 1, 2016). For certain depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure, the Board separately proposed a modified NSFR requirement.

[11] *See* ''Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations,'' 79 FR 17240 (March 27, 2014) (the enhanced prudential standards rule), codified at 12 CFR part 252.

organizations with their risk profiles, taking into account the size and complexity of these banking organizations as well as their potential systemic risks. The final rule is consistent with considerations and factors set forth under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act),[12] as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[13]

The final rule also builds upon the agencies' practice of differentiating requirements among banking organizations based on one or more risk-based indicators. Specifically, prior to this final rule, the agencies applied more stringent capital and liquidity requirements to banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure (advanced approaches banking organizations) relative to banking organizations that did not meet these thresholds.[14] The Board also established a methodology under its GSIB surcharge rule to identify the largest, most interconnected and systemically risky banking organizations and to apply additional requirements to those organizations.[15] By refining the application of capital and liquidity requirements based on the risk profile of a banking organization, the final rule further improves upon the risk sensitivity and efficiency of the agencies' rules.

III. Overview of the Notices of Proposed Rulemaking and General Summary of Comments

In 2018 and 2019, the agencies sought comment on two separate proposals to revise the requirements for determining the applicability of regulatory capital and liquidity requirements for large banking organizations. On December 21, 2018, the agencies published a proposal to revise the criteria for determining the applicability of requirements under the capital rule, LCR rule, and the proposed NSFR rule for U.S. banking organizations with $100 billion or more in total consolidated assets, based on four risk-based categories (domestic proposal).[16] Using the risk profile of the top-tier banking organization, Category I would have been based on the methodology in the Board's GSIB surcharge rule for identification of U.S. GSIBs, whereas Categories II through IV would have been based on size and levels of cross-jurisdictional activity, nonbank assets, off-balance sheet exposure, and weighted short-term wholesale funding (together with size, the risk-based indicators). Capital and liquidity requirements for depository institution subsidiaries, if applicable, would have been based on the risk profile of the top-tier banking organization.

Subsequently, on May 24, 2019, the agencies published a proposal to revise the criteria for determining the applicability of capital and liquidity requirements with respect to the U.S. operations of foreign banking organizations (foreign bank proposal).[17] This proposal also included certain changes to the domestic proposal, as described below.[18] The foreign bank proposal was largely consistent with the domestic proposal, with certain adjustments to reflect the unique structures through which foreign banking organizations operate in the United States. The foreign bank proposal would have applied three categories of standards (Category II, III, or IV) to foreign banking organizations with large U.S. operations, as Category I under the domestic proposal was proposed to apply only to U.S. GSIBs. For capital, the foreign bank proposal would have determined the application of requirements for U.S. intermediate holding companies with total consolidated assets of $100 billion or more and their depository institution subsidiaries. For liquidity, the foreign bank proposal would have applied an LCR requirement to, and amended the scope of the proposed NSFR rule to include, certain foreign banking organizations with combined U.S. assets of $100 billion or more.[19] Foreign banking organizations would have been subject to an LCR requirement with respect to any U.S. intermediate holding company and certain of their large depository institution subsidiaries. Additionally, in the foreign bank proposal the Board requested comment on whether and how it should approach the potential application of standardized liquidity requirements for foreign banking organizations with respect to their U.S. branch and agency networks.

The agencies received approximately 50 public comments on the proposals, from U.S. and foreign banking organizations, public entities (including a foreign central bank and a U.S. state regulator), public interest groups, private individuals, and other interested parties. Agency staff also met with some commenters at those commenters' requests to discuss their comments on

[12] Public Law 111–203, 124 Stat. 1376 (2010), sec. 165, codified at 12 U.S.C. 5365.

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

[14] *See* 12 CFR 217.1(c), 12 CFR 217.100(b), 249.1 (Board); 12 CFR 3.1(c), 12 CFR 3.100(b), 50.1 (OCC); 12 CFR 324.1(c), 12 CFR 324.100(b), 329.1 (FDIC). The agencies designed these thresholds to identify large, interconnected and internationally active banking organizations and to act as broad indicators for banking organizations with more complex risk profiles. With respect to capital, the agencies required banking organizations meeting these thresholds to calculate risk-weighted assets for credit risk and operational risk using advanced methodologies and be subject to risk-based capital requirements that are not less than the generally applicable risk-based capital requirement; calculate a supplementary leverage ratio; and include most elements of accumulated other comprehensive income in regulatory capital. Advanced approaches banking organizations must also increase their capital conservation buffers by the amount of a countercyclical capital buffer under certain circumstances. Similarly, the agencies applied the LCR requirement to banking organizations based on the same measures of total asset size and total on-balance sheet foreign exposure. The Board's regulations also applied a less stringent, modified LCR requirement to certain depository institution holding companies that do not meet the advanced approaches thresholds but have total consolidated assets of $50 billion or more. U.S. GSIBs form a sub-category of advanced approaches banking organizations.

[15] *See* 12 CFR part 217, subpart H. The additional requirements for U.S. GSIBs include a risk-based capital surcharge at the top-tier bank holding company level, calibrated to reflect GSIBs' respective systemic footprints, total long term debt and loss-absorbing capacity requirements (TLAC) applicable at the top-tier bank holding company level, and enhanced supplementary leverage ratio standards at both the top-tier bank holding company level and depository institution subsidiary level. Certain internal TLAC requirements also apply to the U.S. intermediate holding companies of foreign GSIBs. The FDIC and OCC apply an enhanced supplementary leverage ratio standard to depository institution subsidiaries of U.S. top-tier bank holding companies with more than $700 billion in total consolidated assets or more than $10 trillion in total assets under custody, whereas the Board's regulation applies these requirements to depository institution subsidiaries of U.S. GSIBs. There is currently no difference between the U.S. holding companies identified by these regulations, and the OCC has proposed to amend its regulation to reference the Board's U.S. GSIB definition. *See* ''Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Certain of Their Subsidiary Insured Depository Institutions; Total Loss-Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies,'' 83 FR 17317 (proposed April 19, 2018).

[16] 83 FR 66024 (Dec. 21, 2018).

[17] 84 FR 24296 (May 24, 2019).

[18] Specifically, under the foreign bank proposal, the Board proposed applying standardized liquidity requirements to a U.S. depository institution holding company that would have been subject to Category IV standards if the depository institution holding company significantly relies on short-term wholesale funding.

[19] Combined U.S. assets means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any company whose assets are held pursuant to section 2(h)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(h)(2), if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q).

the proposals.[20] Many commenters supported the proposals as meaningfully tailoring prudential standards, and some were particularly supportive of the proposed approach to further tailor regulatory capital and liquidity requirements. Many commenters, however, expressed the view that the proposed framework would not have sufficiently aligned the agencies' capital and liquidity requirements to the risk profile of a banking organization.[21] For example, some commenters argued that banking organizations with less than $250 billion in assets that do not meet a separate indicator of risk should not be subject to prudential standards under the proposals and that Category IV standards should be eliminated. Other commenters argued that the proposed Category II standards were too stringent given the risks indicated by a high level of cross-jurisdictional activity. By contrast, other commenters argued that the proposals would have revised the criteria for determining the applicability and stringency of standards in a way that would weaken the safety and soundness of large banking organizations and increase risks to U.S. financial stability, and asserted that the agencies had gone beyond the changes required by EGRRCPA. Other commenters believed that the proposals could be further revised to more closely align standards to the risk profile of banking organizations in that category. For example, one commenter argued for further differentiation in the standards between Categories I and II. A number of these commenters argued that all risk-based indicators should exclude transactions with affiliates. In addition, some commenters expressed the general view that the thresholds set forth in the proposals should be further justified.

In response specifically to the foreign bank proposal, industry commenters argued that the proposal would unfairly increase requirements applicable to foreign banking organizations. These commenters also expressed the general view that certain aspects of the foreign bank proposal were inconsistent with the principle of national treatment and equality of competitive opportunity, and argued that the proposals should defer more broadly to compliance with home country standards applicable to the parent foreign banking organization. In particular, commenters argued that the foreign bank proposal should not determine the applicability of the LCR and proposed NSFR requirements for a foreign banking organization with respect to its U.S. intermediate holding company based on the risk profile of the foreign banking organization's combined U.S. operations. These commenters asserted that the final rule should instead determine the application of standardized liquidity requirements for a foreign banking organization's U.S. intermediate holding company based on the risk-based indicator levels of the U.S. intermediate holding company. Commenters argued that the risk-based indicators, if applied to combined U.S. assets, would disproportionately result in the application of more stringent requirements to foreign banking organizations, and asserted the proposal could disrupt the efficient functioning of global financial markets and lead to increased fragmentation. These commenters also generally opposed the potential issuance of a separate proposal that would apply standardized liquidity requirements to the U.S. branch and agency network of a foreign banking organization, on the basis that such an approach could lead to ring-fencing and regulatory inconsistencies across jurisdictions.

By contrast, other commenters criticized the foreign bank proposal for reducing the stringency of standards beyond the changes required by EGRRCPA, and argued that the proposal understated the financial stability risks posed by foreign banking organizations. These commenters supported the application of standardized liquidity requirements for a foreign banking organization's U.S. intermediate holding company based on the risk profile of the foreign banking organization's combined U.S. operations, supported the application of standardized liquidity requirements to the U.S. branches and agencies of foreign banking organizations, and criticized the agencies for not proposing such requirements for U.S. branches and agencies.

As discussed in this **SUPPLEMENTARY INFORMATION**, the final rule largely adopts the proposals, with certain adjustments in response to the comments.

IV. Overview of Final Rule

The final rule establishes four categories to apply regulatory capital and liquidity requirements to large U.S. banking organizations and U.S. intermediate holding companies.[22] The criteria for each category are based on certain indicators of risk that are measured at the level of the top-tier banking organization. This approach represents an amendment from the foreign bank proposal, as under the final rule the liquidity requirements applicable to a U.S. intermediate holding company are based on its own risk characteristics rather than those of the combined U.S. operations of the foreign banking organization, as discussed further below.

Under the final rule, and unchanged from the domestic proposal, the most stringent capital and liquidity requirements apply to U.S. GSIBs and their depository institution subsidiaries under Category I, as these banking organizations have the potential to pose the greatest risks to U.S. financial stability. The Category I standards generally reflect agreements reached by the Basel Committee on Banking Supervision (BCBS)[23] and include additional requirements adopted by the Board to increase the resiliency of these banking organizations and to mitigate the potential risk their material financial distress or failure could pose to U.S. financial stability. Category I standards generally remain unchanged from existing requirements.

The second set of standards, under Category II, apply to U.S. banking organizations and U.S. intermediate holding companies with total consolidated assets of $700 billion or more or cross-jurisdictional activity of $75 billion or more, and that do not qualify as U.S. GSIBs.[24] Like Category I standards, Category II standards generally reflect agreements reached by the BCBS, and requirements for banking

[20] Summaries of these meetings may be found on the agencies' public websites. *See https://www.regulations.gov/docket?D=OCC-2019-0009* (OCC); *https://www.federalreserve.gov/regreform/reform-systemic.htm* (Board); *https://www.fdic.gov/regulations/laws/federal/2018/2018-proposed-changes-to-applicability-thresholds-3064-ae96.html* (FDIC).

[21] The agencies received a number of comments that were not specifically responsive to the proposals. In particular, commenters recommended more targeted revisions or requests for clarification related to the U.S. GSIB capital surcharge rule, generally applicable capital rule, capital plan rule, stress capital buffer proposal, total loss absorbing capacity rule, current expected credit losses standard, Volcker rule, and capital simplifications final rule. These comments are not within the scope of this rulemaking, and therefore are not discussed in this **SUPPLEMENTARY INFORMATION**.

[22] Regulatory capital requirements also apply to depository institution subsidiaries of banking organizations subject to Category I, II, III, or IV standards, while liquidity requirements apply to depository institution subsidiaries of banking organizations subject to Category I, II, or III standards where those depository institution subsidiaries have $10 billion or more in total consolidated assets.

[23] International standards that reflect agreements reached by the BCBS may be implemented in the United States through notice and comment rulemaking.

[24] The Board's GSIB surcharge rule does not apply to U.S. intermediate holding companies, and therefore, a U.S. intermediate holding company does not qualify as a U.S. GSIB. *See* 12 CFR part 217, subpart H.

organizations in this category remain largely unchanged from requirements previously applicable to banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposure. Applying requirements that reflect agreements reached by the BCBS is appropriate for the risk profiles of banking organizations in this category. For example, foreign operations and cross-border positions add operational and funding complexity in normal times and complicate the ability of a banking organization to undergo an orderly resolution in times of stress, generating both safety and soundness and financial stability risks. The application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-jurisdictional activity also helps to promote international competitive equity and reduce opportunities for regulatory arbitrage.

The third set of standards, under Category III, apply to U.S. banking organizations and U.S. intermediate holding companies that do not meet the criteria for Category I or II, and have total consolidated assets of $250 billion or more or $75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure. Category III standards reflect the heightened risk profiles of these banking organizations relative to smaller and less complex banking organizations, such as those subject to Category IV standards. As compared to existing requirements, under the final rule regulatory capital and liquidity requirements under Category III are more stringent for some banking organizations and less stringent for others. For example, under Category III, a banking organization with weighted short-term wholesale funding of $75 billion or more is subject to the full set of requirements under the LCR rule; however, a banking organization below that threshold is subject to a reduced LCR requirement, calibrated to 85 percent of the full LCR requirement.[25] With respect to capital, banking organizations subject to Category III standards are subject to the supplementary leverage ratio, among other requirements, but are not required to calculate risk-weighted assets under the advanced approaches. For some banking organizations subject to Category III standards, application of the supplementary leverage ratio is a new requirement. In addition, although some banking organizations subject to Category III standards were previously required to include elements of accumulated other comprehensive income (AOCI) in regulatory capital, these banking organizations can now elect to exclude most elements of AOCI from regulatory capital. Similarly, some banking organizations in Category III will now be subject to simpler regulatory capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of unconsolidated financial institutions, relative to those that previously applied. These banking organizations also will now be subject to a simplified treatment for the amount of capital issued by a consolidated subsidiary and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital.[26]

The fourth set of standards, under Category IV, apply to U.S. banking organizations and U.S. intermediate holding companies with total consolidated assets of $100 billion or more that do not meet the thresholds for one of the other three categories. Banking organizations in Category IV generally have greater scale and operational and managerial complexity relative to smaller banking organizations, but less than banking organizations subject to Category I, II, or III standards. Category IV regulatory capital requirements remain largely unchanged relative to prior requirements. With regard to liquidity requirements, the final rule applies a reduced LCR requirement to a banking organization subject to Category IV standards with weighted short-term wholesale funding of at least $50 billion, but less than $75 billion, calibrated at 70 percent of the full LCR requirement.[27] The reduced LCR requirement does not apply to a depository institution subsidiary of a banking organization subject to Category IV standards. Further, the LCR rule does not apply to banking organizations subject to Category IV standards with less than $50 billion in weighted short-term wholesale funding. Similar to banking organizations in Categories I, II, and III, banking organizations subject to Category IV standards must monitor and report information regarding the risk-based indicators, as described further below. In addition, under a separate final rule the Board is adopting to revise the criteria for determining the applicability of enhanced prudential standards for large domestic and foreign banking organizations using a risk-based category framework that is consistent with the framework described in this final rule (Board-only final rule), all banking organizations subject to Category I, II, III or IV standards are subject to enhanced prudential standards as well as liquidity data reporting under the Board's Complex Institution Liquidity Monitoring Report (FR 2052a).

[25] For banking organizations subject to Category III with less than $75 billion in weighted short-term wholesale funding, the reduced LCR requirement under this final rule is calibrated to 85 percent of the full LCR. All other requirements of the LCR rule, including the maturity mismatch add-on, apply to these banking organizations. *See* section VI.B of this **SUPPLEMENTARY INFORMATION.**

[26] *See* ''Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996,'' 84 FR 35234 (July 22, 2019) (simplifications final rule).

[27] Similar to Category III, all other requirements of the LCR rule apply to such banking organizations, including the LCR rule's maturity mismatch requirement. *See* section VI.B of this Supplementary Information.

TABLE I—SCOPING CRITERIA FOR CATEGORIES OF REGULATORY CAPITAL AND LIQUIDITY REQUIREMENTS

Category	U.S. banking organizations †	Foreign banking organizations ‡
I	U.S. GSIBs and their depository institution subsidiaries	N/A.
II	$700 billion or more in total consolidated assets; or $75 billion or more in cross-jurisdictional activity; do not meet the criteria for Category I.	
III	$250 billion or more in total consolidated assets; or $75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure; do not meet the criteria for Category I or II.	
IV	$100 billion or more in total consolidated assets; do not meet the criteria for Category I, II or III.	

† For U.S. banking organizations, the applicable category of regulatory capital and liquidity requirements is measured at the level of the top-tier banking organization level, and applies to any of its depository institution subsidiaries for purposes of capital requirements or to any of its depository institution subsidiaries with $10 billion or more in total consolidated assets for liquidity requirements.

‡ For foreign banking organizations, the applicable category of regulatory capital and liquidity requirements is measured at the level of the top-tier U.S. intermediate holding company level, and applies to any depository institution subsidiary of such holding company for purposes of capital requirements or to any depository institution subsidiary with $10 billion or more in total consolidated assets for liquidity requirements.

V. Framework for the Application of Capital and Liquidity Requirements

This section describes the framework for determining the application of regulatory capital and liquidity requirements under this final rule, including a discussion of comments received on the proposed framework. The final rule largely establishes the framework set forth in the proposals and introduces four categories of capital and liquidity requirements based on certain indicators of risk that are measured at the level of the top-tier banking organization.[28]

A. Indicators-Based Approach and the Alternative Scoring Methodology

The proposals would have established four categories of regulatory capital and liquidity requirements and the criteria for Categories II, III and IV would have relied on the following risk-based indicators: Size, cross-jurisdictional activity, weighted short-term wholesale funding, off-balance sheet exposure, and nonbank assets. These risk-based indicators are already used in the Board's existing regulatory framework and reported by large U.S. bank holding companies, U.S. intermediate holding companies, and covered savings and loan holding companies.[29]

The proposals also sought comment on an alternative approach that would have used a single, comprehensive score based on the GSIB identification methodology, which is currently used to identify U.S. GSIBs and apply risk-based capital surcharges to these banking organizations (scoring methodology).[30] Under the alternative approach, a banking organization's size and its score from the scoring methodology would have been used to determine which category of standards would apply to the banking organization.[31]

Most commenters preferred the proposed indicators-based approach to the alternative scoring methodology for determining the category of standards that would apply to large banking organizations. These commenters stated that the indicators-based approach would be more transparent, less complex, and more appropriate for applying categories of standards to banking organizations that are not U.S. GSIBs. Some commenters also asserted that if the agencies used the scoring methodology, the agencies should use only method 1. These commenters argued that method 2 would be inappropriate for tailoring capital and liquidity requirements on the basis that the denominators to method 2 are fixed, rather than updated annually. Commenters also argued against using method 2 on the basis that method 2 was calibrated specifically for U.S. GSIBs.

The final rule adopts the indicators-based approach for applying Category II, III, or IV standards to a banking organization, as this approach provides a simple framework that supports the objectives of risk sensitivity and transparency. Many of the risk-based indicators are used in the agencies' existing regulatory frameworks or reported by top-tier banking organizations. By using indicators that exist or are reported by most banking organizations subject to the final rules, the indicators-based approach limits additional reporting requirements. The agencies will continue to use the scoring methodology to apply Category I standards to a U.S. GSIB and its depository institution subsidiaries.

B. Choice of Risk-Based Indicators

To determine the applicability of Category II, III, or IV standards, the proposals considered a top-tier banking organization's level of five risk-based indicators: Size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure.

The agencies received a number of comments on the choice of risk-based indicators and suggested modifications to the calculation of the indicators. Several commenters expressed the general view that the proposed risk-based indicators were poor measures of risk. A number of these commenters also asserted that the agencies did not provide sufficient justification to support the proposed risk-based indicators, and requested that the agencies provide additional explanation regarding their selection. Commenters also asserted that the framework should take into consideration additional risk-mitigating characteristics when measuring the proposed risk-based indicators. Several other commenters argued that the proposals are too complex and at odds with the stated objectives of simplicity and burden reduction.

By considering the relative presence or absence of each risk-based indicator, the proposals would have provided a basis for assessing a banking organization's financial stability and safety and soundness risks. The risk-

[28] Comments regarding the NSFR proposal will be addressed in the context of any final rule to adopt a NSFR requirement for large U.S. banking organizations and U.S. intermediate holding companies.

[29] A covered savings and loan holding company means a savings and loan holding company that is not substantially engaged in insurance and commercial underwriting activities.

[30] For more discussion relating to the scoring methodology, see the Board's final rule establishing the GSIB identification methodology. *See* "Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies," 80 FR 49082 (Aug. 14, 2015).

[31] The scoring methodology contains two methods, method 1 and method 2. The alternative proposal would have used the higher of method 1 or method 2 to determine the applicable category of standards.

based indicators generally track measures already used in the Board's existing regulatory framework and rely on information that is already publicly reported by affected banking organizations.[32] Together with fixed, uniform thresholds, use of the risk-based indicators supports the agencies' objectives of transparency and efficiency, while providing for a framework that enhances the risk sensitivity of the agencies' capital and liquidity rules in a manner that continues to allow for comparability across banking organizations. Risk-mitigating factors, such as a banking organization's HQLA and the presence of collateral to secure an exposure, are incorporated into the enhanced standards to which the banking organization is subject.

One commenter asserted that an analysis of the proposed risk-based indicators based on a measure of the expected capital shortfall of a banking organization in the event of a steep equity market decline (SRISK)[33] demonstrated that only the cross-jurisdictional activity and weighted short-term wholesale funding indicators were positively correlated with SRISK, whereas the other risk-based indicators were not important drivers of a banking organization's SRISK measures. However, because SRISK is conditioned on a steep decline in equity markets, it does not capture the probability of a financial crisis or an idiosyncratic failure of a large banking organization. In addition, SRISK does not directly capture other important aspects of systemic risk, such as a banking organization's interconnectedness with other financial market participants. For these reasons, SRISK alone is not a sufficient means of determining the risk-based indicators used in the tailoring framework.

Accordingly, and as discussed below, the agencies are adopting the risk-based indicators as proposed.

1. Size

The proposals would have considered size in tailoring the application of capital and liquidity requirements to a domestic banking organization or the U.S. operations of a foreign banking organization. Some commenters argued that the proposals placed too much reliance on size for determining the prudential standards applicable to large banking organizations. These commenters generally criticized the size indicator as not sufficiently risk sensitive and a poor measure of systemic and safety and soundness risk, and suggested using risk-weighted assets, as determined under the capital rule, rather than total consolidated assets or combined U.S. assets, as applicable. Several commenters argued that the proposals did not adequately explain the relationship between size and safety and soundness risk, particularly risks associated with operational or control gaps.

Other commenters, however, supported the use of size as a measure of financial stability and safety and soundness risk. These commenters asserted that size serves as an indicator of credit provision that could be disrupted in times of stress, as well as the difficulties associated with the resolution of a large banking organization. These commenters also recommended placing additional emphasis on size for purposes of tailoring prudential standards, and expressed the view that the size indicator is less susceptible to manipulation through temporary adjustments at the end of a reporting period as compared to the other risk-based indicators.

Section 165 of the Dodd-Frank Act, as amended by EGRRCPA, establishes thresholds based on total consolidated assets.[34] Size is also among the factors that the Board must take into consideration in differentiating among banking organizations under section 165.[35] A banking organization's size provides a measure of the extent to which stress at its operations could be disruptive to U.S. markets and present significant risks to U.S. financial stability. A larger banking organization has a greater number of customers and counterparties that may be exposed to a risk of loss or suffer a disruption in the provision of services if the banking organization were to experience distress. In addition, size is an indicator of the extent to which asset fire sales by a banking organization could transmit distress to other market participants, given that a larger banking organization has more counterparties and more assets to sell. The failure of a large banking organization in the U.S. also may give rise to challenges that complicate the resolution process due to the size and diversity of its customer base and the number of counterparties that have exposure to the banking organization.

The complexities associated with size also can give rise to operational and control gaps that are a source of safety and soundness risk and could result in financial losses to a banking organization and adversely affect its customers. A larger banking organization operates on a larger scale, has a broader geographic scope, and generally will have more complex internal operations and business lines relative to a smaller banking organization. Growth of a banking organization, whether organic or through an acquisition, can require more robust risk management and development of enhanced systems or controls; for example, when managing the integration and maintenance of information technology platforms.

Size also can be a proxy for other measures of complexity, such as the amount of trading and available-for-sale securities, over-the-counter derivatives, and Level 3 assets.[36] Using Call Report data from the first quarter of 2005 to the first quarter of 2018, the correlation between a bank's total trading assets (a proxy of complexity) and its total assets

[32] Bank holding companies, covered savings and loan holding companies, and U.S. intermediate holding companies subject to this final rule already report the information required to determine size, weighted short-term wholesale funding, and off-balance sheet exposure on the Banking Organization Systemic Risk Report (FR Y–15). Such bank holding companies and covered savings and loan holding companies also currently report the information needed to calculate cross-jurisdictional activity on the FR Y–15. Nonbank assets are reported on FR Form Y–9 LP. This information is publicly available.

[33] For the definition and measurement of SRISK, *see* Acharya, V., Engle, R. and Richardson, M. (2012). Capital shortfall: A new approach to ranking and regulating systemic risks. *American Economic Review, 102*(3), pp. 59–64, *see also* Brownlees, Christian, and Robert F. Engle (2017). ''SRISK: A conditional capital shortfall measure of systemic risk.'' *The Review of Financial Studies* 30.1 (2016): 48–79.

[34] *See generally* 12 U.S.C. 5635 and EGRRCPA section 401.

[35] EGRRCPA section 401(a)(1)(B)(i) (codified at 12 U.S.C. 5365(a)(2)(A)). The agencies haves also previously used size as a simple measure of a banking organization's potential systemic impact and risk, and have differentiated the stringency of capital and liquidity requirements based on total consolidated asset size. For example, prior to the adoption of this final rule, advanced approaches capital requirements, the supplementary leverage ratio, and the LCR requirement generally applied to banking organizations with total consolidated assets of $250 billion or more or total consolidated on-balance sheet foreign exposure of $10 billion or more.

[36] The FR Y15 and the GSIB surcharge methodology include three indicators of complexity that are used to determine a banking organization's systemic importance for purposes of the U.S. GSIB surcharge rule: Notional amount of OTC derivatives, Level 3 assets, and trading and AFS securities. In the second quarter of 2019, the average complexity score of a U.S. GSIB was 104.7, the average complexity score of a banking organization with assets of greater than $250 billion that is not a U.S. GSIB was 12.0, the average complexity score of a banking organization with assets of more than $100 billion but less than $250 billion was 3.5, and the average complexity score of a banking organization with assets of $50 billion but less than $100 billion was 0.4.

(a proxy of size) is over 90 percent.[37] As was seen in the financial crisis, a more complex institution can be more opaque to the markets and may have difficulty managing its own risks, warranting stricter standards for both capital and liquidity.

Further, notwithstanding commenters' assertions that risk-weighted assets more appropriately capture risk, an approach that relies on risk-weighted assets as an indication of size would not align with the full scope of risks intended to be measured by the size indicator. Risk-weighted assets serve as an indication of credit risk and are not designed to capture the risks associated with managerial and operational complexity or the potential for distress at a large banking organization to cause widespread market disruptions.

Some commenters argued that the Board staff analysis cited in the proposals does not demonstrate that size is a useful indicator for determining the systemic importance of a banking organization.[38] Specifically, one commenter asserted that the Board staff analysis (1) uses a flawed measure of bank stress and (2) does not use robust standard errors or sufficiently control for additional macroeconomic factors that may contribute to a decline in economic activity.

The Board staff paper employs the natural logarithm of deposits at failed banks as a proxy of bank stress. This choice was informed by Bernanke's 1983 article, which uses the level (namely, thousands of dollars) of deposits at failed banks to proxy bank stress.[39] The staff paper makes modifications to the stress proxy in order to account for the evolution of the banking sector over time. In contrast to Bernanke's study of a three-year period during the Great Depression, Board staff's analysis spans almost six decades. Expressing bank stress in levels as the commenter suggests (namely, trillions of dollars) would not account for the structural changes that have occurred in the banking sector and therefore would place a disproportionately greater weight on the bank failures that occurred during the 2008–2009 financial crisis. In addition to the analysis conducted by Board staff, other research has found evidence of a link between size and systemic risk.[40]

For the reasons discussed above, the agencies are adopting the proposed measure of size for foreign and domestic banking organizations without change.[41] Size is a simple and transparent measure of systemic importance and safety and soundness risk that can be readily understood and measured by banking organizations and market participants.

2. Cross-Jurisdictional Activity

The proposals would have included a measure of cross-jurisdictional activity as a risk-based indicator to determine the application of Category II standards. For U.S. banking organizations, the domestic proposal would have defined cross-jurisdictional activity as the sum of cross-jurisdictional claims and liabilities. In recognition of the structural differences between foreign and domestic banking organizations, the foreign bank proposal would have adjusted the measurement of cross-jurisdictional activity for foreign banking organizations to exclude inter-affiliate liabilities and certain collateralized inter-affiliate claims.[42] Specifically, claims on affiliates[43] would have been reduced by the value of any financial collateral in a manner consistent with the agencies' capital rule,[44] which permits, for example, banking organizations to recognize financial collateral when measuring the exposure amount of repurchase agreements and securities borrowing and securities lending transactions (together, repo-style transactions).[45] The foreign bank proposal sought comment on alternative adjustments to the cross-jurisdictional activity indicator for foreign banking organizations, and on other modifications to the components of the indicator.

Some commenters urged the agencies to adopt the cross-jurisdictional activity indicator as proposed. By contrast, a number of commenters expressed concern regarding this aspect of the proposals. Several commenters opposed the inclusion of cross-jurisdictional

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[37] *See* Amy G. Lorenc and Jeffery Y. Zhang (2018) ''The Differential Impact of Bank Size on Systemic Risk,'' *Finance and Economics Discussion Series* 2018–066. Washington: Board of Governors of the Federal Reserve System, available at: *https://doi.org/10.17016/FEDS.2018.066.*

[38] As described in the proposals, relative to a smaller banking organization, the failure of a large banking organization is more likely to have a destabilizing effect on the economy, even if the two banking organizations are engaged in similar business lines. Board staff estimated that stress at a single large banking organization with an assumed $100 billion in deposits would result in approximately a 107 percent decline in quarterly real U.S. GDP growth, whereas stress among five smaller banking organizations—each with an assumed $20 billion in deposits—would collectively result in roughly a 22 percent decline in quarterly real U.S. GDP growth. Both scenarios assume $100 billion in total deposits, but the negative impact is significantly greater when the larger banking organization fails. *Id.*

[39] Bernanke, Ben S. 1983. ''Non-monetary Effects of the Financial Crisis in the Propagation of the Great Depression.'' The American Economic Review Vol. 73, No. 3, pp. 257—276.

[40] *See* Bremus, Buck, Russ and Schnitzer, *Big Banks and Macroeconomic Outcomes: Theory and Cross-Country Evidence of Granularity,* Journal of Money, Credit and Banking (July 2018). Allen, Bali, and Tang construct a measure of systemic risk (CATFIN) and demonstrate that the CATFIN of both large and small banking organizations can forecast macroeconomic declines, and found that the CATFIN of large banks can successfully forecast lower economic activity sooner than that of small banks. *See* Allen, Bali, and Tang, *Does Systemic Risk in the Financial Sector Predict Future Economic Downturns?,* Review of Financial Studies, Vol. 25, Issue 10 (2012). Adrian and Brunnermeier constructed a measurement of systemic risk, designated CoVar, and show that firms with higher leverage, more maturity mismatch, and larger size are associated with larger systemic risk contributions. Specifically, the authors find that if a bank is 10 percent larger than another bank, then the size coefficient predicts that the larger bank's CoVaR per unit of capital is 27 basis points higher than the smaller bank's CoVaR. *See* Adrian & Brunnermeir, *CoVar,* American Economic Review Journal, Vol. 106 No. 7 (July 2016).

In the same vein, research conducted by the Bank for International Settlements suggests that the ratio of one institution's systemic importance to a smaller institution's systemic importance is larger than the ratio of the respective sizes. *See* Tarashev, Borio and Tsatsaronis, *Attributing systemic risk to individual institutions,* BIS Working Paper No. 308 (2010). Relatedly, Dávila and Walther (2017) show that large banks take on more leverage relative to small banks in times of stress. *See* Dávila &Walther, *Does Size Matter? Bailouts with Large and Small Banks,* NBER Working Paper No. 24132 (2017).

[41] The final rule calibrates liquidity and capital requirements for U.S. intermediate holding companies based on the risk profile, including size, of the U.S. intermediate holding company. However, the elements of the size indicator itself, as well as the other risk-based indicators, are being finalized without change.

[42] Specifically, the proposal would have excluded from the cross-jurisdictional activity indicator all inter-affiliate claims of a foreign banking organization secured by financial collateral, in accordance with the capital rule. Financial collateral is defined under the capital rule to mean collateral, (1) in the form of (i) cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee), (ii) gold bullion, (iii) long-term debt securities that are not resecuritization exposures and that are investment grade, (iv) short-term debt instruments that are not resecuritization exposures and that are investment grade, (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded, or (vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and (2) in which the banking organization has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent). *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC).

[43] For the combined U.S. operations, the measure of cross-jurisdictional activity would have excluded all claims between the foreign banking organization's U.S. domiciled affiliates, branches, and agencies to the extent such items are not already eliminated in consolidation. For the U.S. intermediate holding company, the measure of cross-jurisdictional activity would have eliminated through consolidation all inter-affiliate claims within the U.S. intermediate holding company.

[44] *See* 12 CFR 3.37 (OCC); 12 CFR 217.37 (Board); 12 CFR 324.37 (FDIC).

[45] *See* the definition of repo-style transaction at 12 CFR 217.2.

liabilities in the cross-jurisdictional activity indicator. Some commenters argued that cross-jurisdictional liabilities are not a meaningful indicator of systemic risk as measured by SRISK.[46] Other commenters asserted that cross-jurisdictional liabilities can reflect sound risk-management practices on the basis that cross-jurisdictional liabilities can indicate a diversity of funding sources and may be used to fund assets in the same foreign jurisdiction as the liabilities. These commenters suggested modifying the indicator to exclude the amount of any central bank deposits, other HQLA, or assets that receive a zero percent risk weight under the capital rule if those assets are held in the same jurisdiction as a cross-jurisdictional liability.

A number of commenters suggested revisions to the cross-jurisdictional activity indicator that would exclude specific types of claims or liabilities. For example, some commenters asserted that the measure of cross-jurisdictional activity should exclude any claim secured by HQLA or highly liquid assets[47] based on the nature of the collateral. Another commenter suggested excluding operating payables arising in the normal course of business, such as merchant payables. Other commenters suggested that the indicator exclude exposures to U.S. entities or projects that have a foreign guarantee or foreign insurer, unless the U.S. direct counterparty does not meet an appropriate measure of creditworthiness. Some commenters recommended that investments in co-issued collateralized loan obligations be excluded from the measure of cross-jurisdictional activity.

Commenters also suggested specific modifications to exclude exposures to certain types of counterparties. For example, several commenters suggested excluding exposures to sovereign, supranational, international, or regional organizations. Commenters asserted that these exposures do not present the same interconnectivity concerns as exposures with other types of counterparties and that claims on these types of entities present little or no credit risk. Another commenter suggested excluding transactions between a U.S. intermediate holding company and any affiliated U.S. branches of its parent foreign banking organization, on the basis that the foreign bank proposal could disadvantage foreign banking organizations relative to U.S. banking organizations that eliminate such inter-affiliate transactions in consolidation.

Similarly, one commenter suggested excluding transactions between a U.S. intermediate holding company and any U.S. branch of a foreign banking organization, whether affiliated or not, on the basis that such exposures are geographically domestic. Another commenter argued that exposures denominated in a foreign banking organization's home currency should be excluded. By contrast, one commenter argued that cross-jurisdictional activity should be revised to include derivatives, arguing that derivatives can be used as a substitute for other cross-jurisdictional transactions and, as a result, could be used to avoid the cross-jurisdictional activity threshold.

A number of commenters provided other suggestions for modifying the cross-jurisdictional activity indicator. In particular, some commenters recommended that the cross-jurisdictional activity indicator permit netting of claims and liabilities with a counterparty, with only the net claim or liability counting towards cross-jurisdictional activity. Several commenters suggested that the agencies should consider excluding assets or transactions that satisfy another regulatory requirement. For example, these commenters argued that the agencies should consider excluding transactions resulting in the purchase of or receipt of HQLA.

Other commenters suggested modifications to the criteria for determining whether an exposure would be considered cross-border. Specifically, commenters requested modifications to the calculation of cross-jurisdictional activity for claims supported by multiple guarantors or a combination of guarantors and collateral, for example, by not attributing the claim to the jurisdiction of the entity holding the claim or collateral that bears the highest rating for reporting on an ultimate-risk basis. Commenters also requested that the agencies presume that an exposure created through negotiations with agents or asset managers would generally create an exposure based in the jurisdiction of the location of the agent or manager for their undisclosed principal.

Foreign banking organization commenters generally supported the approach taken in the foreign bank proposal with respect to the treatment of inter-affiliate cross-jurisdictional liabilities, but stated that such an approach would not adequately address the differences between domestic and foreign banking organizations. These commenters urged the agencies to eliminate the cross-jurisdictional activity indicator for foreign banking organizations or, alternatively, to eliminate all inter-affiliate transactions from measurement of the indicator.

Significant cross-border activity can indicate heightened interconnectivity and operational complexity. Cross-jurisdictional activity can add operational complexity in normal times and complicate the ability of a banking organization to undergo an orderly resolution in times of stress, generating both safety and soundness and financial stability risks. In addition, cross-jurisdictional activity may present increased challenges in resolution because there could be legal or regulatory restrictions that prevent the transfer of financial resources across borders where multiple jurisdictions and regulatory authorities are involved. Banking organizations with significant cross-jurisdictional activity may require more sophisticated risk management to appropriately address the complexity of those operations and the diversity of risks across all jurisdictions in which the banking organization provides financial services. For example, banking organizations with significant cross-border activities may require more sophisticated risk management related to raising funds in foreign financial markets, accessing international payment and settlement systems, and obtaining contingent sources of liquidity. In addition, the application of consistent capital and liquidity standards to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity in the United States as well as abroad.

Measuring cross-jurisdictional activity taking into account both assets and liabilities—instead of just assets—provides a broader gauge of the scale of cross-border operations and associated risks, as it includes both borrowing and lending activities outside of the United States.[48] While both borrowing and lending outside the United States may reflect prudent risk management, cross-jurisdictional activity of $75 billion or more indicates a level of organizational complexity that warrants more stringent prudential standards. With respect to commenters' suggestion to exclude central bank deposits, HQLA, or assets that receive a zero percent risk weight in the same jurisdiction as a cross-

[46] *See supra* note 33.

[47] *See* 12 CFR 252.35(b)(3)(i) and 252.157(c)(7)(i).

[48] The BCBS recently amended its measurement of cross-border activity to more consistently reflect derivatives, and the Board anticipates it will separately propose changes to the FR Y–15 in a manner consistent with this change. Any related changes to the proposed cross-jurisdictional activity indicator would be updated through those separately proposed changes to the FR Y–15.

jurisdictional liability, such an exclusion would assume that all local liabilities are used to fund local claims. However, because foreign affiliates rely on local funding to different extents, such an exclusion could understate risk.[49]

The cross-jurisdictional activity indicator and threshold identify banking organizations with significant cross-border activities. Significant cross-border activities indicate a complexity of operations, even if some of those activities are low risk. Excluding additional types of claims or liabilities would reduce the transparency and simplicity of the tailoring framework. In addition, excluding certain types of assets based on the credit risk presented by the counterparty would be inconsistent with the purpose of the indicator as a measure of operational complexity and risk. The measure of cross-jurisdictional activity in the final rule therefore does not exclude specific types of claims or liabilities, or claims and liabilities with specific types of counterparties, other than the proposed treatment of inter-affiliate liabilities and certain inter-affiliate claims.

The proposals requested comment on possible additional changes to the components of the cross-jurisdictional activity indicator to potentially provide more consistent treatment across repurchase agreements and other securities financing transactions and with respect to the recognition and treatment of collateral across types of transactions. Commenters were generally supportive of these additional changes. The proposals also requested comment on the most appropriate way in which the proposed cross-jurisdictional activity indicator could account for the risk of transactions with a delayed settlement date. Several commenters argued that the indicator should exclude trade-date receivables or permit the use of settlement-date accounting in calculating the cross-jurisdictional activity indicator. Commenters also supported measuring securities lending agreements and repurchase agreements on an ultimate-risk basis, rather than allocating these exposures based on the residence of the counterparty.

The final rule adopts the cross-jurisdictional activity indicator as proposed. Under the final rule cross-jurisdictional activity is measured based on the instructions to the FR Y–15 and, by reference, to the Country Exposure Report Form (FFIEC 009).[50] The agencies are considering whether additional technical modifications and refinements to the cross-jurisdictional indicator would be appropriate, including with respect to the treatment of derivatives, and would seek comment on any such changes to the indicator through a separate notice. Specifically, under the final rule, cross-jurisdictional claims are measured according to the instructions to the FFIEC 009. The instructions to the FFIEC 009 currently do not permit risk transfer for repurchase agreements and securities financing transactions and the Board is not altering the measurement of repurchase agreements and securities financing transactions under this final rule. This approach maintains consistency between the FR Y–15 and FFIEC 009. In addition, the cross-jurisdictional indicator maintains the use of trade-date accounting for purposes of the final rule. The preference for trade-date accounting is consistent with other reporting forms (*e.g.,* Consolidated Financial Statements for Holding Companies Form (FR Y–9C)) and with generally accepted accounting principles. With respect to netting, the instructions to the FFIEC 009 permit netting in limited circumstances. Allowing banking organizations to net all claims and liabilities with a counterparty could significantly understate an organization's level of international activity, even if such netting might be appropriate from the perspective of managing risk.

As noted above, the risk-based indicators generally track measures already used in the Board's existing regulatory framework and rely on information that banking organizations covered by the final rule already publicly report.[51] The agencies believe that the measure of cross-jurisdictional activity as proposed (including the current reported measurements of repurchase agreements and securities financing transactions, trade date accounting items, and netting) along with the associated $75 billion threshold, appropriately captures the risks that warrant the application of Category II standards. The agencies may consider future changes regarding the measurement of the cross-jurisdictional activity indicator, and in doing so, would consider the comments described above and the impact of any future changes on the $75 billion threshold, and would draw from supervisory experience following the implementation of the final rule. Any such changes would be considered in the context of a separate rulemaking process.

3. Nonbank Assets

The proposals would have considered the level of nonbank assets in determining the applicable category of standards. The amount of a banking organization's activities conducted through nonbank subsidiaries provides a measure of the organization's business and operational complexity. Specifically, banking organizations with significant activities in nonbank subsidiaries are more likely to have complex corporate structures and funding relationships. In addition, in certain cases nonbank subsidiaries are subject to less prudential regulation than regulated banking entities.

Under the proposals, nonbank assets would have been measured as the average amount of assets in consolidated nonbank subsidiaries and equity investments in unconsolidated nonbank subsidiaries.[52] The proposals would have excluded from this measure assets in a depository institution subsidiary, including a national bank, state member bank, state nonmember bank, federal savings association, federal savings bank, or state savings association subsidiary. The proposals also would have excluded assets of subsidiaries of these depository institutions, as well as assets held in each Edge or Agreement Corporation that is held through a bank subsidiary.[53]

[49] Based on data collected from the FFIEC 009, some affiliates of U.S. banking organizations relied extensively (75 percent) on local funding, while others collected almost no local funding. In particular, approximately 40 percent of bank-affiliate locations had no local lending. *See* Nicola Cetorelli & Linda Goldberg, ''Liquidity Management of U.S. Global Banks: Internal Capital Markets In the Great Recession'' (Fed. Reserve Bank of N.Y. Staff Report No. 511, 2012), available at *http://www.newyorkfed.org/research/staff_reports/sr511.pdf.*

[50] Specifically, cross-jurisdictional claims are measured on an ultimate-risk basis according to the instructions to the FFIEC 009. The instructions to the FFIEC 009 currently do not permit risk transfer for repurchase agreements and securities financing transactions. Foreign banking organizations must include in cross-jurisdictional claims only the net exposure (*i.e.,* net of collateral value subject to haircuts) of all secured transactions with affiliates to the extent that these claims are collateralized by financial collateral or excluded in consolidation. *See supra* note 43.

[51] *See* Form FR Y–15. This information is publicly available.

[52] For a foreign banking organization, nonbank assets would have been measured as the average amount of assets in consolidated U.S. nonbank subsidiaries and equity investments in unconsolidated U.S. nonbank subsidiaries.

[53] As noted above, the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP), Schedule PC–B, line item 17 is used to determine nonbank assets. For purposes of this item, nonbank companies exclude (i) all national banks, state member banks, state nonmember insured banks (including insured industrial banks), federal savings associations, federal savings banks,

Continued

A number of commenters argued that measuring nonbank assets based on the location of the assets in a nonbank subsidiary provides a poor measure of risk. Some commenters requested that the agencies instead consider whether the assets relate to bank-permissible activities. Other commenters argued that activities conducted in nonbank subsidiaries can present less risk than banking activities. Specifically, some commenters argued that the proposed measure of nonbank assets was over-inclusive on the basis that many of the assets in nonbank subsidiaries would receive a zero percent risk weight under the agencies' capital rule. In support of this position, commenters noted that retail brokerage firms often hold significant amounts of U.S. treasury securities.

Other commenters argued that the measure of nonbank assets is poorly developed and infrequently used and urged the agencies to provide additional support for the inclusion of the indicator in the proposed framework. Specifically, commenters requested that the agencies provide additional justification for nonbank assets as an indicator of complex corporate structures and funding relationships, as well as interconnectedness. A number of commenters argued that, to the extent the measure was intended to address risk in broker-dealer operations, it was unnecessary in light of existing supervision and regulation of broker-dealers and application of consolidated capital, stress testing, and risk-management requirements to the parent banking organization.

A number of commenters argued that, if retained, the nonbank assets indicator should be more risk sensitive. Some commenters suggested excluding assets related to bank-permissible activities as well as certain types of nonbanking activities, such as retail brokerage activity. The commenters argued that, at a minimum, the nonbank assets indicator should exclude any nonbank subsidiary or asset that would be permissible for a bank to own. Other commenters suggested risk-weighting nonbank assets or deducting certain assets held by nonbank subsidiaries, such as on-balance sheet items that are deducted from regulatory capital under the capital rule (*e.g.,* deferred tax assets and goodwill).

Both the organizational structure of a banking organization and the activities it conducts contribute to its complexity and risk profile. Banking organizations with significant investments in nonbank subsidiaries are more likely to have complex corporate structures, inter-affiliate transactions, and funding relationships.[54] A banking organization's complexity is positively correlated with the impact of the organization's failure or distress.[55]

Market participants typically evaluate the financial condition of a banking organization on a consolidated basis. Therefore, the distress or failure of a nonbank subsidiary could be destabilizing to, and cause counterparties and creditors to lose confidence in, the banking organization as a whole. In addition, the distress or failure of banking organizations with significant nonbank assets has coincided with or increased the effects of significant disruptions to the stability of the U.S. financial system.[56]

Nonbank activities also may involve a broader range of risks than those associated with activities that are permissible for a depository institution to conduct directly and can increase interconnectedness with other financial firms, requiring sophisticated risk management and governance, including capital planning, stress testing, and liquidity risk management. For example, holding companies with significant nonbank assets are generally engaged in financial intermediation of a different nature (such as complex derivatives activities) than those typically conducted through a depository institution. If not adequately managed, the risks associated with nonbank activities could present significant safety and soundness concerns and increase financial stability risks. Nonbank assets also reflect the degree to which a banking organization may be engaged in activities through legal entities that are not subject to separate capital or liquidity requirements or to the direct regulation and supervision applicable to a regulated banking entity.

The nonbank assets indicator in the final rule provides a proxy for operational complexity and nonbanking activities without requiring banking organizations to track assets, income, or revenue based on whether a depository institution has the legal authority to hold such assets or conduct the related activities (legal authority). In addition, a depository institution's legal authority depends on the institution's charter and may be subject to additional interpretation over time.[57] A measure of nonbank assets based on legal authority would be costly and complex for banking organizations to implement, as they do not currently report this information based on legal authority. Defining nonbank assets based on the type of entity that owns them, rather than legal authority, reflects the risks associated with organizational complexity and nonbanking activities without imposing additional reporting burden as a result of implementing the final rule or monitoring any future changes to legal authority. In addition, as noted above, the nonbank assets indicator is designed, in part, to identify activities that a banking organization conducts in subsidiaries that may be subject to less prudential regulation, which makes relevant whether the asset or activity is located in a bank or nonbank subsidiary.

Commenters' suggested modifications to exclude certain types of assets or entities, or to risk-weight nonbank assets, would not align with the full scope of risks intended to be measured by the indicator, including risks associated with operational and managerial complexity. In particular, under the generally applicable risk-based capital requirements, the risk weight assigned to an individual asset is primarily designed to measure credit risk, so relying on risk-weighted assets could underestimate operational and other risks. Further, because nonbank entities are permitted to conduct a wide range of complex activities, assets held by those entities, including those that receive a zero percent risk weight, may be held in connection with complex activities, such as certain prime

and thrift institutions (collectively for purposes of this item, ''depository institutions'') and (ii) except for an Edge or Agreement Corporation designated as ''Nonbanking'' in the box on the front page of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b), any subsidiary of a depository institution (for purposes of this item, ''depository institution subsidiary''). The revised FR Y–15 includes a line item that would automatically populate this information. *See* section XV of the **SUPPLEMENTARY INFORMATION** in the Board-only final rule.

[54] *See* ''Evolution in Bank Complexity'', Nicola Cetorelli, James McAndrews and James Traina, Federal Reserve Bank of New York Economic Policy Review (December 2014) (discussing acquisitions of nonbanking subsidiaries and cross-industry acquisitions as contributing to growth in organization complexity), available at: *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412cet2.pdf.*

[55] *See* 80 FR 49082 (August 14, 2015). *See also* BCBS, ''Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement'' (paragraph 25), available at: *http://www.bis.org/publ/bcbs255.htm.*

[56] An example includes the near-failure of Wachovia Corporation, a financial holding company with $162 billion in nonbank assets as of September 30, 2008.

[57] *See e.g.,* ''OCC Releases Updated List of Permissible Activities for Nat'l Banks & Fed. Sav. Associations,'' OCC NR 17–121 (Oct. 13, 2017) (''The OCC may permit national banks and federal savings associations to conduct additional activities in the future''), available at: *https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/pub-activities-permissible-for-nat-banks-fed-saving.pdf.*

brokerage or other trading activities. Finally, as noted above, the nonbank asset measure is a relatively simple and transparent measures of a banking organization's nonbank activities, and exclusion of specific assets based on risk could undermine the simplicity and transparency of the indicator. For these reasons, the agencies are finalizing the nonbank assets indicator, including the measurement of the indicator, generally as proposed.

4. Off-Balance Sheet Exposure

The proposals would have included off-balance sheet exposure as a risk-based indicator to complement the measure of size. Under the proposals, off-balance sheet exposure would have been measured as the difference between total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, and total assets.[58] Total exposure includes on-balance sheet assets plus certain off-balance sheet exposures, including derivative exposures and commitments.

A number of commenters argued that the proposed measure of off-balance sheet exposure was not sufficiently risk sensitive. Specifically, these commenters argued that the exposures captured by the indicator were generally associated with low-risk activities or assets, such as securities lending activities. In addition, the commenters argued that the proposed measure could be harmful to economic activity by discouraging corporate financing through commitments and letters of credit. Commenters accordingly urged the agencies to modify the proposed approach to measuring the risk of off-balance sheet exposures; for example, by using the combination of credit conversion factors and risk weights applied under the agencies' capital rule. Other commenters suggested that the agencies exclude certain types of exposures from the indicator, such as letters of credit. Foreign banking organization commenters also argued that inter-affiliate transactions should be excluded from the measure, including any guarantee related to securities issued to fund the foreign parent, and guarantees used to facilitate clearing of swaps and futures for affiliates that are not clearing members. With respect to guarantees used to facilitate clearing, commenters argued that these exposures are the result of mandatory clearing requirements and help support the central clearing objectives of the Dodd-Frank Act. Commenters expressed concern that including these exposures also could result in increased concentration of clearing through U.S. GSIBs. For the same reasons, commenters argued that potential future exposures associated with derivatives cleared by an affiliate also should be excluded from the measure of off-balance sheet exposure.

Off-balance sheet exposure complements the size indicator under the tailoring framework by taking into account additional risks that are not reflected in a banking organization's measure of on-balance sheet assets. This indicator provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services stemming from off-balance sheet activities. In addition, off-balance sheet exposure can lead to significant future draws on liquidity, particularly in times of stress. For example, during stress conditions vulnerabilities at individual banking organizations may be exacerbated by calls on commitments and the need to post collateral on derivatives exposures. The nature of these off-balance sheet risks for banking organizations of significant size and complexity can also lead to financial stability risk, as they can manifest rapidly and with less transparency and predictability to other market participants relative to on-balance sheet exposures.

Excluding certain off-balance sheet exposures would be inconsistent with the purpose of the indicator as a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services. Commitments and letters of credit, like extensions of credit through loans and other arrangements included on a banking organization's balance sheet, help support economic activity. Because corporations tend to increase their reliance on committed credit lines during periods of stress in the financial system, draws on these instruments can exacerbate the effects of stress conditions on banking organizations by increasing their on-balance sheet credit exposure.[59] During the 2008–2009 financial crisis, reliance on lines of credit was particularly pronounced among smaller and non-investment grade corporations, suggesting that an increase in these exposures may be associated with decreasing credit quality.[60]

Including guarantees to affiliates related to cleared derivative transactions in off-balance sheet exposure also is consistent with the overall purpose of the indicator. A clearing member that guarantees the performance of an affiliate to a central counterparty is exposed to a risk of loss if the affiliate were to fail to perform its obligations under a derivative contract. By including these exposures, the indicator identifies a source of interconnectedness with other financial market participants. These transactions can arise with respect not only to principal trades, but also because a client wishes to face a particular part of the organization, and thus excluding these guarantees could understate risk and interconnectedness.[61]

As described above, the tailoring framework's risk-based indicators and uniform category thresholds balance risk sensitivity with simplicity and transparency. Excluding certain types of exposures would not align with the full scope of risks intended to be measured by the indicator. The final rule, therefore, adopts the off-balance sheet exposure indicator as proposed.

5. Weighted Short-Term Wholesale Funding

The proposed weighted short-term wholesale funding indicator would have measured the amount of a banking organization's short-term funding obtained generally from wholesale counterparties. Reliance on short-term, generally uninsured funding from more sophisticated counterparties can make a banking organization more vulnerable to

[58] Total exposure would be reported for domestic holding companies on the FR Y–15, Schedule A, Line Item 5, and for foreign banking organizations' U.S. intermediate holding companies and combined U.S. operations on the FR Y–15, Schedule H, Line Item 5. Total off-balance sheet exposure would be reported as Line Item M5 on Schedules A and H.

[59] During the financial crisis, increased reliance on credit lines began as early as 2007, and increased after September 2008. *See* Jose M. Berrospide, Ralf R. Meisenzahl, and Briana D. Sullivan, ''Credit Line Use and Availability in the Financial Crisis: The Importance of Hedging,'' available at: *https://www.federalreserve.gov/pubs/feds/2012/201227/201227pap.pdf.* Some have found evidence that an increase in draws on credit lines may have been motivated by concerns about the ability of financial institutions to provide credit in the future. *See* Victoria Ivashina & David Scharfstein, ''Bank Lending During the Financial Crisis of 2008,'' 97 J. Fin. Econ. 319–338 (2010). *See* William F. Bassett, Simon Gilchrist, Gretchen C. Weinbach, and Egon Zakrajšek, ''Improving Our Ability to Monitor Bank Lending'' chapter on *Risk Topography: Systemic Risk and Macro Modeling* (2014), Markus Brunnermeier and Arvind Krishnamurthy, ed., pp. 149–161, available at: *http://www.nber.org/chapters/c12554.*

[60] *Id.*

[61] In order to facilitate clearing generally, the capital rule more specifically addresses the counterparty credit risk associated with transactions that facilitate client clearing, such as a shorter margin period of risk, and provides incentives that are intended to help promote the central clearing objectives of the Dodd-Frank Act. *See* 12 CFR 3.35 (OCC); 12 CFR 217.35 (Board); 12 CFR 324.35 (FDIC).

large-scale funding runs, generating both safety and soundness and financial stability risks. The proposals would have calculated this indicator as the weighted-average amount of funding obtained from wholesale counterparties, certain brokered deposits, and certain sweep deposits with a remaining maturity of one year or less, in the same manner as currently reported by holding companies on the FR Y–15.[62]

A number of commenters expressed concern regarding the use of the weighted short-term wholesale funding indicator in the tailoring framework. Several commenters argued that this indicator fails to take into account the extent to which the risk of short-term wholesale funding has been mitigated through existing regulatory requirements, such as the Board's enhanced prudential standards rule and, for foreign banking organizations, standardized liquidity requirements applicable to foreign banking organizations at the global consolidated level. Other commenters argued that the indicator is a poor measure of risk more broadly because it fails to consider the maturity of assets funded by short-term wholesale funding. Commenters argued that focusing on liabilities and failing to recognize the types of assets funded by the short-term funding would disproportionately affect foreign banking organizations' capital market activities and ability to compete in the United States.

The weighted short-term wholesale funding indicator is designed to serve as a broad measure of the risks associated with elevated, ongoing reliance on funding sources that are typically less stable than funding of a longer term or funding such as fully-insured retail deposits, long-term debt, and equity. For example, a banking organization's weighted short-term wholesale funding level serves as an indication of the likelihood of funding disruptions in firm-specific or market-wide stress conditions. These funding disruptions may give rise to urgent liquidity needs and unexpected losses, which warrant heightened application of liquidity and regulatory capital requirements. A measure of funding dependency that reflects the various types or maturities of assets supported by short-term wholesale funding sources, as suggested by commenters, would add complexity to the indicator. For example, because a banking organization's funding is fungible, monitoring the direct relationship between specific liabilities and assets with various maturities requires a methodology for asset-liability matching and liability maturity. The LCR rule and the proposed NSFR rule therefore include methodologies for reflecting asset maturity in regulatory requirements that address the associated risks.[63]

Commenters suggested revisions to the weighted short-term wholesale funding indicator that would align with the treatment of certain assets and liabilities under the LCR rule. For example, some commenters recommended that the agencies more closely align the indicator's measurement of weighted short-term wholesale funding with the outflow rates applied in the LCR rule, such as by excluding from the indicator funding that receives a zero percent outflow rate in the LCR rule or reducing the weights for secured funding to match the LCR's outflow treatment. Similarly, commenters suggested that the agencies provide a lower weighting for brokered and sweep deposits from affiliates, consistent with the lower outflow rates assigned to these deposits in the LCR rule. Specifically, commenters argued that the weighted short-term wholesale funding indicator inappropriately applies the same 25 percent weight to sweep deposits sourced by both affiliates and non-affiliates alike, and treats certain non-brokered sweep deposits in a manner inconsistent with the LCR rule.

The agencies note that when the Board established the weights applied in calculating and reporting short-term wholesale funding for purposes of the GSIB surcharge rule, the Board took into account the treatment of certain liabilities in the LCR rule and fire sale risks in key short-term wholesale funding markets. The agencies continue to believe the current scope of the weighted short-term wholesale funding indicator, and the weights applied in the indicator, are appropriately calibrated for assessing the risk to broader financial stability as a result of a banking organization's reliance on short-term wholesale funding. The final rule treats brokered deposits as short-term wholesale funding because they are generally considered less stable than standard retail deposits. In order to preserve the relative simplicity of the short-term wholesale funding metric, the final rule does not distinguish among different types of brokered deposits and sweep deposits. Accordingly, all retail deposits identified as brokered deposits and brokered sweep deposits under the LCR rule are reported on the FR Y–15 as retail brokered deposits and sweeps for purpose of the weighted short-term wholesale funding indicator.

Commenters also suggested other specific revisions to the calculation of the weighted short-term wholesale funding indicator. Some commenters argued that the weighted short-term wholesale funding indicator should look to the original maturity of the funding relationship—instead of the remaining maturity—and exclude long-term debt that is maturing within the next year. Commenters also urged the agencies to recognize certain offsets to reduce the amount of short-term wholesale funding included in the indicator. For example, a number of commenters suggested that the amount of short-term wholesale funding should be reduced by the amounts of HQLA held by the banking organization, cash deposited at the Federal Reserve by the banking organization, or of any high-quality collateral used for secured funding. Commenters argued that this approach would better reflect the banking organization's liquidity risk because it would take into account assets that could be used to meet cash outflows as well as collateral that typically maintains its value and therefore would not contribute to asset fire sales. Commenters also argued that the measure of weighted short-term wholesale funding should exclude funding that the commenters viewed as stable, such as credit lines from Federal Home Loan Banks and Federal Reserve Banks, savings and checking accounts of wholesale customers, and brokered sweep deposits received from an affiliate.

The agencies believe that the remaining maturity of a funding relationship, instead of original maturity as suggested by commenters, provides a more accurate measure of the banking organization's ongoing exposure to rollover risk. As discussed above, because a banking organization's inability to rollover funding may generate safety and soundness and financial stability risks, the agencies believe that using remaining maturity is more appropriate given the purposes of the short-term wholesale funding indicator. Further, the weighted short-term wholesale funding indicator takes into account the quality of collateral used in funding transactions by

[62] Average amounts over a 12 month period in each category of short-term wholesale funding are weighted based on four residual maturity buckets; the asset class of collateral, if any, securing the funding; and liquidity characteristics of the counterparty. Weightings reflect risk of runs and attendant fire sales. *See* 12 CFR 217.406 and 80 FR 49082 (August 14, 2015).

[63] For example, the LCR rule includes cash inflows from certain maturing assets and the proposed NSFR rule would use the maturity profile of a banking organization's assets to determine its required stable funding amount.

assigning different weights to average amounts of secured funding depending on its collateral. These weights reflect the liquidity characteristics of the collateral and the extent to which the quality of such assets may mitigate fire sale risk. Revising the short-term wholesale funding indicator to permit certain assets to offset liabilities because the assets may be used to address cash outflows, as suggested by commenters, could understate financial stability and safety and soundness risk because such an approach assumes those assets are available to offset funding needs in stress conditions. Similarly, excluding a banking organization's reliance on certain types of short-term funding from the indicator may result in an underestimation of a banking organization's potential to contribute to systemic risk because such funding may be unavailable for use in a time of stress. Thus, the final rule does not exclude short-term borrowing from the Federal Home Loan Banks, which may be secured by a broad range of collateral, and the final rule treats such short-term borrowing the same as borrowing from other wholesale counterparties in order to identify risk. More generally, incorporating commenters' recommended exclusions and offsets would reduce the transparency of the weighted short-term wholesale funding indicator, contrary to the agencies' intention to provide a simplified measure to identify banking organizations with heightened risks. For these reasons, the final rule adopts the weighted short-term wholesale funding indicator without change.

Commenters also provided suggestions to reduce or eliminate inter-affiliate transactions from the measure of weighted-short term wholesale funding. Specifically, commenters provided suggestions to weight inter-affiliate transactions or net transactions with affiliates.

Including funding from affiliated sources provides an appropriate measure of the risks associated with a banking organization's general reliance on short-term wholesale funding. Banking organizations that generally rely on funding with a shorter contractual maturity from financial sector affiliates may present higher risks relative to those that generally rely on funding with a longer contractual term from outside of the financial sector. Based on the contractual term, the risks presented by ongoing reliance on short-term funding from affiliates may be similar to funding from non-affiliated sources. For the reasons discussed above, the final rule adopts the weighted short-term wholesale funding indicator as proposed.

C. Application of Standards Based on the Proposed Risk-Based Indicators

The proposed risk-based indicators would have determined the application of capital and liquidity requirements under Categories II, III, and IV. By taking into consideration the relative presence or absence of each risk-based indicator, the proposals would have provided a basis for assessing a banking organization's financial stability and safety and soundness risks for purposes of determining the applicability and stringency of these requirements.

Commenters criticized the methods by which the proposed risk-based indicators would determine the category of standards applicable to a banking organization. Certain commenters expressed concern that a banking organization could become subject to Category II or III standards without first being subject to Category IV standards, due to the disjunctive use of the size and other risk-based indicators under the proposals. One commenter suggested that the agencies should instead apply a category of standards based on a weighted average of the risk-based indicators. Another commenter suggested that application of Category II standards should be based on other or additional risk factors. Several commenters suggested that the application of standardized liquidity requirements should be based only on the levels of the weighted short-term wholesale funding indicator, and not based on the levels of any other risk-based indicator. One commenter criticized the proposals for not providing sufficient justification for the number of categories.

Because each indicator serves as a proxy for various types of risk, a high level in a single indicator warrants the application of more stringent standards to mitigate those risks and support the overall purposes of each category. The agencies therefore do not believe using a weighted average of a banking organization's levels in the risk-based indicators, or the methods that would require a banking organization to exceed multiple risk-based indicators, is appropriate to determine the applicable category of standards. The final rule therefore adopts the use of the risk-based indicators generally as proposed.

Certain commenters suggested that the agencies reduce requirements under the foreign bank proposal to account for the application of standards at the foreign banking organization parent. The final rule takes into account the standards that already apply to the foreign banking organization parent. Specifically, the final rule tailors the application of capital and liquidity requirements based, in part, on the size and complexity of a foreign banking organization's activities in the United States. Moreover, under the Board-only final rule, the standards applicable to foreign banking organizations with a more limited U.S. presence largely rely on compliance with comparable home-country standards applied at the consolidated foreign parent level. In this way, the final rule helps to mitigate the risk such banking organizations present to safety and soundness and U.S. financial stability, consistent with the overall objectives of the tailoring framework. Requiring foreign banking organizations to maintain financial resources in the jurisdictions in which they operate subsidiaries also reflects existing agreements reached by the BCBS and international regulatory practice.

D. Calibration of Thresholds and Indexing

The proposals would have employed fixed nominal thresholds to assign the categories of standards that apply to banking organizations. In particular, the proposals included total asset thresholds of $100 billion, $250 billion, and $700 billion, along with $75 billion thresholds for each of the other risk-based indicators. The foreign bank proposal also included a $50 billion weighted short-term wholesale funding threshold for U.S. and foreign banking organizations subject to Category IV standards.

Some commenters expressed concerns regarding the use of $75 billion thresholds for cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. In particular, these commenters stated that the $75 billion thresholds were poorly justified and requested additional information as to why the agencies chose these thresholds. A number of these commenters also supported the use of a higher threshold for these risk-based indicators. Other commenters urged the agencies to retain the discretion to adjust the thresholds on a case-by-case basis, such as in the case of a temporary excess driven by customer transactions or for certain transactions that would result in a sudden change in categorization.

The $75 billion thresholds are based on the degree of concentration of a particular risk indicator for each banking organization relative to total assets. That is, a threshold of $75 billion represents at least 30 percent and as much as 75 percent of total assets for banking organizations with between $100 billion and $250 billion in total assets.[64] Thus, for banking organizations that do not meet the size threshold for Category III standards, other risks represented by the risk-based indicators would be substantial, while banking organizations with $75 billion in cross-jurisdictional activity have a substantial international footprint. In addition, setting the thresholds at $75 billion ensures that banking organizations that account for the vast majority of the total amount of each risk-based indicator among banking organizations with $100 billion or more in total consolidated assets are subject to prudential standards that account for the associated risks of these risk-based indicators, which facilitates consistent treatment of these risks across banking organizations. The use of a single threshold also supports the overall simplicity of the framework. Moreover, a framework in which thresholds are regularly adjusted on a temporary and case-by-case basis would not support the objectives of predictability and transparency.

One commenter stated that the agencies should not use the $700 billion size threshold as the basis for applying Category II standards, arguing that the agencies had not provided sufficient justification for that threshold. However, as noted in the proposals, historical examples suggest that the distress or failure of a banking organization of this size would have systemic impacts. For example, during the 2008–2009 financial crisis, significant losses at Wachovia Corporation, which had $780 billion in total assets at the time of being acquired in distress, had a destabilizing effect on the financial system. The $700 billion size threshold under Category II addresses the substantial risks that can arise from the activities and potential distress of very large banking organizations that are not U.S. GSIBs. Commenters did not request additional explanation regarding the $100 billion and $250 billion total asset thresholds. As noted above, these size thresholds are consistent with those set forth in section 165 of the Dodd-Frank Act, as amended by section 401 of EGRRCPA.[65]

Several commenters requested that the agencies index certain of the proposed thresholds based on changes in various measures, such as growth in domestic banking assets, inflation, gross domestic product growth or other measures of economic growth, or share of the indicator held by the banking organization in comparison to the amount of the indicator held in the financial system. These commenters requested that the thresholds be automatically adjusted on an annual basis based on changes in the relevant index, by operation of a provision in the rule. Other commenters expressed concern that indexing can have pro-cyclical effects.

As commenters noted, the $100 billion and $250 billion size thresholds prescribed in the Dodd-Frank Act, as amended by EGRRCPA, are fixed by statute.[66] Indexing the other thresholds would add complexity, a degree of uncertainty, and potential discontinuity to the framework. The agencies acknowledge the thresholds should be reevaluated over time to ensure they appropriately reflect growth on a macroeconomic and industry-wide basis, as well as to continue to support the objectives of this rule. The agencies plan to accomplish this by periodically reviewing the thresholds and proposing changes through the notice and comment process, rather than including an automatic adjustment of thresholds based on indexing.[67]

E. The Risk-Based Categories

1. Category I

Under the domestic proposal, Category I standards would have applied to U.S. GSIBs, which are banking organizations that have a U.S. GSIB score of 130 or more under the scoring methodology. Category I standards would have included the most stringent standards relative to those imposed under the other categories, to reflect the heightened risks that banking organizations subject to Category I standards pose to U.S. financial stability. The requirements applicable to U.S. GSIBs would have remained largely unchanged from existing requirements.

The agencies did not receive comments regarding the criteria for application of Category I standards to U.S. GSIBs. Several commenters expressed concern regarding applying more stringent standards than Category II standards to foreign banking organizations, even if the risk profile of a foreign banking organization's U.S. operations were comparable to a U.S. GSIB.[68] The final rule adopts the scoping criteria for Category I, and the capital and liquidity standards that apply under this category as proposed. U.S. GSIBs have the potential to pose the greatest risks to U.S. financial stability due to their systemic risk profile and, accordingly, should be subject to the most stringent capital and liquidity standards. The treatment for U.S. GSIBs aligns with international efforts to address the financial stability risks posed by the largest, most interconnected financial institutions. In 2011, the BCBS adopted a framework to identify global systemically important banking organizations and evaluate their systemic importance.[69] This framework generally applies to the global consolidated parent organization, and does not apply separately to subsidiaries and operations in host jurisdictions. Consistent with this approach, U.S. intermediate holding companies of foreign banking organizations are not subject to Category I standards under the final rule. The agencies will continue to monitor the systemic risk profiles of foreign banking organizations' U.S. operations, and consider whether application of more stringent requirements is appropriate to address any increases in their size, complexity or overall systemic risk profile.

2. Category II

The proposals would have applied Category II standards to banking organizations with $700 billion in total assets or $100 billion or more in total assets and $75 billion or more in cross-

[64] The $100 billion and $250 billion size thresholds are consistent with those set forth in section 165 of the Dodd-Frank Act, as amended by 401 of EGRRCPA. Section 165 requires the application of enhanced prudential standards to bank holding companies and foreign banking organizations with $250 billion or more in total consolidated assets. Section 165 authorizes the Board to apply enhanced prudential standards to such banking organizations with assets between $100 billion and $250 billion, taking into consideration the banking organization's capital structure, riskiness, complexity, financial activities (including those of subsidiaries), size, and any other risk-related factors the Board deems appropriate. 12 U.S.C. 5365.

[65] *Id.*

[66] Section 165 of the Dodd-Frank Act does provide the Board with discretion to establish a minimum asset threshold above the statutory thresholds for some, but not all, enhanced prudential standards. However, the Board may only utilize this discretion ''pursuant to a recommendation by the Financial Stability Oversight Council in accordance with section 115 of the Dodd-Frank Act.'' This authority is not available for stress testing and risk committee requirements. 12 U.S.C. 5365(a)(2)(B).

[67] Similarly, the Board-only final rule does not include an automatic indexing function.

[68] As noted above, the foreign bank proposal would not have applied Category I standards to the U.S. operations of foreign banking organizations because the Board's GSIB surcharge rule would not identify a foreign banking organization or a U.S. intermediate holding company as a U.S. GSIB. The foreign bank proposal sought comment on the advantages and disadvantages of applying enhanced prudential standards that are more stringent than Category II standards to the U.S. operations of foreign banking organizations with a comparable risk profile to U.S. GSIBs.

[69] *See* BCBS, ''Global systemically important banks: Assessment methodology and the additional loss absorbency requirement'' (November 4, 2011).

jurisdictional activity. Like Category I standards, Category II capital and liquidity standards are generally based on standards that reflect agreements reached by the BCBS. The proposals also sought comment on whether Category II standards should apply based on a banking organization's weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure, using a higher threshold than the $75 billion threshold that would apply for Category III standards.

Some commenters argued that cross-jurisdictional activity should be an indicator for Category III standards rather than Category II standards. Another commenter expressed concern with expanding the criteria for Category II standards to include any of the other risk-based indicators used for purposes of Category III standards. Some commenters also argued that the proposed Category II standards were too stringent relative to the risks indicated by a high level of cross-jurisdictional activity or very large size. Other commenters argued that application of Category II standards to foreign banking organizations was unnecessary because these banking organizations are already subject to BCBS-based standards on a global, consolidated basis by their home-country regulators. Another commenter requested that the agencies make clearer distinctions between Category I and Category II standards.

As discussed above, banking organizations that engage in significant cross-jurisdictional activity present complexities that support the application of more stringent standards relative to those that would apply under Category III. In addition, application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity among U.S. banking organizations and their foreign peers, while applying standards that appropriately reflect the risk profiles of banking organizations that meet the thresholds for Category III standards. As noted above, this approach is consistent with international regulatory practice.

Accordingly, and consistent with the proposal, the final rule applies Category II standards to U.S. banking organizations and U.S. intermediate holding companies with $700 billion in total consolidated assets or cross-jurisdictional activity of $75 billion or more.

3. Category III

Under the proposals, Category III standards would have applied to banking organizations that are not subject to Category I or II standards and that have total assets of $250 billion or more. They also would have applied to banking organizations with $100 billion or more in total assets and $75 billion or more in nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure.

A number of commenters supported the proposed scoping criteria for Category III, as well as the standards that would have applied under this category. Several other commenters requested certain changes to the specific thresholds and risk-based indicators used to determine which banking organizations would have been subject to Category III standards, as well as the capital and liquidity standards that would have applied under this category. Comments regarding the capital and liquidity requirements that would have applied under Category III are discussed in section V.B of this Supplementary Information.

The final rule generally adopts the scoping criteria for Category III, and the capital and liquidity standards that apply under this Category as proposed.

4. Category IV

Under the proposals, Category IV standards would have applied to banking organizations with $100 billion or more in total assets that do not meet the thresholds for any other category. A number of commenters argued that no heightened prudential standards should apply to banking organizations that meet the criteria for Category IV standards because such banking organizations are not as large or complex as banking organizations that would be subject to more stringent categories of standards under the proposals. Alternatively, these commenters suggested that the threshold for application of Category IV standards should be raised from $100 billion to $250 billion in total assets.[70] In contrast, one commenter argued that the agencies should not reduce the requirements applicable to banking organizations that would be subject to Category IV until current requirements have been in effect for a full business cycle.

The final rule includes Category IV because banking organizations subject to this category of standards generally have greater scale and operational and managerial complexity relative to smaller banking organizations and, as a result, present heightened safety and soundness risks. In addition, the failure of one or more banking organizations subject to Category IV standards could have a more significant negative effect on economic growth and employment relative to the failure or distress of smaller banking organizations. The banking organizations subject to Category IV standards have lower risk profiles than those subject to Category I, II, or III standards. Banking organizations subject to these standards therefore generally will be subject to capital and liquidity requirements that are similar to those applicable to banking organizations with less than $100 billion in assets. To the extent a banking organization subject to Category IV standards has elevated levels of short-term wholesale funding, it will be subject to a reduced LCR requirement. The agencies believe this approach strikes the right balance in applying standards that are tailored to the risk profiles of banking organizations subject to Category IV standards.

F. Treatment of Depository Institution Subsidiaries

The proposals generally would have applied the same category of standards to U.S. depository institution holding companies and their depository institution subsidiaries. As discussed in section VI.B of this **SUPPLEMENTARY INFORMATION**, standardized liquidity requirements would have applied only to depository institutions with $10 billion or more in total consolidated assets that are subsidiaries of banking organizations subject to Category I, II, or III standards.

Commenters on the domestic proposal generally supported the application of consistent requirements for U.S. depository institution holding companies and their depository institution subsidiaries. This treatment aligns with the agencies' longstanding policy of applying similar standards to holding companies and their depository institution subsidiaries. For example, since 2007 the agencies generally have required depository institutions to apply the advanced approaches capital requirements if their parent holding company is identified as an advanced approaches banking organization.

Accordingly, the final rule maintains the application of regulatory capital and LCR requirements to depository institution subsidiaries as proposed.

[70] Commenters also argued that the Board had not sufficiently justified the application of enhanced prudential standards to banking organizations subject to Category IV standards, in the manner required under EGRRCPA. These comments are addressed in section VI.D of the Supplementary Information in the Board-only final rule.

G. Specific Aspects of the Foreign Bank Proposal

1. Liquidity Standards Based on Combined U.S. Operations

The foreign bank proposal would have determined the category of liquidity standards applicable to a foreign banking organization with respect to its U.S. intermediate holding company based on the risk profile of its combined U.S. operations, in recognition of the agencies' observation that liquidity needs may arise suddenly and manifest across all segments of a foreign banking organization's U.S. operations.[71]

Some commenters supported the proposal to calibrate liquidity standards applicable to foreign banking organizations based on the risk profile of their combined U.S. operations. Most commenters objected to this aspect of the foreign bank proposal, however, and argued that the agencies instead should determine the applicability and calibration of liquidity standards based on the risk profile of a foreign banking organization's U.S. intermediate holding company. These commenters argued the U.S. intermediate holding company is a separate legal entity from the foreign banking organization's U.S. branches and agencies, with separate activities and risks. Commenters also asserted that the proposed approach does not recognize the potential capacity of the parent foreign banking organization to serve as a source of support for its U.S. operations. Other commenters asserted that certain requirements, such as capital planning requirements, stress testing, and internal liquidity stress testing-based buffer requirements could help to insulate a U.S. intermediate holding company from risks at other parts of the foreign banking organization. Some commenters also argued the proposed approach would have resulted in a framework that is overly complex.

In addition, commenters stated that the proposed approach could create a competitive disadvantage for U.S. intermediate holding companies relative to U.S. banking organizations that the commenters viewed as similarly situated, because the foreign bank proposal would have considered risks and activities outside of the consolidated U.S. intermediate holding company to determine the applicability and calibration of standardized liquidity requirements. These commenters stated that such an approach is inconsistent with the principle of national treatment and equality of competitive opportunity. Some commenters also asserted that the proposed approach would have inappropriately required a foreign banking organization to hold liquid assets at its U.S. intermediate holding company to meet outflows at the foreign banking organization's U.S. branches and require HQLA of a U.S. intermediate holding company to be controlled by the international bank rather than the U.S. intermediate holding company. One commenter suggested that the agencies should provide data in support of assertions that requirements based on the combined U.S. operations would reduce the incentives for a foreign banking organization to migrate risky activities to the branches and agencies.

The final rule determines the applicability of liquidity standards with respect to a U.S. intermediate holding company based on the risk profile of the U.S. intermediate holding company, rather than the combined U.S. operations of the foreign banking organization. Specifically, the final rule applies a full LCR or reduced LCR requirement to a U.S. intermediate holding company under the risk-based categories based on measures of the U.S. intermediate holding company's size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. The agencies believe this approach helps to enhance the focus and efficiency of standardized liquidity requirements relative to the proposal, because liquidity requirements that apply to a U.S. intermediate holding company will be based on the U.S. intermediate holding company's own risk profile. As discussed in the foreign bank proposal and in section VI.B.10 of this **SUPPLEMENTARY INFORMATION**, the Board may develop and propose a standardized liquidity requirement for the U.S. branches and agencies of a foreign banking organization. As part of that process, the agencies intend to further consider how to most appropriately address concerns regarding the liquidity risk profiles of foreign banking organizations' U.S. operations, including through the use of existing supervisory processes, other relevant regulations and international coordination, as well as developments in the U.S. activities and liquidity risk-management practices of foreign banking organizations.

2. The Treatment of Inter-Affiliate Transactions

Except for cross-jurisdictional activity, which would have excluded liabilities and certain collateralized claims on non-U.S. affiliates, the proposed risk-based indicators would have included transactions between a foreign banking organization's combined U.S. operations and non-U.S. affiliates. Similarly, and as noted above, except for cross-jurisdictional activity, a U.S. intermediate holding company would have included transactions with affiliates outside the U.S. intermediate holding company when reporting its risk-based indicators.

Most commenters on the foreign bank proposal supported the proposed exclusion of certain inter-affiliate transactions in the cross-jurisdictional activity indicator, and argued further that all risk-based indicators should exclude transactions with affiliates. These commenters asserted that including inter-affiliate transactions disadvantaged foreign banking organizations relative to U.S. peers and argued that the rationale for excluding certain inter-affiliate claims from the cross-jurisdictional activity measure applied equally to all other risk-based indicators. A number of commenters argued that including inter-affiliate transactions would overstate the risks to a foreign banking organization's U.S. operations or U.S. intermediate holding company because inter-affiliate transactions may be used to manage risks of the foreign bank's global operations. Similarly, some commenters asserted that the inclusion of inter-affiliate transactions would be inconsistent with the risks that the risk-based indicators are intended to capture. Other commenters argued that any risks associated with inter-affiliate transactions would be appropriately managed through the supervisory process and existing requirements, and expressed concern that including inter-affiliate transactions could encourage ring fencing in other jurisdictions. Some commenters suggested that, if inter-affiliate transactions are not excluded entirely, the agencies should assign inter-affiliate transactions a weight at no more than 50 percent. By contrast, one commenter argued that inter-affiliate transactions should be included in the risk-based indicators, arguing that the purpose of the Board's U.S. intermediate holding company framework is that resources located outside the organization may not be reliably available during periods of financial stress.

[71] Combined U.S. operations consist of the foreign banking organizations U.S. subsidiaries, including any intermediate holding company, and U.S. branch and agency operations.

Tailoring standards based on the risk profile of the U.S. intermediate holding company, or combined U.S. operations of a foreign banking organization as under the Board-only final rule, requires measurement of risk-based indicators at a level below that of the global consolidated foreign banking organization. As a result, the calculation of the risk-based indicators must distinguish between a foreign banking organization's U.S. operations or U.S. intermediate holding company, as applicable, and affiliates outside of the United States, including by providing a treatment for inter-affiliate transactions that would otherwise be eliminated in consolidation at the global parent. Including inter-affiliate transactions in the calculation of risk-based indicators would mirror, as closely as possible, the risk profile of a U.S. intermediate holding company or combined U.S. operations if each were consolidated in the United States.

Including inter-affiliate transactions in the calculation of risk-based indicators is consistent with the agencies' approach to measuring and applying standards at a sub-consolidated level in other contexts. For example, existing thresholds and requirements in the Board's Regulation YY are based on measures of a foreign banking organization's size in the United States that includes inter-affiliate transactions.[72] Similarly, the total consolidated assets of a U.S. intermediate holding company or depository institution include transactions with affiliates outside of the consolidated U.S. intermediate holding company.[73] Capital and liquidity requirements applied to U.S. intermediate holding companies and depository institutions generally do not distinguish between exposures with affiliates and third parties.[74] For example, the LCR rule assigns inflow rates to funding according to the characteristics of the source of funding, but generally does not distinguish between funding provided by an affiliate or third party. Excluding inter-affiliate transactions from off-balance sheet exposure, size, and short-term wholesale funding indicators would be inconsistent with the treatment of these exposures under the capital and liquidity rules.

In some cases, the exclusion of inter-affiliate transactions would not align with the full scope of risks intended to be measured by an indicator. Inter-affiliate positions can represent sources of risk—for example, claims on the resources of a foreign banking organization's U.S. operations. As another example, short-term wholesale funding provided to a U.S. intermediate holding company by its parent foreign bank represents funding that the parent could withdraw quickly, which could leave fewer assets available for U.S. counterparties of the U.S. intermediate holding company.[75] By including inter-affiliate transactions in weighted short-term wholesale funding while excluding these positions from cross-jurisdictional liabilities, the framework provides a more risk-sensitive measure of funding risk from foreign affiliates as it takes into consideration the maturity and other risk characteristics of the funding for purposes of the weighted short-term wholesale funding measure. Additionally, because long-term affiliate funding (such as instruments used to meet total loss absorbing capacity requirements) would not be captured in weighted short-term wholesale funding, the indicator is designed to avoid discouraging a foreign parent from providing support to its U.S. operations.

Similarly, with respect to off-balance sheet exposure, an exclusion for inter-affiliate transactions would not account for the risks associated with any funding commitments provided by the U.S. operations of a foreign banking organization to non-U.S. affiliates. Accordingly, the agencies believe it would be inappropriate to exclude inter-affiliate transactions from the measure of off-balance sheet exposure.

For purposes of the nonbank assets indicator, the proposals would have treated inter-affiliate transactions similarly for foreign and domestic banking organizations. For foreign banking organizations, the proposals would have measured nonbank assets as the sum of assets in consolidated U.S. nonbank subsidiaries together with investments in unconsolidated U.S. nonbank companies that are controlled by the foreign banking organization.[76] Both foreign and domestic banking organizations would have included in nonbank assets inter-affiliate transactions between the nonbank company and other parts of the organization.[77]

Accordingly, for purposes of the risk-based indicators, the final rule adopts the treatment of inter-affiliate transactions as proposed.

H. Determination of Applicable Category of Standards

Under the proposals, a banking organization would have determined its category of standards based on the average levels of each indicator at the top-tier banking organization, reported over the preceding four calendar quarters. If the banking organization had not reported risk-based indicator levels for each of the preceding four calendar quarters, the category would have been based on the risk-based indicator level for the quarter, or average levels over the quarters, that the banking organization has reported.

For a change to a more stringent category (for example, from Category IV to Category III), the change would have been based on an increase in the average value of its risk-based indicators over the prior four quarters of a calendar year. In contrast, for a banking organization to change to a less stringent category (for example, Category II to Category III), the banking organization

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72 Combined U.S. assets are calculated as the average of the total combined assets of U.S. operations for the four most recent consecutive quarters as reported by the foreign banking organization on the Capital and Asset Report for Foreign Banking Organizations Form (FR Y–7Q), or, if the foreign banking organization has not reported this information on the FR Y–7Q for each of the four most recent consecutive quarters, the average of the combined U.S. assets for the most recent quarter or consecutive quarters as reported on the FR Y–7Q. Combined U.S. assets are measured on the as-of date of the most recent FR Y–7Q used in the calculation of the average. *See e.g.* 12 CFR 252.15(b)(1).

73 *See* Call Report instructions, FR Y–9C.

74 For example, the LCR rule differentiates unsecured wholesale funding provided by financial sector entities and by non-financial sector entities, but does not differentiate between financial sector entities that are affiliates and those that are not affiliates. *See* 12 CFR 50.32(h) (OCC), 12 CFR 249.32(h) (Board), 12 CFR 329.32(h) (FDIC). The LCR rule differentiates between affiliates and third parties under limited circumstances. *See e.g.,* 12 CFR 50.32(g)(7) (OCC), 12 CFR 249.32(g)(7) (Board), 12 CFR 329.32(g)(7) (FDIC).

75 *See e.g.,* Robert H. Gertner, David S. Scharfstein & Jeremy C. Stein, ''Internal Versus External Capital Markets,'' 109 Q.J. ECON. 1211 (1994) (discussing allocation of resources within a consolidated organization through internal capital markets); Nicola Cetorelli & Linda S. Goldberg, ''Global Banks and International Shock Transmission: Evidence from the Crisis,'' 59 IMF ECON. REV. 41 (2011) (discussing the role of internal capital markets as a mechanism for transmission of stress in the financial system); and Nicola Cetorelli & Linda Goldberg, ''Liquidity Management of U.S. Global Banks: Internal Capital Markets in the Great Recession'' (Fed. Reserve Bank of N. Y. Staff Report No. 511, 2012), available at: *http://www.newyorkfed.org/research/staff_reports/sr511.pdf* (finding that foreign affiliates were both recipients and providers of funds to the parent between March 2006 and December 2010). *See also,* Ralph de Haas and Iman Van Lelyvelt, ''Internal Capital Markets and Lending by Multinational Bank Subsidiaries (2008) (discussing substitution effect in lending across several countries as a parent bank expand its business in those countries where economic conditions improve and decrease its activities where economic circumstance worsen), available at: *https://www.ebrd.com/downloads/research/economics/workingpapers/wp0105.pdf.*

76 *See* FR Y–9LP, Schedule PC–B, line item 17.

77 *See* FR Y–9LP Instructions for Preparation of Parent Company Only Financial Statements for Large Holding Companies (September 2018) *https://www.federalreserve.gov/reportforms/forms/FR_Y-9LP20190630_i.pdf.*

would have been required to report risk-based indicator levels below any applicable threshold for the more stringent category in each of the four preceding calendar quarters. Changes in a banking organization's requirements that result from a change in category generally would have taken effect on the first day of the second quarter following the change in the banking organization's category.

The agencies received several comments on the process for determining the applicable category of standards under the proposal and on the amount of time provided to comply with the requirements of a new category. In particular, several commenters suggested providing banking organizations with at least 18 months to comply with a more stringent category of standards. Several commenters recommended that the agencies retain discretion to address a temporary increase in an activity, such as to help a banking organization avoid a sudden change in the categorization of applicable standards. These commenters suggested that any adjustments of thresholds could consider both qualitative information and supervisory judgment. Commenters also requested that the agencies clarify the calculation of certain risk-based indicators. For example, by providing references to specific line items in the relevant reporting forms. One commenter also suggested that the agencies revise the reporting forms used to report risk-based indicator levels so that they apply to a depository institution that is not part of a bank or savings and loan holding company structure.

The final rule maintains the process for determining the category of standards applicable to a banking organization as proposed. To move into a category of standards or to determine the category of standards that would apply for the first time, a banking organization would rely on an average of the previous four quarters or, if the banking organization has not reported in each of the prior four quarters, the category would be based on the risk-based indicator level for the quarter, or average levels over the quarter or quarters that the banking organization has reported. Use of a four-quarter average would capture significant changes in a banking organization's risk profile, rather than temporary fluctuations, while maintaining incentives for a banking organization to reduce its risk profile relative to a longer period of measurement.

To move to a less stringent category of standards, a banking organization must report risk-based indicator levels below any applicable threshold for the more stringent category in each of the four preceding calendar quarters. This approach is consistent with the existing applicability and cessation requirements of the Board's enhanced prudential standards rule.[78]

The final rule does not provide for discretionary adjustments of thresholds on a case-by-case basis, because such an approach would diminish the transparency and predictability of the framework and could reduce incentives for banking organizations to engage in long-term management of their risks.[79]

Each risk-based indicator will generally be calculated in accordance with the instructions to the FR Y–15, FR Y–9LP, FR Y–7Q, or FR Y–9C, as applicable. The risk-based indicators must be reported for the top-tier banking organization on a quarterly basis.[80] U.S. banking organizations currently report the information necessary to determine their applicable category of standards based on a four-quarter average.[81] In response to concerns raised by commenters, the Board also is revising its reporting forms to specify the line items used in determining the risk-based indicators.[82] With respect to the commenters' concern regarding the applicability of these reporting forms to depository institutions that are not a consolidated subsidiary of a U.S. depository institution holding company, the agencies note that no such depository institution would be subject to the final rule based on first quarter 2019 data. The agencies will monitor the implementation of the final rule and make any such adjustments to reporting forms, as needed, to require such a depository institution to report risk-based indicator levels.

Some commenters asserted that banking organizations could adjust their exposures to avoid thresholds, including by making temporary adjustments to lower risk-based indicator levels reported. The agencies will continue to monitor risk-based indicator amounts reported and information collected through supervisory processes to ensure that the risk-based indicators are reflective of a banking organization's overall risk profile, and would consider changes to reporting forms, as needed. In particular, the agencies will monitor weighted short-term wholesale funding levels reported at quarter-end, relative to levels observed during the reporting period.

VI. Capital and Liquidity Requirements for Large U.S. and Foreign Banking Organizations

A. Capital Requirements That Apply Under Each Category

As discussed below, the final rule adopts the capital requirements applicable to large banking organizations under the risk-based category framework as proposed. Under the final rule, Category I capital requirements apply to U.S. GSIBs, whereas capital requirements under Categories II through IV apply to large U.S. banking organizations and U.S. intermediate holding companies based on measures of a top-tier banking organization's size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. Consistent with the principle of national treatment and equality of competitive opportunity, as well as agreements reached by the BCBS,[83] the capital requirements applicable to U.S. intermediate holding companies under this final rule are generally consistent with those applicable to U.S. bank holding companies and savings and loan holding companies of a similar size and risk profile.

1. Category I Capital Requirements

The domestic proposal would not have changed the capital requirements applicable to U.S. GSIBs and their depository institution subsidiaries. Therefore, such banking organizations would have remained subject to the most stringent capital requirements, including requirements based on

[78] *See e.g.,* 12 CFR 252.43.

[79] The agencies retain general authority under their capital and liquidity rules to increase or adjust requirements as necessary on a case-by-case basis. *See* 12 CFR 217.1(d) and 249.2 (Board); 12 CFR 324.1(d) and 329.2 (FDIC); 12 CFR 3.1(d) and 50.2 (OCC). The discussion of transitions specific to the LCR rule are addressed below in section VI of this **SUPPLEMENTARY INFORMATION**.

[80] A foreign banking organization must also report risk-based indicators with respect to its combined U.S. operations as applicable under the final rule.

[81] The Board-only final rule includes information on changes to Federal Reserve reporting forms and discussion of the specific line items that will be used to calculate risk-based indicators. Although U.S. intermediate holding companies currently report the FR Y–15, the revised form would reflect the cross-jurisdictional activity indicator adopted in the final rule.

[82] Section XV of the Supplementary Information in the Board-only final rule discusses changes to reporting requirements, and identifies the specific line items that will be used to calculate risk-based indicators. Although U.S. intermediate holding companies currently report the FR Y–15, the revised form reflects the cross-jurisdictional activity indicator adopted in the final rule.

[83] *See e.g.,* BCBS, "International Convergence of Capital Measurement and Capital Standards," Sec. 781 (June 2006).

standards that reflect agreements reached by the BCBS.

One commenter supported the proposal to maintain the most stringent capital requirements for U.S. GSIBs under Category I. Some commenters specifically supported retaining the requirement to recognize elements of AOCI in regulatory capital, and expressed the view that it serves as an early warning signal for credit deterioration. However, a few other commenters requested that the agencies permit all banking organizations to make an election to opt out of this requirement.

Following the financial crisis, the agencies adopted heightened capital requirements for U.S. GSIBs to support the resiliency of these banking organizations and reduce risks to U.S. financial stability. These requirements are tailored to the systemic risk profile of U.S. GSIBs, and have contributed to the significant improvements in the capital positions and risk-management practices of these banking organizations since the financial crisis. The requirement to recognize elements of AOCI in regulatory capital, in particular, has helped to improve the transparency of regulatory capital ratios, as it better reflects banking organizations' actual risk at a specific point in time. The agencies previously have observed that AOCI is an important indicator that market participants use to evaluate the capital strength of a banking organization, and thus is particularly important for the largest, most systemically significant banking organizations.

The final rule maintains the capital requirements applicable to U.S. GSIBs and their depository institution subsidiaries. These requirements generally reflect agreements reached by the BCBS. U.S. GSIBs and their depository institution subsidiaries must calculate risk-based capital ratios using both the advanced approaches and the standardized approach and are subject to the U.S. leverage ratio. Such banking organizations are also subject to the requirement to recognize elements of AOCI in regulatory capital; the requirement to expand the capital conservation buffer by the amount of the countercyclical capital buffer, if applicable; and enhanced supplementary leverage ratio standards. In addition, U.S. GSIBs are subject to the GSIB surcharge. Application of these Category I capital requirements will continue to strengthen the capital positions of U.S. GSIBs and reduce risks to financial stability.

2. Category II Capital Requirements

The proposals generally would have maintained the capital requirements applicable to banking organizations of a very large size or that engage in significant cross-jurisdictional activity under Category II. Similar to Category I, capital requirements under Category II would have been based on standards that reflect agreements reached by the BCBS and included the requirement to recognize elements of AOCI in regulatory capital and to expand the capital conservation buffer by the amount of the countercyclical capital buffer, if applicable. Banking organizations subject to Category II capital requirements also would have been required to comply with the advanced approaches capital requirements, generally applicable risk-based capital requirements, and the supplementary leverage ratio. Consistent with the prior treatment of U.S. intermediate holding companies with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure, U.S. intermediate holding companies subject to Category II capital requirements would not have been required to calculate risk-based capital requirements using the advanced approaches under the capital rule. These banking organizations would instead have used the generally applicable capital requirements for calculating risk-weighted assets due to the compliance burden of applying the advanced approaches in both the U.S. and the home-country jurisdiction.[84]

Several commenters argued that capital requirements under Category II would not be appropriately aligned to the scoping criteria for this category. In particular, some commenters asserted that the cross-jurisdictional activity indicator is designed to identify activities that could give rise to liquidity risks in foreign jurisdictions and that would not need to be supported by more stringent capital requirements. Therefore, commenters suggested a banking organization scoped into Category II as a result of its cross-jurisdictional activity should be subject to the same capital requirements that would apply to banking organizations under Category III. In particular, commenters opposed the application of advanced approaches capital requirements and the requirement to recognize elements of AOCI in regulatory capital. Some commenters argued that the proposals did not establish the purpose of the requirement to reflect elements of AOCI in regulatory capital for banking organizations with significant cross-jurisdictional activity.

Relative to banking organizations subject to Category III capital requirements, banking organizations of a very large size or with significant cross-jurisdictional activity pose heightened risks to U.S. financial stability and present increased complexity due to their operational scale or global presence. The heightened capital requirements under Category II, including the requirement to recognize elements of AOCI in regulatory capital, serve to address these risks by supporting the transparency of the capital strength of these banking organizations, and promote consistency in the capital regulations across all jurisdictions in which they operate. In view of the operational and managerial sophistication required for a banking organization of a very large size or global scale, banking organizations subject to Category II capital standards are appropriately positioned to manage the interest rate risk and regulatory capital volatility that may result from this requirement.

More generally, with respect to the agencies' regulatory capital requirements, the BCBS recently completed revisions to its capital standards, including the methodologies for credit risk, operational risk, and market risk. The agencies are considering how most appropriately to implement these standards in the United States, including potentially replacing the advanced approaches with risk-based capital requirements based on the revised Basel standardized approaches for credit risk and operational risk. Any such changes to applicable risk-based capital requirements would be subject to notice and comment through a future rulemaking process.

Some commenters argued that U.S. intermediate holding companies subject to Category II capital requirements should not be subject to the countercyclical capital buffer or the supplementary leverage ratio.[85]

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[84] After adoption of the enhanced prudential standards rule, and its general exemption for U.S. intermediate holding companies from calculating risk-weighted assets under the advanced approaches, depository institution subsidiaries of U.S. intermediate holding companies were similarly exempted by order from calculating risk-weighted assets under the advanced approaches.

[85] These commenters also stated that U.S. intermediate holding companies subject to Category III capital requirements should not be subject to the countercyclical capital buffer and supplementary leverage ratio. For the reasons stated above, and in the following section regarding Category III capital requirements, the final rule maintains these requirements as proposed.

Commenters argued that application of these requirements to foreign banking organizations on both a global consolidated basis and at the local subsidiary level in a host jurisdiction could lead to fragmentation of capital.

The countercyclical capital buffer is an important element of the capital framework that aims to enhance the resilience of the banking system and reduce systemic vulnerabilities. The benefits from additional resiliency created by this requirement are more pronounced when it is applied to all banking organizations of a large size or global scale because they are interconnected with other market participants. Further, application of the U.S. countercyclical capital buffer to all such banking organizations with large U.S. operations adds to the desired countercyclical effect relative to incomplete activation of the buffer across comparable banking organizations. Application of the supplementary leverage ratio to U.S. intermediate holding companies subject to Category II capital standards also supports the resilience of these banking organizations and promotes consistency in the capital requirements across all jurisdictions in which they operate. As noted above, aligning the capital requirements for U.S. intermediate holding companies formed by foreign banking organizations and U.S. bank holding companies is consistent with longstanding international capital agreements that provide flexibility to host jurisdictions to establish capital requirements on a national treatment basis for local subsidiaries of foreign banking organizations. The overall consistency of the capital requirements under Category II with BCBS capital standards acts to mitigate concerns regarding capital fragmentation.

The failure or distress of banking organizations subject to Category II requirements could impose significant costs on the U.S. financial system and economy, although they generally do not present the same degree of risk as U.S. GSIBs. The application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity among U.S. banking organizations and their foreign peers and competitors, and to reduce opportunities for regulatory arbitrage, while applying standards that appropriately reflect the risk profiles of banking organizations in this category. Thus, the agencies are finalizing Category II capital requirements as proposed.

3. Category III Capital Requirements

Under the proposals, Category III capital requirements would have included the generally applicable risk-based capital requirements, supplementary leverage ratio, and the countercyclical capital buffer. The advanced approaches risk-based capital requirements would not have applied under Category III, and banking organizations subject to this category would have been permitted to make an election to opt out of the requirement to recognize elements of AOCI in regulatory capital. The proposals sought comment on various elements of Category III capital requirements, including the advantages and disadvantages of retaining the supplementary leverage ratio and countercyclical capital buffer, and the optional recognition of AOCI in regulatory capital.

Some commenters supported the application of the supplementary leverage ratio and countercyclical capital buffer to banking organizations subject to Category III capital requirements. Commenters asserted that the supplementary leverage ratio is a critical leverage measure that offers significant benefits to financial stability relative to risk-based capital measures, and that it is particularly important for banking organizations subject to Category III to maintain tier 1 capital for on- and off-balance sheet exposures because of their risk profile. In addition, some commenters asserted that the countercyclical capital buffer is a macro-prudential tool that supports the capital strength of the banking system more broadly, and noted that the consequence of not applying it to banking organizations subject to Category III would be to remove a substantial amount of assets from the potential activation of the buffer. Commenters added that retaining these requirements would not increase the complexity of the capital rule, as they currently apply to certain banking organizations that would be subject to Category III capital requirements.

In view of the scale at which they provide financial intermediation in the United States, banking organizations subject to Category III have a footprint substantial enough to merit an expansion of their regulatory capital base through application of the countercyclical capital buffer. These banking organizations also may have elevated levels of off-balance sheet exposure that is not accounted for in the U.S. leverage ratio. The supplementary leverage ratio helps to constrain the build-up of this exposure and mitigate any attendant risk to the financial stability and safety and soundness of these banking organizations. More broadly, the countercyclical capital buffer and supplementary leverage ratio are important elements of the post-crisis framework that support the agencies' objective to establish capital and other prudential requirements at a level that not only promotes resilience at a banking organization and protects financial stability, but also maximizes long-term through-the-cycle credit availability and economic growth. In addition, as noted above, application of these requirements to U.S. intermediate holding companies is consistent with international practice.

Consistent with the proposals, Category III capital requirements under the final rule include generally applicable risk-based capital requirements, the U.S. leverage ratio, and for the reasons described above, the supplementary leverage ratio and the countercyclical capital buffer. The final rule clarifies that the public disclosure requirements related to the supplementary leverage ratio also apply under Category III. Banking organizations subject to Category III requirements are not required to apply advanced approaches capital requirements. The models for applying these requirements are costly to build and maintain, and the agencies do not expect that removal of these requirements would materially change the amount of capital that these banking organizations would be required to hold. Relative to capital requirements under the advanced approaches, the standardized approach currently represents the binding risk-based capital constraint for the current population of banking organizations that are estimated to be subject to Category III capital requirements.

In addition, the proposals would have removed the mandatory application of the requirement to recognize elements of AOCI in regulatory capital for certain banking organizations subject to Category III capital requirements. Such banking organizations subject to this requirement currently would have been provided an opportunity to make a one-time opt-out election in the first regulatory report filed after the effective date of the final rule. A banking organization that is currently subject to this requirement and that does not make such an opt-out election would have continued to include all AOCI components in regulatory capital, except accumulated net gains and losses on cash flow hedges related to items that are not recognized at fair value.

Some commenters objected to the proposed regulatory capital treatment of AOCI under Category III. Commenters argued that mandatory application of the requirement to recognize elements of AOCI in regulatory capital would support investor confidence in banking organizations during stress, when gains and losses on securities holdings can result in significant volatility in regulatory capital levels. Commenters added that the agencies did not provide sufficient justification for allowing banking organizations subject to Category III capital standards to make an election to opt out of the requirement to recognize elements of AOCI in regulatory capital. In contrast, other commenters supported this aspect of the proposal.

Recognizing elements of AOCI in regulatory capital could introduce substantial volatility to a banking organization's regulatory capital levels, particularly during times of stress, and present significant challenges to asset-liability and capital management. Generally, the agencies' view has been that this volatility is justified for the largest, most internationally active banking organizations in order to provide a transparent, comparable measure of their capital. However, relative to banking organizations subject to Category I and Category II capital requirements, banking organizations subject to Category III present different risk profiles. Further, several of the banking organizations that would be subject to Category III or Category IV capital requirements currently are not subject to the mandatory recognition of AOCI in regulatory capital, and the agencies do not believe that the benefits mandatory recognition would provide to market participants sufficiently outweigh the associated burden and compliance costs. Therefore, consistent with the proposals, the final rule provides banking organizations subject to Category III capital requirements an opportunity to make a one-time election to opt out of the requirement to recognize elements of AOCI in regulatory capital.[86]

In July 2019, the agencies adopted the capital simplifications rule.[87] The capital simplifications rule established simpler capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of unconsolidated financial institutions relative to those that previously applied to non-advanced approaches banking organizations. The capital simplifications rule also adopted a simplified treatment for the amount of capital issued by a consolidated subsidiary and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital. This final rule extends the applicability of the capital simplifications rule to all banking organizations subject to Category III capital requirements.

The agencies separately have proposed to adopt the standardized approach for counterparty credit risk for derivatives exposures (SA–CCR) and to require advanced approaches banking organizations (banking organizations subject to Category I or II standards under this final rule) to use SA–CCR for calculating their risk-based capital ratios and a modified version of SA–CCR for calculating total leverage exposure under the supplementary leverage ratio. If that proposed approach were to be adopted, the agencies would allow a Category III banking organization to elect to use SA–CCR for calculating derivatives exposure in connection with its risk-based capital ratios, consistent with the SA–CCR proposal. Furthermore, the agencies intend to allow a banking organization subject to Category III standards to elect to use SA–CCR or continue to use the current exposure method for calculating its total leverage exposure for purposes of its the supplementary leverage ratio.[88]

4. Category IV Capital Requirements

Under the proposals, Category IV capital requirements would have included the generally applicable risk-based capital requirements and the U.S. leverage ratio. The proposals would not have applied the countercyclical capital buffer and the supplementary leverage ratio to Category IV banking organizations. In this manner, the requirements applicable to banking organizations subject to Category IV capital requirements would maintain the risk sensitivity of the current capital regime and resiliency of these banking organizations' capital positions, and would recognize that these banking organizations, while large, have lower risk-based indicator levels relative to their larger peers, as set forth in the proposals. As a result, and as noted above, banking organizations subject to Category IV capital requirements would have been subject to the same generally applicable risk-based and leverage capital requirements as banking organizations with less than $100 billion in total consolidated assets.

The agencies did not receive any comments specific to the capital requirements that would apply to banking organizations subject to Category IV standards. Similar to certain aspects of the current capital requirements, the final rule allows banking organizations to choose to apply the more stringent requirements of another category (*e.g.,* a banking organization subject to Category III standards could choose to comply with the more stringent Category II standards to minimize compliance costs across multiple jurisdictions).

5. Capital Requirements Transitions

Under the final rule, a banking organization that changes from one category of applicable standards to another category must generally comply with the new requirements no later than on the first day of the second quarter following the change in category. Transition provisions provided for certain requirements, such as increases to the GSIB surcharge and the parallel run process for internal models, continue to apply.

In addition, the agencies are amending the cessation provisions for calculating risk-based capital requirements under the advanced approaches. Previously, a banking organization that was required to calculate its risk-based capital ratios using both the advanced approaches and standardized approaches would have been required to calculate its risk-based capital ratios using both the advanced approaches and the standardized approaches until the appropriate Federal banking agency determined that application of the requirement would not be appropriate in light of the banking organization's asset size, level of complexity, risk profile, or scope of operations. The new framework makes this cessation provision unnecessary. Accordingly, a banking organization that no longer meets the relevant criteria for being subject to Category I or II standards will not be required to calculate its risk-based capital ratios using both approaches.

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[86] Banking organizations that were previously advanced approaches banking organizations, but under the final rule will be subject to Category III capital requirements, can make a one-time election to become subject to AOCI-related adjustments as described in § __.22(b)(2) of the agencies' regulatory capital rules. *See* 12 CFR 3.22(b)(2) (OCC); 12 CFR 217.22(b)(2) (Board); 12 CFR 324.22(b)(2) (FDIC). Banking organizations must make this election on the organization's Call Report or FR Y–9C report, as applicable, filed on the first reporting date after this final rule is effective.

[87] *See supra* note 26.

[88] Banking organizations would be required to use the same approach, SA–CCR or the current exposure method, for calculating both its risk-based capital and its total leverage exposure. *See* 83 FR 64660 (December 17, 2018).

B. Liquidity Requirements Applicable to Each Category

1. Background on LCR Rule

The LCR rule requires a banking organization to calculate and maintain an amount of HQLA sufficient to cover its total net cash outflows in a 30-day stress, as calculated under the LCR rule. A banking organization's LCR is the ratio of its HQLA amount (LCR numerator) divided by its total net cash outflows (LCR denominator). Previously under the LCR rule, a banking organization, including a U.S. intermediate holding company with a depository institution subsidiary, with $250 billion in total consolidated assets or $10 billion in on-balance sheet foreign exposure, and any depository institution subsidiary with $10 billion or more in total consolidated assets, was required to calculate and maintain an LCR of at least 100 percent each business day. To ensure the HQLA amount can be used to cover relevant cash outflows in a period of stress, the LCR rule places certain requirements on the control and location of eligible HQLA within a banking organization. The total net cash outflow amount includes an amount that reflects the timing of certain outflows and inflows (maturity mismatch add-on) within the LCR's 30-day horizon to ensure the LCR denominator represents the potential cash needs of these banking organizations.[89] All banking organizations subject to the LCR rule are required to make certain public disclosures on a quarterly basis.

The Board previously applied a modified LCR requirement to certain depository institution holding companies with $50 billion or more in total consolidated assets, but less than $250 billion in total consolidated assets and less than $10 billion in on-balance sheet foreign exposure.[90] The Board's former modified LCR minimum requirement was calibrated at a level equivalent to 70 percent of the full requirement. In addition, under the modified LCR requirement, depository institution holding companies were not required to calculate a maturity mismatch add-on as a component of their total net cash outflow amounts.[91]

The proposals would have applied standardized liquidity and funding requirements for U.S. and foreign banking organizations based on the risk-based indicators and thresholds described above. Specifically, the proposals would have applied one of four categories of liquidity and funding requirements to a banking organization: Category I, II, III, or IV. Under the proposals, a full LCR requirement would have been applied to banking organizations subject to Category I and II standards. For banking organizations subject to Category III or Category IV standards, the proposals would have reduced the LCR requirement based on the weighted short-term wholesale funding of the U.S. banking organization or the combined U.S. operations of the foreign banking organization. A banking organization subject to Category III standards with $75 billion or more in weighted short-term wholesale funding would have been subject to the full LCR requirement. A banking organization subject to Category III standards with less than $75 billion in weighted short-term wholesale funding or to Category IV standards with $50 billion or more in weighted short-term wholesale funding would have been required to comply with a reduced LCR requirement.[92] Banking organizations subject to Category IV standards with less than $50 billion in weighted short-term wholesale funding would not have been subject to an LCR requirement.

Under the proposals, the agencies sought comment on the calibration of the reduced LCR requirement under Category III and Category IV, at a level within a range of between 70 percent and 85 percent of the full LCR requirement applicable under Category I and Category II. In addition, the proposals would have required all banking organizations subject to an LCR requirement to include a maturity mismatch add-on and would have retained the LCR rule's treatment of HQLA held at a banking organization's consolidated subsidiaries.[93]

In general, the agencies received comments on the application of a standardized liquidity requirement to certain categories of banking organizations, the calibration of the reduced LCR requirement, and the application of elements of the Board's former modified LCR requirement to banking organizations that would be subject to the reduced LCR requirement.[94] These comments are discussed below.

2. Category I Liquidity Requirements

As proposed, U.S. GSIBs would have been subject to Category I standards because they pose the highest risks to U.S. financial stability and safety and soundness. The domestic proposal did not propose to change the full LCR requirement applicable to U.S. GSIBs. Under the domestic proposal, U.S. GSIBs would also have been included in the scope of application of the full set of requirements described in the proposed NSFR rule. In addition, consistent with current requirements, a U.S. GSIB's depository institution subsidiary with $10 billion or more in total consolidated assets would have remained subject to the full LCR requirement under the proposal.

The agencies did not receive comments on the application of standardized liquidity requirements to U.S. GSIBs or their depository institution subsidiaries and are finalizing the application of the full LCR requirement to banking organizations subject to Category I as proposed. Under the final rule, a banking organization subject to Category I standards will continue to be required to hold an amount of HQLA equal to at least 100 percent of its total net cash outflows as calculated under the LCR rule each business day.

3. Category II Liquidity Requirements

The proposals would have applied the full LCR requirement to banking organizations subject to Category II standards. Consistent with existing requirements, the proposals would also have applied the full LCR requirement to their depository institution subsidiaries with total consolidated assets of $10 billion or more. Under the proposals, banking organizations subject

[89] Section __.30 of the LCR rule requires a banking organization, as applicable, to include in its total net cash outflow amount a maturity mismatch add-on, which is calculated as the difference (if greater than zero) between the banking organization's largest net cumulative maturity outflow amount for any of the 30 calendar days following the calculation date and the net day 30 cumulative maturity outflow amount. *See* 12 CFR 50.30 (OCC); 12 CFR 249.30 (Board); and 12 CFR 329.30 (FDIC).

[90] *See* 12 CFR part 249, subpart G (2018), which has been repealed as part of this final rule.

[91] Separately, certain U.S. and foreign banking organizations are required to submit data related to their liquidity positions under the Board's FR 2052a.

[92] The proposals would have removed the Board's modified LCR because the agencies believed that the reduced LCR would be better designed for assessing liquidity risks for banking organizations that meet the thresholds for Categories III and IV.

[93] The proposals would have permitted a top-tier banking organization to include in its HQLA amount the eligible HQLA of a consolidated subsidiary up to the amount of the net cash outflows of the subsidiary (as adjusted for the factor reducing the stringency of the LCR requirement), plus any additional amount of assets, including proceeds from the monetization of assets, that would be available to the top-tier banking organization during times of stress without statutory, regulatory, contractual, or supervisory restrictions.

[94] Comments regarding the NSFR proposal will be addressed in the context of any final rule to adopt a NSFR requirement for large U.S. banking organizations and U.S. intermediate holding companies.

to Category II standards would also have been included in the scope of application of the full requirement of the proposed NSFR rule.

Some commenters argued that Category II standards should include reduced, rather than the full LCR requirement because banking organizations subject to Category II standards have lower risk relative to U.S. GSIBs. In addition, commenters argued that custody activities present lower risks due to their use of operational deposits, which the commenters viewed as stable. Other commenters argued that U.S. intermediate holding companies should not be subject to an LCR requirement at all, or alternatively, that they should be subject to the Board's former modified LCR requirement if the top-tier foreign parent is subject to an LCR requirement.

The failure or distress of banking organizations that would be subject to Category II standards could impose significant costs on the U.S. financial system and economy. While these banking organizations generally do not present the same degree of systemic risk as U.S. GSIBs, the very large size or the cross-jurisdictional activity of these banking organizations present risks that make it appropriate to apply the most stringent liquidity standards. Size and cross-jurisdictional activity can present particularly heightened challenges in the case of a liquidity stress, and the nature of custody business does not substantially mitigate these risks. Any very large or global banking organization that engages in asset fire sales to meet short-term liquidity needs, including one that has a significant custody business, is likely to transmit distress on a broader scale because of the greater volume of assets it may sell and its multiple counterparties across multiple jurisdictions. Similarly, a banking organization with significant international activity, regardless of the level of custody business, is more exposed to the risk of ring-fencing of liquidity resources by one or more jurisdictions. Such ring-fencing would constrain the movement of liquid assets across jurisdictions to meet outflows. More generally, the overall size of a banking organization's operations, material transactions in foreign jurisdictions, and use of overseas funding sources add complexity to the management of its liquidity risk profile. Additionally, a U.S. intermediate holding company may pose risks in the United States similar to other banking organizations of similar size and risk profile, regardless of whether the foreign banking organization is subject to an LCR requirement in its home jurisdiction.[95] In light of these concerns, the agencies are adopting the full LCR requirement as a Category II requirement as proposed.

4. Category III Liquidity Requirements

Under the proposals, Category III liquidity requirements would have reflected the elevated risk profile of banking organizations subject to this category relative to smaller and less complex banking organizations subject to Category IV. Within Category III, the proposals would have differentiated liquidity requirements based on the level of weighted short-term wholesale funding of a banking organization or, for foreign banking organizations, its U.S. operations. Specifically, a banking organization subject to Category III with weighted short-term wholesale funding of $75 billion or more would have been subject to the full set of LCR and proposed NSFR requirements applicable under Categories I and II. The banking organization would also have been included in the amended scope of application of the proposed NSFR rule. A banking organization subject to Category III with less than $75 billion in weighted short-term wholesale funding would have been subject to reduced LCR and proposed NSFR requirements. The level of the LCR and proposed NSFR requirements applicable to a depository institution subsidiary with total consolidated assets of $10 billion or more of a banking organization subject to Category III standards would have been the same as the level that would apply to the parent banking organization.[96]

A banking organization subject to the reduced LCR requirement would have been required to hold a lower minimum amount of HQLA to address applicable net cash outflows, relative to a banking organization subject to the full LCR. All other requirements under the LCR rule would have remained the same, relative to a banking organization subject to the full LCR requirement. For example, these banking organizations would have been required to calculate an applicable LCR on each business day and include the maturity mismatch add-on in their calculations. The agencies requested comment on the calibration of the reduced LCR requirement under Category III, at a level between 70 and 85 percent of the full LCR requirement. The proposals additionally included a description of a potential reduced NSFR requirement for such banking organizations under the proposed NSFR rule that would have applied a similar adjustment factor to the banking organization's required stable funding amount.

Under the proposals, a banking organization subject to Category III liquidity requirements would not have been permitted to include in its HQLA amount eligible HQLA of a consolidated subsidiary except up to the amount of the net cash outflows of the subsidiary (as adjusted for the factor reducing the stringency of the requirement), plus any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier banking organization during times of stress without statutory, regulatory, contractual, or supervisory restrictions. For the purpose of this requirement, a banking organization subject to reduced LCR requirements under the proposals would have reduced the net cash outflows of that subsidiary by the appropriate outflow adjustment percentage.

Some commenters recommended that the proposals should not reduce the LCR requirement applicable to banking organizations subject to Category III with weighted short-term wholesale funding of less than $75 billion. However, other commenters expressed support for the reduced LCR requirement asserting that the proposals appropriately recognize the liquidity risk profiles of these banking organizations. The commenters that opposed reducing LCR requirements argued that requirements under the LCR rule are already adjusted to account for a banking organization's size and risk profile. Further, these commenters asserted that banking organizations that would be subject to the reduced LCR requirement under Category III had received substantial governmental support during the financial crisis, and that the proposals did not provide a sufficient economic justification for a reduced LCR requirement nor describe the benefit of the reduction relative to

[95] Consistent with agreements that reflect BCBS standards, other jurisdictions impose liquidity requirements on local subsidiaries of consolidated banking organizations that are not domiciled within that jurisdiction.

[96] For example, a depository institution subsidiary with $10 billion in total consolidated assets of a banking organization subject to the reduced LCR requirement under Category III standards would also be subject to the reduced LCR requirement. In the case of a depository institution that is domiciled in the United States and is not a consolidated subsidiary of a U.S. depository institution holding company that would have been subject to Category I, II, or III standards, the applicable category of standards would have depended on the risk-based indicators of the depository institution. For example, if the depository institution meets the criteria for Category III standards but has weighted short-term wholesale funding of less than $75 billion, the depository institution would have been subject to the proposed reduced LCR requirement.

its impact on the resilience of such banking organizations. Other commenters recommended that the agencies adopt a 70 percent outflow adjustment percentage for the reduced LCR requirement under Category III, consistent with the calibration of the Board's former modified LCR.

As noted by commenters, the LCR rule differentiates between banking organizations by requiring a banking organization to hold a minimum amount of HQLA based on its liquidity risk over a 30-day time horizon.[97] Banking organizations that have lower liquidity risk have lower minimum requirements under the rule. To improve the calibration of a banking organization's minimum HQLA amount relative to its risk profile and its potential risk to U.S. financial stability, the final rule differentiates between banking organizations based on their category of standards and their degree of reliance on short-term wholesale funding. Accordingly, under the final rule, a banking organization subject to Category III standards with weighted short-term wholesale funding of $75 billion or more is subject to the full LCR requirement. A banking organization subject to Category III standards with weighted short-term wholesale funding of less than $75 billion is subject to a reduced LCR requirement calibrated at 85 percent of the full LCR requirement. The agencies believe an 85 percent calibration is appropriate for these banking organizations because they are less likely to contribute to a systemic event relative to similarly sized banking organizations that have a greater reliance on short-term wholesale funding and, therefore, are more complex and more likely to have greater systemic impact. The 85 percent calibration reflects the expectation that these less complex banking organizations should be able to address their liquidity needs under a stress scenario in a shorter period of time than other larger or more complex banking organizations that are subject to the full LCR requirement.

Several commenters argued that, in addition to the lower minimum HQLA amount described above, the reduced LCR requirements should be further reduced to align with those of the Board's former modified LCR requirement. Commenters also requested that the reduced LCR requirement should permit the automatic inclusion of a subsidiary's HQLA up to 100 percent of that subsidiary's outflows, rather than limiting the amount based on reduced outflows, because the subsidiary's HQLA is available to meet its outflow needs and this approach would be consistent with the Board's former modified LCR treatment.

As a general matter, the broad alignment of the reduced LCR with the Board's former modified LCR would not be appropriate because each of these requirements was designed to address different risk profiles. The Board designed the former modified LCR for smaller U.S. holding companies with less complex business models and more limited potential impact on U.S. financial stability compared to banking organizations that would be subject to the reduced LCR requirement.[98] While a lower minimum HQLA amount improves the alignment of the LCR requirement with the systemic risks posed by certain banking organizations subject to Category III, additional approaches to reducing the stringency of the requirements may reduce the effectiveness of the LCR.

As discussed in section VI.B.6. of this Supplementary Information, the final rule requires large depository institution subsidiaries of banking organizations subject to Category III standards to calculate and maintain an LCR because large subsidiary depository institutions have a significant role in a consolidated banking organization's funding structure, and in the operation of the payments system.

In addition, consistent with previous restrictions under the LCR rule, the final rule retains the proposal's limitation on the amount of a subsidiary's HQLA that is automatically includable in the top-tier banking organization's HQLA amount. The agencies believe that it is important that banking organizations consider potential liquidity needs across the consolidated entity for which the LCR calculation is required. Accordingly, banking organizations must consider the extent to which assets held at a subsidiary are transferable across the organization and ensure that a minimum level of HQLA is positioned or freely available to transfer to meet outflows at the subsidiary where they would be expected to occur. Although HQLA at a subsidiary in excess of its adjusted net outflows may be available to support that subsidiary in a period of stress, permitting the automatic inclusion of such HQLA up to 100 percent of that subsidiary's outflows, as requested by commenters, without appropriate consideration of transfer restrictions, may make the consolidated asset coverage requirement less effective. Therefore, under the final rule, the agencies are only permitting an automatic inclusion of HQLA held at a subsidiary up to the reduced amount of the subsidiary's outflows.

5. Category IV Liquidity Requirements

The foreign bank proposal would have required certain depository institution holding companies and foreign banking organizations that meet the criteria for Category IV and that have weighted short-term wholesale funding of $50 billion or more to comply with a reduced LCR requirement. The proposals would not have applied Category IV liquidity requirements to standalone depository institutions or to depository institution holding companies or foreign banking organizations with less than $50 billion in weighted short-term wholesale funding, or their subsidiary depository institutions. The agencies requested comment on the calibration of the reduced LCR requirement under Category IV, at a level between 70–85 percent of the full LCR requirement.

Some commenters argued that all banking organizations subject to Category IV should be subject to some form of standardized liquidity requirements, rather than none, and that such requirements could be modified or simplified for these organizations, as appropriate. These commenters argued that, in absence of macroeconomic evidence that current requirements have harmed credit intermediation, any decrease in liquidity requirements for these organizations is difficult to support. In contrast, certain commenters argued for the removal of any LCR requirement for all banking organizations subject to Category IV.

Banking organizations subject to Category IV have smaller systemic footprints, more limited size, and present less risk and complexity relative to banking organizations subject to a more stringent category. However, banking organizations subject to Category IV that are substantially reliant on short-term wholesale funding are vulnerable to the liquidity risks addressed by the reduced LCR requirement. Weighted short-term wholesale funding of $50 billion or more is substantial relative to the size of

[97] 12 CFR 249.10(a). The LCR rule prescribes the minimum amount of HQLA that the banking organization must hold both by reference to its total net cash outflow amount and the minimum required ratio level, each as prescribed under the rule.

[98] The Board's former modified LCR applied to depository institution holding companies with between $50 billion and less than $250 billion in total assets whereas the proposal would have applied Category III to banking organizations that either have $250 billion or more in total assets or have $100 billion or more in total assets as well as heightened levels of off-balance sheet exposure, nonbank assets, or weighted short-term wholesale funding.

banking organizations subject to Category IV. Banking organizations with such funding dependencies are more likely to have higher risk of near-term outflows in a stress. The application of the LCR requirement is therefore appropriate for these banking organizations, albeit at a reduced level, given their lower potential systemic impact. The agencies are calibrating the minimum reduced LCR for banking organizations subject to Category IV at a level equivalent to 70 percent of the minimum level required under Category I and II. The difference between the 85 percent reduced LCR calibration in Category III and the 70 percent reduced LCR calibration in Category IV reflects the differences in the risk profiles of banking organizations subject to each respective requirement. The 70 percent calibration recognizes that these banking organizations are less complex and smaller than other banking organizations subject to more stringent liquidity requirements under the LCR rule and would likely have more modest systemic impact than larger, more complex banking organizations if they experienced liquidity stress. Under the final rule, banking organizations that are subject to Category IV liquidity standards and have weighted short-term wholesale funding of $50 billion or more apply an outflow adjustment factor of 70 percent to their total net cash outflow amount. Moreover, for the same reasons as discussed above, the final rule retains the proposed limitation on the amount of subsidiary's HQLA that is automatically includable in the top-tier banking organization's HQLA amount, equal to an amount up to the amount of the subsidiary's net cash outflows (as adjusted by the top-tier banking organization's 70 percent outflow adjustment factor). Banking organizations subject to Category IV that have weighted short-term wholesale funding of less than $50 billion are not subject to an LCR requirement under the final rule.[99]

6. Application of Liquidity Requirements to Depository Institution Subsidiaries

The proposals generally would have applied the same category of liquidity standards to depository institution holding companies, including U.S. intermediate holding companies, and their depository institution subsidiaries with $10 billion or more in total consolidated assets. As discussed above, standardized liquidity requirements would not have applied at the depository institution subsidiary level or to a depository institution domiciled in the United States that is not a consolidated subsidiary of a U.S. depository institution holding company under Category IV. Commenters argued that the application of liquidity requirements to depository institution subsidiaries is unnecessary and could limit the flexibility of a U.S. intermediate holding company and its foreign parent to respond in a period of stress by trapping liquidity at depository institution subsidiaries. One commenter argued that the calibration of the LCR requirement should reflect the size of the depository institution subsidiary, as the bulk of the line items reported in the Board's FR 2052a are applicable to, and driven by, the calculation of the depository institution subsidiary's profile.

Large depository institution subsidiaries play a significant role in a banking organization's funding structure and in the operation of the payments system. To reduce the potential systemic impact of a liquidity stress event at such large subsidiaries, the agencies believe that such entities should have sufficient amounts of HQLA to meet their own net cash outflows rather than be overly reliant on their parents or affiliates for liquidity in times of stress. Accordingly, the final rule maintains the application of the LCR requirement to certain depository institution subsidiaries as proposed.

7. Maturity Mismatch Add-On Requirement for Reduced LCR

As discussed above, the proposals would have required all banking organizations subject to an LCR requirement—full or reduced—to include a maturity mismatch add-on in their LCR calculations. When finalizing the LCR rule in 2014, the agencies required the maturity mismatch add-on for all banking organizations subject to the full LCR requirement. The agencies determined that the maturity mismatch add-on, based only on certain categories of outflows and inflows, is necessary to address a material risk to the safety and soundness of banking organizations subject to the requirement.

Several commenters argued that no maturity mismatch add-on should apply in the reduced LCR calculation. Commenters asserted that the maturity mismatch add-on would create competitive disparities for banking organizations because of different business models and observed that the mismatch was not included in the Board's former modified LCR requirement. One commenter stated that the maturity mismatch add-on should not apply to LCR calculations with respect to a U.S. intermediate holding company because, in the commenter's view, it represents a significant departure from the Basel LCR standard and the commenter argued that the U.S. operations of a foreign banking organization should not be subject to a materially different standard relative to its consolidated requirements.

The final rule provides that all banking organizations subject to an LCR requirement must include a maturity-mismatch add on when calculating the LCR and address the timing of potential outflows and inflows within the LCR's 30-day time horizon. The maturity mismatch add-on is appropriately risk sensitive because banking organizations that are engaged primarily in deposit gathering and traditional lending generally would have a smaller maturity mismatch add-on, while banking organizations that are engaged in activities that create timing mismatches inside the LCR rule's 30-day horizon may be subject to a higher mismatch add-on. The agencies acknowledge that contractual maturity mismatch is not a quantitative component of the Basel III LCR standard, but believe that is an important component of addressing the liquidity risks of banking organizations subject to the LCR rule. In addition, under the final rule, a U.S. intermediate holding company subject to an LCR requirement would only be required to assess its own mismatches, consistent with the calculation for other banking organizations, and without regard to business model. In response to comments that the Board's former modified LCR requirement did not require a maturity-mismatch add on calculation, as noted above, the modified LCR was designed for smaller, less systemic and less complex depository institution holding companies compared to banking organizations that are subject to a reduced LCR requirement under the final rule.

8. Timing of LCR Calculations and Public Disclosure Requirements

The proposal would have required banking organizations subject to Category I, Category II, or Category III standards to calculate an LCR on each business day. Banking organizations subject to Category IV standards with $50 billion or more in weighted short-term wholesale funding would have

[99] Banking organizations subject to Category IV remain subject to the internal liquidity stress testing requirements under the Board's regulations, which include 30-day and 1-year planning horizons, and additionally FR 2052a reporting requirements. The Board-only final rule provides further discussion of liquidity standards that apply under the Board's regulations to banking organizations subject to Category IV.

been required to calculate a monthly LCR. To reduce compliance costs for banking organizations subject to Category IV standards and to reflect these organizations' smaller systemic footprint, the agencies proposed to require the calculation of the LCR on the last business day of the applicable month rather than each business day.

Commenters requested that Category III standards require a monthly calculation frequency for banking organizations required to calculate a reduced LCR or, alternatively, the rule could require daily monitoring of the LCR by banking organizations but with monthly compliance requirements. A commenter also argued for LCR public disclosures based on the average month-end values to align with certain banking organizations' FR 2052a reporting obligations. A commenter also recommended that the public disclosure of LCR information be required with a two-year lag. Commenters also requested that the Board immediately eliminate the LCR public disclosure requirements for banking organizations that would be subject to Category IV.

Banking organizations subject to Category III standards are larger and generally have more complex risk profiles and business models than banking organizations subject to Category IV standards (or the depository institution holding companies that were previously subject to the Board's modified LCR requirement). The size and complexity of banking organizations subject to Category III standards warrant LCR calculations that are the same as those used under Category I and II standards, except for the 85 percent outflow adjustment factor for such banking organizations with less than $75 billion of weighted short-term wholesale funding.

The size and greater potential impact on U.S. financial stability of these organizations also warrant daily calculation and compliance requirements. Meaningful public disclosure by banking organizations supports market discipline and encourages sound risk-management practices. The current requirement that LCR public disclosures be made quarterly is consistent with the frequency of other quarterly disclosures of financial information, which should help market participants assess the liquidity risk profiles of banking organizations. Timely public disclosures based on the average of each required calculation under the LCR rule provide market participants and other stakeholders with more comprehensive information relative to only averaging month-end calculations. Therefore, for banking organizations whose LCR calculations are required each business day, the averages of these calculations should be used for public disclosure even in cases where the banking organizations are required only to provide more detailed FR 2052a reporting on a monthly basis. Similarly, if a banking organization subject to Category IV standards is required to calculate an LCR on a monthly basis, the public disclosure of averages of such calculations is also useful to market participants and other stakeholders and, therefore, the agencies are declining to remove public disclosure requirements from such banking organizations.[100] Accordingly, the agencies are finalizing the frequency of LCR calculations and the disclosure requirements as proposed.

9. Comments on Refinements to the Current LCR Rule

Under the proposals, the agencies did not propose to amend other definitions, calculation elements, or public disclosure requirements in the LCR rule beyond those related to the categories of standards discussed above. One commenter, however, expressed concern regarding a statement in the foreign bank proposal that the agencies expect HQLA to be "continually available" for use by the foreign banking organization's liquidity management function to be considered eligible HQLA. The commenter characterized this statement as creating an intraday utilization requirement, which it asserted would be a new requirement that would require an amendment to the LCR rule, following the APA's notice-and-comment procedures. Although the LCR rule requires a banking organization to calculate its LCR as of the same time on each business day (the elected calculation time), the LCR rule also contains explicit requirements for assets to be eligible for inclusion in the company's HQLA amount. Section __.22(a)(2) of the LCR rule provides that the banking organization must implement policies that require eligible HQLA to be under the control of the management function in the banking organization that is charged with managing liquidity risk (liquidity management function). Section __.22(a)(2) specifies that the liquidity management function must evidence its control over the HQLA by either: (i) Segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity, or (ii) demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk-management strategy of the banking organization. In response to the comment, the agencies are confirming that the LCR rule does not limit the requirements of § __.22(a)(2) to the elected calculation time. To so limit the application of these requirements would be inconsistent with the purpose of the requirements, which is to ensure that a central function of a banking organization has the authority and capability to liquidate HQLA to meet its obligations in times of stress. In order for a liquidity management function to demonstrate that it has the ability to monetize the HQLA in a way that does not conflict with the banking organization's business or risk-management strategy, the banking organization should be able to demonstrate its ability to monetize the assets and make the proceeds continuously available to the liquidity management function. Accordingly, HQLA that is only available to the liquidity management function of a banking organization at the elected calculation time would not meet the requirements of § __.22(a)(2).

One commenter provided a broad range of suggested technical amendments to the existing LCR rule. These included adjustments to the determination of the LCR numerator, such as expanding the types of assets that qualify as level 1 and level 2 liquid assets and making technical refinements to the definition of "liquid and readily marketable" under the rule. The suggested amendments also included changes to the determination of the total net cash outflow amount under the current LCR rule, such as changes in the calculation of the retail deposit and retail brokered deposit outflow amounts, a change to the definition of operational deposits and recognition of potential forward-dated collateral substitution under the LCR rule. The commenter further suggested amendments to the public disclosure requirements under the LCR rule and proposed NSFR rule.

The agencies assess the effectiveness of existing rules on a regular basis and take into account insights received from industry and public comments. As noted above, the agencies did not propose amendments to the LCR rule or proposed NSFR rule beyond those described above and are not amending other elements of the LCR rule or proposed NSFR rule at this time.

[100] Subject to the transitions under the final rule, banking organizations subject to Category IV standards with weighted short-term wholesale funding of less than $50 billion are not subject to LCR public disclosures under the final rule.

10. Comments Regarding the Potential Application of Standardized Liquidity Requirements With Respect to U.S. Branches and Agencies

In the foreign bank proposal, the Board requested comment on whether and how it should apply standardized liquidity requirements, such as an LCR-based requirement, to foreign banking organizations with respect to their U.S. branch and agency networks. As stated in the proposal, the goal of such a requirement would be to strengthen the overall resilience of a foreign banking organization's U.S. operations to liquidity risks and help prevent transmission of risks between various segments of the foreign banking organization. The foreign bank proposal clarified that if the Board were to consider application of standardized requirements with respect to the U.S. branches and agencies of foreign banking organizations, the proposed requirements would be subject to a separate notice-and-comment rulemaking process.

Commenters generally opposed development or issuance of a proposal that would apply standardized liquidity requirements to the U.S. branch and agency network of a foreign banking organization. Some of these commenters argued that the Board should defer to compliance with the standardized liquidity requirements that apply to foreign banking organizations in their home country, in recognition of the fact that branches and agencies are the same legal entity as the parent foreign banking organization. In the view of these commenters, the combination of home-country standardized requirements and existing regulation and supervision of U.S. branches and agencies would sufficiently address liquidity risk at these entities. Commenters also noted that a standardized requirement for U.S. branches and agencies could limit the ability of foreign banking organizations to deploy funds as needed, including during times of stress.

Certain commenters also argued that implementing liquidity requirements for branches and agencies in the United States could lead other jurisdictions to implement similar requirements for the branches and agencies of U.S. banking organizations abroad, which could lead to market fragmentation. Many of these commenters suggested that concerns regarding liquidity risk at branches and agencies should be further discussed and evaluated at the global level by international regulatory groups before any actions are taken at the national level.

In contrast, some commenters supported the application of standardized liquidity requirements with respect to the U.S. branches and agencies of foreign banking organizations in order to account more fully for liquidity risks of the U.S. operations of these entities. To support this position, one commenter noted that the role of foreign banking organizations, including their branches and agencies, as providers of liquidity was a critical driver of systemic risks during the financial crisis.

The Board is still considering whether to develop and propose for implementation a standardized liquidity requirement with respect to the U.S. branches and agencies of foreign banking organizations. As part of this process, the Board intends to further evaluate commenters' observations regarding the liquidity risk profiles of the U.S. operations of foreign banking organizations, consider potential interactions with existing regulations and supervisory processes, and engage in further discussion and evaluation of the issue at an international level. As mentioned above, any such requirement would be subject to notice and comment as part of a separate rulemaking process.

11. LCR Rule Transition Periods; Cessation of Applicability

a. Initial Transitions for Banking Organizations Subject to an LCR Requirement on the Effective Date

The domestic proposal did not include initial transition periods for banking organizations already subject to the LCR rule. The foreign bank proposal would have required compliance on the effective date for a foreign banking organization with respect to its U.S. intermediate holding company if that U.S. intermediate holding company was already subject to the full LCR requirement. Under this final rule, a U.S. banking organization or U.S. intermediate holding company that was subject to the LCR rule immediately prior to the effective date is required to comply with its applicable LCR requirement (full or reduced) beginning on the effective date.

In addition, the foreign bank proposal provided a transition period for a foreign banking organization that was not previously subject to an LCR requirement with respect to its U.S. intermediate holding company, including certain depository institution subsidiaries of such foreign banking organizations. Some commenters requested longer initial transitions. Consistent with the final framework and the proposed transitions for foreign banking organizations, under the final rule, a U.S. intermediate holding company that meets the applicability criteria for the LCR rule on the effective date of the final rule, but was not subject to an LCR requirement immediately prior to the effective date, must comply with the applicable LCR requirement one year following the effective date of the final rule.

TABLE II—TRANSITIONS FOR BANKING ORGANIZATIONS SUBJECT TO LCR RULE ON THE EFFECTIVE DATE

LCR requirement prior to effective date of the final rule	LCR requirement as of the effective date of the final rule	Mandatory compliance date
Full LCR requirement	LCR (full or reduced) or no requirement	Effective Date.
No requirement	Full LCR requirement or Category III Reduced LCR requirement.	First day of the fifth full calendar quarter following the effective date.
	Category IV LCR requirement	Last business day of the first month for the fifth full calendar quarter following the effective date.

b. Initial Transitions for Banking Organizations That Become Subject to LCR Rule After The Effective Date

Under the proposals, a banking organization that would have become subject to the LCR rule after the effective date of the final rule would have been required to comply with the LCR rule on the first day of the second quarter after the banking organization became subject it (newly covered banking organizations), consistent with the amount of time previously provided under the LCR rule. In addition, the proposals would have maintained the transition period under the LCR rule for the daily calculation requirement, which provides a newly covered banking organization three quarters to calculate its LCR on a monthly basis before it must conduct daily LCR calculations.

Some commenters requested additional time to comply with the LCR rule. The final rule provides an additional quarter to comply with the LCR rule, such that a newly covered banking organization will be required to comply with these requirements on the first day of the third quarter after becoming subject to these requirements. In addition, a newly covered banking organization that is required to calculate its LCR daily has two quarters to calculate its LCR on a monthly basis before transitioning to daily calculations.

TABLE III—EXAMPLE OF A BANKING ORGANIZATION THAT BECOMES SUBJECT TO A DAILY LCR REQUIREMENT AFTER THE EFFECTIVE DATE

Example:	First compliance date	LCR calculation frequency
Banking organization becomes subject as of December 31, 2023 to an LCR requirement (full or reduced) that includes daily calculation.	July 1, 2024	Monthly calculation: From July 2024 through December 2024. Daily calculation: Begins January 1, 2025.

c. Transitions for Changes to an LCR Requirement

Under the proposals, a banking organization subject to the LCR rule that becomes subject to a higher outflow adjustment percentage would have been able to continue using a lower calibration for one quarter. A banking organization that becomes subject to a lower outflow adjustment percentage at a quarter end would have been able to use the lower percentage immediately, as of the first day of the subsequent quarter. Some commenters requested longer transitions before a banking organization is required to meet an increased LCR requirement. The final rule allows a banking organization an additional quarter to continue using a lower outflow adjustment percentage after becoming subject to a higher outflow adjustment percentage. The agencies are finalizing the transition period for a banking organization that transitions to a lower outflow adjustment percentage as proposed.

The final rule also provides a banking organization that moves from Category IV into another category one year to begin complying with daily LCR calculation requirements. A depository institution subsidiary with $10 billion or more in total consolidated assets must begin complying on the same dates as its top-tier banking organization.[101]

TABLE IV—EXAMPLE DATES FOR CHANGES TO AN LCR REQUIREMENT

Example 1:	Continue to apply prior outflow adjustment percentage	Apply new outflow adjustment percentage
Banking organization that is subject to a daily LCR calculation requirement becomes subject to a higher outflow adjustment percentage as of December 31, 2023, as a result of having an average weighted-short-term wholesale funding level of greater than $75 billion based on the four prior calendar quarters.	1st and 2nd quarter of 2024	Beginning July 1, 2024.
Example 2:	**Continue to apply prior requirement (i.e., lower outflow adjustment percentage and monthly calculation)**	**Apply new requirements**
Banking organization subject to a reduced LCR requirement under Category IV moves to Category I, II, or III as of December 31, 2023.	Lower outflow adjustment percentage: 1st and 2nd quarter of 2024. Monthly calculation: January 2024–December 2024.	Higher outflow adjustment percentage begins 3rd quarter of 2024. Daily calculation begins January 1, 2025.
Example 3:	**Continue to apply prior requirement (i.e., lower outflow adjustment percentage and monthly calculation)**	**Apply new requirements**
Covered subsidiary depository institution of banking organization that moves from Category IV to another category as of December 31, 2023.	No prior requirement	Comply with outflow adjustment percentage applicable to new category from 3rd quarter of 2024, calculating monthly Daily calculation begins January 1, 2025.

[101] *See, supra* note 3.

d. Reservation of Authority To Extend Transitions

The final rule includes a reservation of authority that provides the agencies with the flexibility to extend transitions for banking organizations where warranted by events and circumstances. There may be limited circumstances where a banking organization needs a longer transition period. For example, an extension may be appropriate when unusual or unforeseen circumstances cause a banking organization to become subject to an LCR requirement for the first time, such as a merger with another entity that results in a banking organization becoming subject to the LCR rule. However, the agencies expect that this authority would be exercised in limited situations, consistent with prior practice.

e. Cessation of Applicability

Under the proposal, once a banking organization became subject to an LCR requirement, it would have remained subject to the rule until the appropriate Federal banking agency determined that application of the rule would not be appropriate in light of the foreign banking organization's asset size, level of complexity, risk profile, or scope of operations. The agencies are repealing this provision in the LCR rule because the new framework makes this cessation provision unnecessary. A banking organization that no longer meets the relevant criteria for being subject to the LCR rule will not be required to comply with the LCR rule.

VII. Impact Analysis

The Board assessed the potential impact of the tailoring final rule, considering potential benefits and costs, taking into account current levels of capital and holdings of HQLA at affected domestic and foreign banking organizations.[102] Potential benefits to banking organizations include increased net interest margins from holding higher yielding assets, reduced compliance costs as well as better tailoring of regulatory requirements to banking organizations. Potential costs to banking organizations and financial stability include increased risk during a period of elevated economic stress or market volatility.[103]

Capital requirements will not change for banking organizations subject to Category I or II standards. The Board expects the final rule to slightly lower capital requirements by about $8 billion and $3.5 billion for domestic and foreign banking organizations subject to Category III and IV standards, respectively, or about 60 basis points of total risk-weighted assets for these banking organizations. The impact on capital levels could vary under different economic and market conditions. For example, from 2001 to 2018, the total AOCI of affected banking organizations that included AOCI in capital ranged from a decrease of approximately 140 basis points of total risk-weighted assets to an increase of about 50 basis points of total risk-weighted assets for domestic banking organizations and a decrease of about 70 basis points of total risk-weighted assets to an increase of about 70 basis points of total risk-weighted assets for foreign banking organizations. In addition to no longer being required to reflect all changes in AOCI into regulatory capital, some of these banking organizations would receive a higher threshold for certain capital deductions as outlined in the capital simplification rule.[104] The Board also expects the final rule to reduce compliance costs as a result of certain banking organizations no longer being subject to the advanced approaches capital requirements and as a result of LCR and certain capital requirements no longer applying to banking organizations with total consolidated assets of between $50 billion and $100 billion.

The Board assessed the impact of the final rule on liquidity standards, focusing on the potential changes in the applicability and the stringency of the LCR requirement and taking into account the internal liquidity stress test (ILST) requirements of banking organizations, whose applicability remains unchanged.[105] The Board estimated that, under the final rule, total HQLA requirements would decrease by $48 billion and $5 billion for domestic and foreign banking organizations, respectively. The decrease would represent about a 2 percent reduction in the liquidity requirements for both domestic and foreign banking organizations with greater than $100 billion in assets. The decrease in the liquidity requirements of banking organizations subject to Category III standards accounts for the majority of the total liquidity requirement reduction, both among domestic and foreign banking organizations. For banking organizations in Category III, the decrease would represent an approximately 8 percent reduction in liquidity requirements.

The Board also estimated the impact of the final rule on the HQLA holdings of affected banking organizations. For the impact estimation, the Board assumed that banking organizations would adjust their liquid asset holdings so that they maintain the excess HQLA percentage that they held above the greater of their LCR and ILST requirements in the first quarter of 2019. According to the Board's estimates, total HQLA holdings are expected to decrease by about $56 billion and $6 billion at domestic and foreign banking organizations, respectively. The decrease would represent an approximately 2 percent reduction in the HQLA holdings for both domestic and foreign banking organizations with greater than $100 billion in total assets. The estimated impact on HQLA holdings is about equally distributed across Category III and Category IV banking organizations and would represent an approximately 8 percent reduction in the HQLA holdings of these organizations.

In addition to assessing the potential impact on liquid asset requirements and HQLA holdings, the Board investigated the broader benefits and costs associated with the final rule. Regarding domestic banking organizations, the Board analyzed how the final rule would affect the net interest margin, loan growth, and the likelihood of default or the need for external support during times of financial stress.[106] The analysis was implemented by using linear and nonlinear regression models for these outcome variables and calculating indirect impact estimates based on the tailoring rulemaking's direct impact on HQLA holdings discussed above. Regarding foreign banking organizations, the Board analyzed how the tailoring rulemaking would affect the participation in global dollar markets and their reliance on Federal Reserve liquidity facilities in the event of a financial crisis. The Board estimated the impact of the tailoring final rule on foreign banking organizations' reliance on Federal

[102] The Board assessed the impact of the tailoring rulemaking for domestic and foreign banking organizations that would be subject to Category III or Category IV standards based on the data submitted on the FR 2052a and FR Y–9C by banking organizations for the 2019:Q1 reporting period.

[103] The OCC also considered the potential costs of the tailoring rulemaking for the purpose of the Unfunded Mandates Reform Act of 1996 (2 U.S.C. 1532), the Regulatory Flexibility Act, and the Congressional Review Act.

[104] *See supra* note 26.

[105] The Board-only proposal would continue to require large domestic and foreign banking organizations to conduct internal liquidity stress tests and hold highly liquid assets sufficient to meet projected 30-day net stressed cash-flow needs under internal stress scenarios. *See* 12 CFR part 252.

[106] The analysis assessed banking organizations' probability of default or need for external support during the 2007–2008 financial crisis. In the analysis, external support reflected participation in the Troubled Asset Relief Program, implemented in 2008 by the U.S. Treasury.

Reserve liquidity facilities by analyzing the relationship between liquid asset holdings and the usage of the discount window and the Term Auction Facility during the financial crisis.

The Board estimated that the final rule would lead to a modest increase in the net interest margin and have a negligible impact on the loan growth of affected domestic banking organizations. The final rule would modestly increase the likelihood that affected domestic banking organizations experience liquidity pressure under stress. With regard to foreign banking organizations, as the estimated impact of the tailoring final rule on the HQLA holdings of these banking organizations is relatively small, the anticipated effect on global dollar markets and the safety and soundness of these banking organizations is likely to be mild. The Board will continue to assess the safety and soundness of both domestic and foreign banking organizations through the normal course of supervision, including the conduct of internal liquidity stress tests.

VIII. Administrative Law Matters

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for the agencies' respective LCR rules are OCC (1557–0323), Board (7100–0367), and FDIC (3064–0197). The OMB control numbers for the agencies' respective regulatory capital rules are OCC (1557–0318), Board (7100–0313), and FDIC (3064–0153). These information collections will be extended for three years, with revision. The information collection requirements contained in this final rule have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB. The OCC and the FDIC submitted the information collection requirements to OMB at the proposed rule stage. OMB filed comments requesting that the agencies examine public comment in response to the proposal and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendations. The agencies received no comments on the information collection requirements.

LCR Rule

Current Actions: The final rule revise §§ ____.1, ____.3, ____.10, ____.30, and ____.50 of each of the agencies' respective LCR rules and §§ ____.90 and ____.91 of the Board's LCR rule to require certain depository institution subsidiaries of large domestic banking organizations and U.S. intermediate holding companies of foreign banking organizations to calculate an LCR. For more detail on §§ ____.90 and ____.91, please see ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,'' 81 FR 94922 (Dec. 27, 2016).

Information Collections Proposed to be Revised:

OCC

OMB control number: 1557–0323.

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.

Frequency: Event generated, monthly, quarterly, annually.

Affected Public: National banks and federal savings associations.

Estimated average hours per response:

50.40(a) (19 respondents)
Reporting (ongoing monthly)—.50
50.40(b) (19 respondents)
Reporting (ongoing)—.50
50.40(b)(3)(iv) (19 respondents)
Reporting (quarterly)—.50
50.22(a)(2) & (a)(5)) (19 respondents)
Recordkeeping (ongoing)—40
50.40(b) (19 respondents)
Recordkeeping (ongoing)—200

Estimated annual burden hours: 4,722.

Board

OMB control number: 7100–0367.

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with the Regulation WW.

Frequency: Event generated, monthly, quarterly, annually.

Affected Public: Insured state member banks, bank holding companies, and savings and loan holding companies, and foreign banking organizations.

Estimated average hours per response:

249.40(a) (3 respondents)
Reporting (ongoing monthly)—.50
249.40(b) (3 respondents)
Reporting (ongoing)—.50
249.40(b)(3)(iv) (3 respondents)
Reporting (quarterly)—.50
249.22(a)(2) & (a)(5) (23 respondents)
Recordkeeping (ongoing)—40
249.40(b) (3 respondents)
Recordkeeping (ongoing)—200
249.90, 249.91 (19 respondents)
Disclosure (quarterly)—24

Estimated annual burden hours: 3,370.

FDIC

OMB control number: 3064–0197.

Title of Information Collection: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (LCR).

Frequency: Event generated, monthly, quarterly, annually.

Affected Public: State nonmember banks and state savings associations.

Estimated average hours per response:

329.40(a) (2 respondents)
Reporting (ongoing monthly)—.50
329.40(b) (2 respondents)
Reporting (ongoing)—.50
329.40(b)(3)(iv) (2 respondents)
Reporting (quarterly)—.50
329.22(a)(2) & (a)(5) (2 respondents)
Recordkeeping (ongoing)—40
329.40(b) (2 respondents)
Recordkeeping (ongoing)—200

Estimated annual burden hours: 497.

Disclosure Burden—Advanced Approaches Banking Organizations

Current Actions

The final rule requires banking organizations subject to Category III standards to maintain a minimum supplementary leverage ratio of 3 percent given its size and risk profile. As a result, these intermediate holding companies would no longer be identified as ''advanced approaches banking organizations'' for purposes of the advanced approach disclosure respondent count.

Information Collections Proposed to be Revised:

OCC

Title of Information Collection: Risk-Based Capital Standards: Advanced Capital Adequacy Framework.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents: National banks, state member banks, state nonmember banks, and state and federal savings associations.

OMB control number: 1557–0318.

Estimated number of respondents: 1,365 (of which 18 are advanced approaches institutions).

Estimated average hours per response:
Minimum Capital Ratios
Recordkeeping (Ongoing)—16.
Standardized Approach
Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.
Advanced Approach
Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—328.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—41.

Estimated annual burden hours: 1,136 hours initial setup, 64,945 hours for ongoing.

Board

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated with Regulation Q.
Frequency: Quarterly, annual.
Affected Public: Businesses or other for-profit.
Respondents: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).
Current actions: This proposal would amend the definition of advanced approaches Board-regulated institution to include, as relevant here, a depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, and a U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5. Category III Board-regulated institutions would not be considered advanced approaches Board-regulated institutions. As a result, the Board estimates that 1 institution will no longer be an advanced approaches Board-regulated institution under the proposal.
Legal authorization and confidentiality: This information collection is authorized by section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(c)), section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)), section 9(6) of the Federal Reserve Act (12 U.S.C. 324), and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The obligation to respond to this information collection is mandatory. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4)). Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)).
Agency form number: FR Q.
OMB control number: 7100–0313.
Estimated number of respondents: 1,431 (of which 19 are advanced approaches institutions).
Estimated average hours per response:
Minimum Capital Ratios
Recordkeeping (Ongoing)—16.
Standardized Approach
Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.
Advanced Approach
Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—328.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—41.
Disclosure (Table 13 quarterly)—5.
Risk-based Capital Surcharge for GSIBs
Recordkeeping (Ongoing)—0.5.
Current estimated annual burden hours: 1,136 hours initial setup, 78,591 hours for ongoing.
Proposed revisions estimated annual burden: 1,582 hours.
Total estimated annual burden: 1,136 hours initial setup, 80,173 hours for ongoing.

FDIC

Title of Information Collection: Regulatory Capital Rule.
Frequency: Quarterly, annual.
Affected Public: Businesses or other for-profit.
Respondents: State nonmember banks, state savings associations, and certain subsidiaries of those entities.
OMB control number: 3064–0153.
Estimated number of respondents: 3,489 (of which 1 is an advanced approaches institution).
Estimated average hours per response:
Minimum Capital Ratios
Recordkeeping (Ongoing)—16.
Standardized Approach
Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.
Advanced Approach
Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—328.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—41.
Estimated annual burden hours: 1,136 hours initial setup, 126,920 hours for ongoing.

Reporting Burden—FFIEC and Board Forms

Current Actions

The final rule requires changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557–0081 (OCC), 7100–0036 (Board), and 3064–0052 (FDIC)) and Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Nos. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)), which will be addressed in a separate **Federal Register** notice.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''), requires an agency, in connection with a final rule, to prepare a final Regulatory Flexibility Analysis describing the impact of the final rule on small entities (defined by the Small Business Administration (''SBA'') for purposes of the RFA to include banking entities with total assets of $600 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The OCC currently supervises approximately 755 small entities.[107] Because the final rule only applies to banking organizations with total consolidated assets of $100 billion or more, it will not impact any OCC-supervised small entities. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Board: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small

[107] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

entities.[108] However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[109] For the reasons described below and under section 605(b) of the RFA, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities. As of June 30, 2019, there were 2,976 bank holding companies, 133 savings and loan holding companies, and 537 state member banks that would fit the SBA's current definition of ''small entity'' for purposes of the RFA.

The Board is finalizing amendments to Regulations Q[110] and WW[111] that would affect the regulatory requirements that apply to state member banks, U.S. bank holding companies, U.S. covered savings and loan holding companies, and U.S. intermediate holding companies with $50 billion or more in total consolidated assets. These changes are consistent with EGRRCPA, which amended section 165 of the Dodd-Frank Act. The reasons and justification for the final rule are described above in more detail in this **SUPPLEMENTARY INFORMATION.**

The assets of institutions subject to this final rule substantially exceed the $600 million asset threshold under which a banking organization is considered a ''small entity'' under SBA regulations. Because the final rule is not likely to apply to any depository institution or company with assets of $600 million or less, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.[112] However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[113] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2019, the FDIC supervised 3,424 institutions, of which 2,665 are considered small entities for the purposes of RFA.[114]

As discussed in Section I, the final rule establishes four risk-based categories for determining the regulatory capital and liquidity requirements applicable to large U.S. banking organizations and the U.S. intermediate holding companies of foreign banking organizations. The final rule applies to banking organizations with greater than $100 billion in assets. The final rule also affects certain banking organizations with greater than $50 billion in assets that were subject to the modified LCR requirement.[115]

Small banking organizations, as defined by the SBA, must have less than $600 million in total assets amongst its affiliates. Thus, no small banking organizations meet the minimum asset thresholds of banking organizations affected by the final rule. Since this proposal does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[116] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[117] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[118]

The Federal banking agencies considered the administrative burdens and benefits of the rule and its elective framework in determining its effective date and administrative compliance requirements. As such, the final rule

[108] 5 U.S.C. 601 *et seq.*

[109] *See* 13 CFR 121.201. Effective August 19, 2019, the Small Business Administration revised the size standards for banking organizations to $600 million in assets from $550 million in assets. *See* 84 FR 34261 (July 18, 2019). Consistent with the General Principles of Affiliation in 13 CFR 121.103, the Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity.

[110] 12 CFR part 217.

[111] 12 CFR part 249.

[112] 5 U.S.C. 601 *et seq.*

[113] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[114] Consolidated Reports of Condition and Income for the quarter ending June 30, 2019.

[115] *See* 12 CFR part 249, subpart G.

[116] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[117] 12 U.S.C. 4802(a).

[118] 12 U.S.C. 4802.

will be effective on the first day of the first calendar quarter following December 31, 2019. In addition, any banking organization subject to the final rule may elect to adopt amendments on December 31, 2019.[119]

E. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[120] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[121]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[122] As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

Pursuant to the Congressional Review Act, the Office of Management and Budget's Office of Information and Regulatory Affairs (OMB) designated this rule as a ''major rule,'' as defined at 5 U.S.C. 804(2), as applied to OCC-supervised institutions [and Board-supervised institutions]. However, for FDIC-supervised institutions, OMB determined that this final rule is not a ''major rule,'' as defined in 5 U.S.C. 804(2).

F. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that this rule will not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year.[123] Accordingly, the OCC has not prepared a written statement to accompany this rule.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Federal Reserve System, National banks, Reporting and recordkeeping requirements.

12 CFR Part 50

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements.

12 CFR Part 217

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

12 CFR Part 249

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements.

[119] 12 U.S.C. 4802(b)(2).

[120] 5 U.S.C. 801 *et seq.*

[121] 5 U.S.C. 801(a)(3).

[122] 5 U.S.C. 804(2).

[123] The OCC identifies 29 OCC-supervised institutions that fall within the scope of the final rule. However, only 12 of these institutions will be impacted by the final rule. The remaining 17 institutions will not have any change from their current capital and liquidity requirements and thus will not be impacted by the final rule. Assuming a compensation cost of $114 per hour, the OCC estimates that that the final rule will result in one-time administrative costs of approximately $109,440. The OCC estimates that each institution will spend approximately 80 hours to modify policies and procedures (80 hours × $114 per hour × 12 institutions = $109,440). Consistent with the UMRA, the OCC review considers whether the mandates imposed by the final rule may result in an expenditure of $100 million or more by state, local, and tribal governments, or by the private sector, in any one year, adjusted annually for inflation (currently $154 million). The OCC interprets expenditure to mean assessment of costs (*i.e.,* this part of the UMRA analysis assesses the costs of a rule on OCC-supervised entities, rather than the overall impact). The UMRA expenditure estimate for the final rule is approximately $109,440.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION section, chapter I of title 12 of the Code of Federal Regulations to be amended as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. In § 3.1, add paragraph (f)(5) to read as follows:

§ 3.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(f) * * *

(5) A national bank or Federal savings association that changes from one category of national bank or Federal savings association to another of such categories must comply with the requirements of its category in this part, including applicable transition provisions of the requirements in this part, no later than on the first day of the second quarter following the change in the national bank's or Federal savings association's category.

■ 3. In § 3.2, add the definitions of *Category II national bank or Federal savings association, Category III national bank or Federal savings association, FR Y–9LP,* and *FR Y–15* in alphabetical order to read as follows:

§ 3.2 Definitions.

* * * * *

Category II national bank or Federal savings association means:

(1) A national bank or Federal savings association that is a subsidiary of a Category II banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) A national bank or Federal savings association that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent quarters, total consolidated assets is based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraph (2)(ii) of this definition, a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association has:

(A)(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form; or

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

Category III national bank or Federal savings association means:

(1) A national bank or Federal savings association that is a subsidiary of a Category III banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A national bank or Federal savings association that is a subsidiary of a depository institution that meets the criteria in paragraph (3)(ii)(A) or (B) of this definition; or

(3) A national bank or Federal savings association that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; and

(*2*) At least one of the following in paragraphs (3)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each calculated as the average of the four most recent calendar quarters, or if the depository institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a depository institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraph (3)(ii) of this definition, a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association:

(A) Has:

(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a national bank's or Federal savings association's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the national bank or Federal savings association, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II national bank or Federal savings association.

* * * * *

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

FR Y–15 means the Systemic Risk Report.

* * * * *

■ 4. In § 3.10, revise paragraphs (a)(5), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 3.10 Minimum capital requirements.

(a) * * *

(5) For advanced approaches national banks and Federal savings associations, and for Category III national banks and Federal savings associations, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches and Category III capital ratio calculations.* An advanced approaches national bank or Federal savings association that has completed the parallel run process and received notification from the OCC pursuant to § 3.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association institution meets any of the criteria in § 3.100(b)(1). A Category III national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association is identified as a Category III national bank or Federal savings association.

* * * * *

(4) * * *

(i) An advanced approaches national bank's or Federal savings association's or a Category III national bank's or Federal savings association's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter of which is calculated as the sum of:

* * * * *

■ 5. In § 3.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 3.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(b) * * *

(1) *General.* An advanced approaches national bank or Federal savings association, and a Category III national bank or Federal savings association, must calculate a countercyclical capital buffer amount in accordance with paragraphs (b)(1)(i) through (iv) of this section for purposes of determining its maximum payout ratio under Table 1 to this section.

* * * * *

(ii) *Amount.* An advanced approaches national bank or Federal savings association, and a Category III national bank or Federal savings association, has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the national bank's or Federal savings association's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 6. In § 3.22, revise paragraph (b)(2)(ii) introductory text to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

* * * * *

(b) * * *

(2) * * *

(ii) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must make its AOCI opt-out election in the Call Report:

(A) If the national bank or Federal savings association is a Category III national bank or Federal savings association, during the first reporting period after the national bank or Federal savings association meets the definition of a Category III national bank or Federal savings association in § 3.2; or

(B) If the national bank or Federal savings association is not a Category III national bank or Federal savings association, during the first reporting period after the national bank or Federal savings association is required to comply with subpart A of this part as set forth in § 3.1(f).

* * * * *

■ 7. In § 3.63, add paragraphs (d) and (e) to read as follows:

§ 3.63 Disclosures by national banks or Federal savings associations described in § 3.61.

* * * * *

(d) A Category III national bank or Federal savings association that is required to publicly disclose its supplementary leverage ratio pursuant to § 3.172(d) is subject to the supplementary leverage ratio disclosure requirement at § 3.173(a)(2).

(e) A Category III national bank or Federal savings association that is required to calculate a countercyclical capital buffer pursuant to § 3.11 is subject to the disclosure requirement at Table 4 to § 3.173, ''Capital Conservation and Countercyclical Capital Buffers,'' and not to the disclosure requirement at Table 4 to this section, ''Capital Conservation Buffer.''

■ 8. In § 3.100, revise paragraph (b)(1), remove paragraph (b)(2), and redesignate paragraph (b)(3) as paragraph (b)(2) to read as follows:

§ 3.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to a national bank or Federal savings association that:

(i) Is a subsidiary of a global systemically important BHC, as identified pursuant to 12 CFR 217.402;

(ii) Is a Category II national bank or Federal savings association;

(iii) Is a subsidiary of a depository institution that uses the advanced approaches pursuant to this subpart (OCC), 12 CFR part 217, subpart E (Board), or 12 CFR part 324 (FDIC), to calculate its risk-based capital requirements;

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses the advanced approaches pursuant to subpart E of 12 CFR part 217 to calculate its risk-based capital requirements; or

(v) Elects to use this subpart to calculate its risk-based capital requirements.

■ 9. In § 3.172, revise paragraph (d)(2) to read as follows:

§ 3.172 Disclosure requirements.

* * * * *

(d) * * *

(2) A national bank or Federal savings association that meets any of the criteria in § 3.100(b)(1) on or after January 1, 2015, or a Category III national bank or Federal savings association must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association becomes an advanced approaches national bank or Federal savings association or a Category III national bank or Federal savings association. This disclosure requirement applies without regard to whether the national bank or Federal savings association has completed the parallel run process and has received notification from the OCC pursuant to § 3.121(d).

■ 10. In § 3.173, revise the section heading and paragraph (a)(2) to read as follows:

§ 3.173 Disclosures by certain advanced approaches national banks or Federal savings associations and Category III national banks or Federal savings associations.

* * * * *

(a) * * *

(2) An advanced approaches national bank or Federal savings association and a Category III national bank or Federal savings association that is required to publicly disclose its supplementary leverage ratio pursuant to § 3.172(d) must make the disclosures required under Table 13 to this section unless the national bank or Federal savings association is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public

disclosure requirements in its home jurisdiction.

* * * * *

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 11. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 481, 1818, and 1462 *et seq.*

■ 12. Revise § 50.1 to read as follows:

§ 50.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard for certain national banks and Federal savings associations on a consolidated basis, as set forth in this part.

(b) *Applicability.* (1) A national bank or Federal savings association is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a:

(A) GSIB depository institution supervised by the OCC;

(B) Category II national bank or Federal savings association; or

(C) Category III national bank or Federal savings association; or

(ii) The OCC has determined that application of this part is appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company;

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i); or

(iii) A Federal branch or agency as defined by 12 CFR 28.11.

(3) In making a determination under paragraph (b)(1)(ii) of this section, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.404.

■ 13. In § 50.3:

■ a. Add a definition for ''Average weighted short-term wholesale funding'' in alphabetical order;

■ b. Revise the definition of ''Calculation date'';

■ c. Add definitions for ''Call Report'', ''Category II national bank or Federal savings association'', and ''Category III national bank or Federal savings association'' in alphabetical order;

■ d. Revise the definition of ''Covered depository institution holding company'';

■ e. Add definitions of ''FR Y–9LP'', ''FR Y–15'', ''Global systemically important BHC'', and ''GSIB depository institution'' in alphabetical order;

■ f. Revise the definition of ''Regulated financial company''; and

■ g. Add definitions for ''State'' and ''U.S. intermediate holding company'' in alphabetical order.

The additions and revisions read as follows:

§ 50.3 Definitions.

* * * * *

Average weighted short-term wholesale funding means the average of the national bank's or Federal savings association's weighted short-term wholesale funding for each of the four most recent calendar quarters as reported quarterly on the FR Y–15 or, if the national bank or Federal savings association has not filed the FR Y–15 for each of the four most recent calendar quarters, for the most recent quarter or averaged over the most recent quarters, as applicable.

* * * * *

Calculation date means, for purposes of subparts A through F of this part, any date on which a national bank or Federal savings association calculates its liquidity coverage ratio under § 50.10.

Call Report means the Consolidated Reports of Condition and Income.

* * * * *

Category II national bank or Federal savings association means:

(1)(i) A national bank or Federal savings association that:

(A) Is a consolidated subsidiary of:

(*1*) A company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(*2*) A U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5; or

(*3*) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable. After meeting the criteria under this paragraph (1), a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the national bank or Federal savings association is no longer a consolidated subsidiary of an entity described in paragraph (1)(i)(A)(*1*), (*2*), or (*3*) of this definition; or

(2) A national bank or Federal savings association that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association:

(A)(*1*) Has less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

Category III national bank or Federal savings association means:

(1)(i) A national bank or Federal savings association that:

(A) Is a consolidated subsidiary of:

(*1*) A company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(*2*) A U.S. intermediate holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5; or

(*3*) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable. After meeting the criteria under this paragraph (1), a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the national bank or Federal savings association is no longer a consolidated subsidiary of an entity described in paragraph (1)(i)(A)(*1*), (*2*), or (*3*) of this definition; or

(2) A national bank or Federal savings association that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(*2*) One or more of the following in paragraphs (2)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each measured as the average of the four most recent calendar quarters, or if the depository institution has not filed the FR Y–9LP or equivalent reporting form, Call Report, or FR Y–15 or equivalent reporting form, as applicable for each of the four most recent calendar quarters, for the most recent quarter or the average of the most recent quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association:

(A)(*1*) Has less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Has less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Has less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report; and

(*4*) Has less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II national bank or Federal savings bank; or

(D) Is a GSIB depository institution.

* * * * *

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company;

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (3)(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System; or

(4) A U.S. intermediate holding company.

* * * * *

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

FR Y–15 means the Systemic Risk Report.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or the average of the most recent calendar quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) website,[2] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under 12 CFR part 249;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462);

(7) A U.S. intermediate holding company; and

(8) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (7) of this definition (*e.g.,* a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(9) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

* * * * *

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

* * * * *

U.S. intermediate holding company means the top-tier company that is required to be established pursuant to 12 CFR 252.153.

* * * * *

■ 14. In § 50.10, revise paragraph (a) to read as follows:

§ 50.10 Liquidity coverage ratio.

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, a national bank or Federal savings association must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day in accordance with this part. A national bank or Federal savings association must calculate its liquidity coverage ratio as of the same time on each calculation date (the elected calculation time). The national bank or Federal savings association must select this time by written notice to the OCC prior to December 31, 2019. The national bank or Federal savings association may not thereafter change its elected calculation time without prior written approval from the OCC.

* * * * *

■ 15. In § 50.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 50.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a national bank's or Federal savings association's total net cash outflow amount equals the national bank's or Federal savings association's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 50.32(a) through (l); minus

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 50.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; plus

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* A national bank's or Federal savings association's outflow adjustment percentage is determined pursuant to Table 1 to this paragraph (c).

[2] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

TABLE 1 TO § 50.30(c)—OUTFLOW ADJUSTMENT PERCENTAGES

	Percent
Outflow adjustment percentage	
GSIB depository institution that is a national bank or Federal savings association	100
Category II national bank or Federal savings association	100
Category III national bank or Federal savings association that: (1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part, in each case with $75 billion or more in average weighted short-term wholesale funding; or (2) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part	100
Category III national bank or Federal savings association that: (1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part, in each case with less than $75 billion in average weighted short-term wholesale funding; or (2) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part	85

(d) *Transition into a different outflow adjustment percentage.* (1) A national bank or Federal savings association whose outflow adjustment percentage increases from a lower to a higher outflow adjustment percentage may continue to use its previous lower outflow adjustment percentage until the first day of the third calendar quarter after the outflow adjustment percentage increases.

(2) A national bank or Federal savings association whose outflow adjustment percentage decreases from a higher to a lower outflow adjustment percentage must continue to use its previous higher outflow adjustment percentage until the first day of the first calendar quarter after the outflow adjustment percentage decreases.

■ 16. Revise § 50.50 to read as follows:

§ 50.50 Transitions.

(a) *No transition for certain national banks and Federal savings association.* A national bank or Federal savings association that is subject to the minimum liquidity standard and other requirements of this part prior to December 31, 2019 must comply with the minimum liquidity standard and other requirements of this part as of December 31, 2019.

(b) [Reserved]

(c) *Initial application.* (1) A national bank or Federal savings association that initially becomes subject to the minimum liquidity standard and other requirements of this part under § 50.1(b)(1)(i) must comply with the requirements of this part beginning on the first day of the third calendar quarter after which the national bank or Federal savings association becomes subject to this part, except that a national bank or Federal savings association must:

(i) For the first two calendar quarters after the national bank or Federal savings association begins complying with the minimum liquidity standard and other requirements of this part, calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(ii) Beginning the first day of the fifth calendar quarter after the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part and continuing thereafter, calculate and maintain a liquidity coverage ratio on each calculation date.

(2) A national bank or Federal savings association that becomes subject to the minimum liquidity standard and other requirements of this part under § 50.1(b)(1)(ii), must comply with the requirements of this part subject to a transition period specified by the OCC.

(d) *Transition into a different outflow adjustment percentage.* A national bank or Federal savings association whose outflow adjustment percentage changes is subject to transition periods as set forth in § 50.30(d).

(e) *Compliance date.* The OCC may extend or accelerate any compliance date of this part if the OCC determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the OCC will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with this part, and the actions the national bank or Federal savings association is taking to come into compliance with this part.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Supplementary Information section, chapter II of title 12 of the Code of Federal Regulations is to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 17. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 18. In § 217.1, add paragraph (f)(5) to read as follows:

§ 217.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(f) * * *

(5) A depository institution holding company, a U.S. intermediate holding company, or a state member bank that changes from one category of Board-regulated institution to another of such categories must comply with the requirements of its category in this part, including applicable transition provisions of the requirements in this part, no later than on the first day of the second quarter following the change in the company's category.

■ 19. In § 217.2, add definitions for ''Category II Board-regulated institution'', ''Category III Board-regulated institution'', ''FR Y–9LP'', ''FR Y–15'', and ''U.S. intermediate holding company'' in alphabetical order to read as follows:

§ 217.2 Definitions.

* * * * *

Category II Board-regulated institution means:

(1) A depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5;

(3) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition; or

(4) A state member bank that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the state member bank has not filed the Call Report for each of the four most recent quarters, total consolidated assets is based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraph (4)(i) of this section, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A) Has:

(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

Category III Board-regulated institution means:

(1) A depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5;

(3) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition;

(4) A depository institution that:

(i) Is not a subsidiary of a depository institution holding company;

(ii)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; and

(*2*) At least one of the following in paragraphs (4)(i)(B)(*2*)(*i*) through (*iii*) of this definition, each calculated as the average of the four most recent calendar quarters:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more; or

(iii) [Reserved]

(iv) After meeting the criteria in paragraph (4)(ii) of this definition, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A) Has:

(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the

Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II Board-regulated institution.

* * * * *

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

FR Y–15 means the Systemic Risk Report.

* * * * *

U.S. intermediate holding company means the company that is required to be established or designated pursuant to 12 CFR 252.153.

* * * * *

■ 20. In § 217.10, revise paragraphs (a)(5), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 217.10 Minimum capital requirements.

(a) * * *

(5) For advanced approaches Board-regulated institutions or, for Category III Board-regulated institutions, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches and Category III capital ratio calculations.* An advanced approaches Board-regulated institution that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution meets any of the criteria in § 217.100(b)(1). A Category III Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution is identified as a Category III Board-regulated institution.

* * * * *

(4) * * *

(i) An advanced approaches Board-regulated institution's or a Category III Board-regulated institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter which is calculated as the sum of:

* * * * *

■ 21. In § 217.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

* * * * *

(b) * * *

(1) *General.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution must calculate a countercyclical capital buffer amount in accordance with this paragraph (b) for purposes of determining its maximum payout ratio under Table 1 to this section.

* * * * *

(ii) *Amount.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the Board-regulated institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 22. In § 217.22, revise paragraph (b)(2)(ii) to read as follows:

§ 217.22 Regulatory capital adjustments and deductions.

* * * * *

(b) * * *

(2) * * *

(ii) A Board-regulated institution that is not an advanced approaches Board-regulated institution must make its AOCI opt-out election in the Call Report, for a state member bank, FR Y–9C, for bank holding companies or savings and loan holding companies:

(A) If the Board-regulated institution is a Category III Board-regulated institution or Category IV Board-regulated institution, during the first reporting period after the Board-regulated institution meets the definition of a Category III Board-regulated institution or Category IV Board-regulated institution in § 217.2; or

(B) If the A Board-regulated institution is not a Category III Board-regulated institution and not a Category IV Board-regulated institution, during the first reporting period after the Board-regulated institution is required to comply with subpart A of this part as set forth in § 217.1(f).

* * * * *

■ 23. In § 217.63, add paragraphs (d) and (e) to read as follows:

§ 217.63 Disclosures by Board-regulated institutions described in § 217.61.

* * * * *

(d) A Category III Board-regulated institution that is required to publicly disclose its supplementary leverage ratio pursuant to § 217.172(d) is subject to the supplementary leverage ratio disclosure requirement at § 217.173(a)(2).

(e) A Category III Board-regulated institution that is required to calculate a countercyclical capital buffer pursuant to § 217.11 is subject to the disclosure requirement at Table 4 to § 217.173, ''Capital Conservation and Countercyclical Capital Buffers,'' and not to the disclosure requirement at Table 4 to this section, ''Capital Conservation Buffer.''

■ 24. In § 217.100, revise paragraph (b)(1), remove paragraph (b)(2), and redesignate paragraph (b)(3) as paragraph (b)(2) to read as follows:

§ 217.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) * * *

(1) This subpart applies to:

(i) A top-tier bank holding company or savings and loan holding company domiciled in the United States that:

(A) Is not a consolidated subsidiary of another bank holding company or savings and loan holding company that uses this subpart to calculate its risk-based capital requirements; and

(B) That:

(*1*) Is identified as a global systemically important BHC pursuant to § 217.402;

(*2*) Is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10; or

(*3*) Has a subsidiary depository institution that is required, or has elected, to use 12 CFR part 3, subpart E (OCC), this subpart (Board), or 12 CFR part 324, subpart E (FDIC), to calculate its risk-based capital requirements;

(ii) A state member bank that:

(A) Is a subsidiary of a global systemically important BHC;

(B) Is a Category II Board-regulated institution;

(C) Is a subsidiary of a depository institution that uses 12 CFR part 3, subpart E (OCC), this subpart (Board), or 12 CFR part 324, subpart E (FDIC), to calculate its risk-based capital requirements; or

(D) Is a subsidiary of a bank holding company or savings and loan holding company that uses this subpart to calculate its risk-based capital requirements; or

(iii) Any Board-regulated institution that elects to use this subpart to calculate its risk-based capital requirements.

* * * * *

■ 25. In § 217.172, revise paragraph (d)(2) to read as follows:

§ 217.172 Disclosure requirements.

* * * * *

(d) * * *

(2) A Board-regulated that meets any of the criteria in § 217.100(b)(1) on or after January 1, 2015, or a Category III Board-regulated institution must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution becomes an advanced approaches Board-regulated institution or a Category III Board-regulated institution. This disclosure requirement applies without regard to whether the Board-regulated institution has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d).

■ 26. In § 217.173, revise the section heading and paragraph (a)(2) to read as follows:

§ 217.173 Disclosures by certain advanced approaches Board-regulated institutions and Category III Board-regulated institutions.

(a) * * *

(2) An advanced approaches Board-regulated institution and a Category III Board-regulated institution that is required to publicly disclose its supplementary leverage ratio pursuant to § 217.172(d) must make the disclosures required under Table 13 to this section unless the Board-regulated institution is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

* * * * *

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 27. Revise the authority citation for part 249 to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368; 12 U.S.C. 3101 *et seq.*

■ 28. Revise § 249.1 to read as follows:

§ 249.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard for certain Board-regulated institutions on a consolidated basis, as set forth in this part.

(b) *Applicability.* (1) A Board-regulated institution is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a:

(A) Global systemically important BHC;

(B) GSIB depository institution;

(C) Category II Board-regulated institution;

(D) Category III Board-regulated institution; or

(E) Category IV Board-regulated institution with $50 billion or more in average weighted short-term wholesale funding;

(ii) It is a covered nonbank company; or

(iii) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(3) In making a determination under paragraph (b)(1)(iii) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

(c) *Covered nonbank companies.* The Board will establish a minimum liquidity standard and other requirements for a designated company under this part by rule or order. In establishing such standard, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act and may tailor the application of the requirements of this part to the designated company based on the nature, scope, size, scale, concentration, interconnectedness, mix of the activities of the designated company, or any other risk-related factor that the Board determines is appropriate.

■ 29. Amend § 249.3 by:

■ a. Adding a definition for ''Average weighted short-term wholesale funding'' in alphabetical order;

■ b. Revising the definitions for ''Board-regulated institution'' and ''Calculation date'' in alphabetical order;

■ c. Adding the definitions for ''Call Report'', ''Category II Board-regulated institution'', ''Category III Board-regulated institution'', and ''Category IV Board-regulated institution'' in alphabetical order;

■ d. Revising the definition for ''Covered depository institution holding company'';

■ e. Adding the definitions for ''FR Y–9LP'', ''FR Y–15'', ''Global systemically important BHC'', and ''GSIB depository institution'' in alphabetical order;

■ f. Revising the definition for ''Regulated financial company''; and

■ g. Adding the definitions for ''State'' and ''U.S. intermediate holding company'' in alphabetical order.

The additions and revisions read as follows:

§ 249.3 Definitions.

* * * * *

Average weighted short-term wholesale funding means the average of the weighted short-term wholesale funding for each of the four most recent calendar quarters as reported quarterly on the FR Y–15 or, if the Board-regulated institution has not filed the FR Y–15 for each of the four most recent calendar quarters, for the most recent quarter or averaged over the most recent quarters, as applicable.

* * * * *

Board-regulated institution means a state member bank, covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company.

* * * * *

Calculation date means, for purposes of subparts A through J of this part, any date on which a Board-regulated institution calculates its liquidity coverage ratio under § 249.10.

Call Report means the Consolidated Reports of Condition and Income.

Category II Board-regulated institution means:

(1) A covered depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10;

(2) A U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5;

(3)(i) A state member bank that:

(A) Is a consolidated subsidiary of:

(*1*) A company described in paragraph (1) or (2) of this definition; or

(*2*) A depository institution that meets the criteria in paragraph (4)(ii)(A) or (B) of this definition; and

(B) That has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable. After meeting the criteria under this paragraph (3), a state member bank continues to be a Category II Board-regulated institution until the state member bank has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the state member bank is no longer a consolidated subsidiary of a company described in paragraph (3)(i)(A)(*1*) or (*2*) of this definition; or

(4) A state member bank that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraphs (4)(i) and (ii) of this definition, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A)(*1*) Has less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

Category III Board-regulated institution means:

(1) A covered depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5;

(3)(i) A state member bank that is:

(A) A consolidated subsidiary of:

(*1*) A company described in paragraph (1) or (2) of this definition; or

(*2*) A depository institution that meets the criteria in paragraph (4)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable. After meeting the criteria under this paragraph (3), a state member bank continues to be a Category III Board-regulated institution until the state member bank has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the state member bank is no longer a consolidated subsidiary of a company described in paragraph (3)(i)(A)(*1*) or (*2*) of this definition; or

(4) A state member bank that:

(i) Is not a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent quarters as reported on the most recent Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent calendar quarters as reported on the most recent Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(*2*) At least one of the following in paragraphs (4)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each measured as the average of the four most recent calendar quarters, or if the depository institution has not filed the FR Y–9LP or equivalent reporting form, Call Report, or FR Y–15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters, for the most recent quarter or the average of the most recent quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraphs (4)(i) and (ii) of this definition, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A)(*1*) Has less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Has less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Has less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; and

(*4*) Has less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II Board-regulated institution; or

(D) Is a GSIB depository institution.

Category IV Board-regulated institution means:

(1) A covered depository institution holding company that is identified as a Category IV banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) A U.S. intermediate holding company that is identified as a Category IV banking organization pursuant to 12 CFR 252.5.

* * * * *

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company;

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (3)(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System; or

(4) A U.S. intermediate holding company.

* * * * *

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

FR Y–15 means the Systemic Risk Report.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or the average of the most recent calendar quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) website,[2] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under this part;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1a); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462);

(7) A U.S. intermediate holding company; and

(8) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (7) of this definition (*e.g.,* a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(9) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

* * * * *

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American

[2] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

Samoa, Guam, or the United States Virgin Islands.

* * * * *

U.S. intermediate holding company means a top-tier company that is required to be established pursuant to 12 CFR 252.153.

* * * * *

■ 30. In § 249.10, revise paragraph (a), redesignate paragraph (b) as paragraph (c), and add new paragraph (b) to read as follows:

§ 249.10 Liquidity coverage ratio.

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, a Board-regulated institution must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day (or, in the case of a Category IV Board-regulated institution, on the last business day of the applicable month) in accordance with this part. A Board-regulated institution must calculate its liquidity coverage ratio as of the same time on each calculation date (the elected calculation time). The Board-regulated institution must select this time by written notice to the Board prior to December 31, 2019. The Board-regulated institution may not thereafter change its elected calculation time without prior written approval from the Board.

(b) *Transition from monthly calculation to daily calculation.* A Board-regulated institution that was a Category IV Board-regulated institution immediately prior to moving to a different category must begin calculating and maintaining a liquidity coverage ratio each business day beginning on the first day of the fifth quarter after becoming a Category I Board-regulated institution, Category II Board-regulated institution, or Category III Board-regulated institution.

* * * * *

■ 31. In § 249.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 249.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a Board-regulated institution's total net cash outflow amount equals the Board-regulated institution's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 249.32(a) through (l); *minus*

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 249.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; *plus*

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* A Board-regulated institution's outflow adjustment percentage is determined pursuant to Table 1 to this paragraph (c).

TABLE 1 TO § 249.30(c)—OUTFLOW ADJUSTMENT PERCENTAGES

	Percent
Outflow adjustment percentage	
Global systemically important BHC or GSIB depository institution	100
Category II Board-regulated institution	100
Category III Board-regulated institution with $75 billion or more in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution	100
Category III Board-regulated institution with less than $75 billion in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution	85
Category IV Board-regulated institution with $50 billion or more in average weighted short-term wholesale funding	70

(d) *Transition into a different outflow adjustment percentage.* (1) A Board-regulated institution whose outflow adjustment percentage increases from a lower to a higher outflow adjustment percentage may continue to use its previous lower outflow adjustment percentage until the first day of the third calendar quarter after the outflow adjustment percentage increases.

(2) A Board-regulated institution whose outflow adjustment percentage decreases from a higher to a lower outflow adjustment percentage must continue to use its previous higher outflow adjustment percentage until the first day of the first calendar quarter after the outflow adjustment percentage decreases.

■ 32. Revise § 249.50 to read as follows:

§ 249.50 Transitions.

(a) *No transitions for certain Board-regulated institutions.* A Board-regulated institution that is subject to the minimum liquidity standards and other requirements of this part immediately prior to December 31, 2019 must comply with the requirements of this part as of December 31, 2019.

(b) *Transitions for certain U.S. intermediate holding companies.* A U.S. intermediate holding company that initially becomes subject to this part on December 31, 2019 does not need to comply with the minimum liquidity standard of § 249.10 or with the public disclosure requirements of § 249.90 until December 31, 2020, at which time the U.S. intermediate holding company must comply with the minimum liquidity standard of § 249.10 each business day (or, in the case of a Category IV Board-regulated institution, on the last business day of the applicable calendar month) in accordance with this part, and with the public disclosure requirements of § 249.90.

(c) *Initial application.* (1) A Board-regulated institution that initially becomes subject to the minimum liquidity standard and other requirements of this part under § 249.1(b)(1)(i) or (ii) after December 31, 2019, must comply with the requirements of this part beginning on the first day of the third calendar quarter after which the Board-regulated institution becomes subject to this part, except that a Board-regulated institution that is not a Category IV Board-regulated institution must:

(i) For the first two calendar quarters after the Board-regulated institution begins complying with the minimum liquidity standard and other requirements of this part, calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(ii) Beginning the first day of the fifth calendar quarter after the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part and continuing thereafter, calculate and maintain a liquidity coverage ratio on each calculation date.

(2) A Board-regulated institution that becomes subject to the minimum liquidity standard and other requirements of this part under § 249.1(b)(1)(iii) must comply with the requirements of this part subject to a transition period specified by the Board.

(d) *Transition into a different outflow adjustment percentage.* (1) A Board-regulated institution whose outflow adjustment percentage changes is subject to transition periods as set forth in § 249.30(d).

(2) A Board-regulated institution that is no longer subject to the minimum liquidity standard and other requirements of this part pursuant to § 249.1(b)(1)(i) or (ii) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, instructions to the FR Y–9LP or the FR Y–15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with this part as of the first day of the first quarter after it is no longer subject to § 249.1(b).

(e) *Reservation of authority.* The Board may extend or accelerate any compliance date of this part if the Board determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Board will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with this part, and the actions the Board-regulated institution is taking to come into compliance with this part.

Subpart G—[Removed and Reserved]

■ 33. Remove and reserve subpart G, consisting of §§ 249.60 through 249.64.

■ 34. In § 249.90, revise paragraphs (a) and (b) to read as follows:

§ 249.90 Timing, method and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to § 249.1 must disclose publicly all the information required under this subpart.

(b) *Timing of disclosure.* (1) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company subject to this subpart must provide timely public disclosures each calendar quarter of all the information required under this subpart.

(2) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to this subpart must provide the disclosures required by this subpart beginning with the first calendar quarter that includes the date that is 18 months after the covered depository institution holding company or U.S. intermediate holding company first became subject to this subpart.

* * * * *

■ 35. In § 249.91:

■ a. Revise Table 1 to § 249.91(a);

■ b. In paragraph (b)(1)(i)(B):

■ i. Remove ''(c)(1), (c)(5), (c)(9), (c)(14), (c)(19), (c)(23), and (c)(28)'' and add in its place ''(c)(1), (5), (9), (14), (19), (23), and (28)''; and

■ ii. Remove the semicolon at the end of the paragraph and add a period in its place.

■ c. Remove paragraph (b)(1)(ii) and redesignate paragraph (b)(1)(iii) as paragraph (b)(1)(ii);

■ d. Revise paragraphs (c)(32) and (33): and

■ e. Add paragraphs (c)(34) and (35).

The revisions and additions read as follows:

§ 249.91 Disclosure requirements.

(a) * * *

TABLE 1 TO § 249.91(a)—DISCLOSURE TEMPLATE

XX/XX/XXXX to YY/YY/YYYY (In millions of U.S. dollars)	Average unweighted amount	Average weighted amount
High-Quality Liquid Assets		
1. Total eligible high-quality liquid assets (HQLA), of which:		
2. Eligible level 1 liquid assets		
3. Eligible level 2A liquid assets		
4. Eligible level 2B liquid assets		
Cash Outflow Amounts		
5. Deposit outflow from retail customers and counterparties, of which:		
6. Stable retail deposit outflow		
7. Other retail funding		
8. Brokered deposit outflow		
9. Unsecured wholesale funding outflow, of which:		
10. Operational deposit outflow		
11. Non-operational funding outflow		
12. Unsecured debt outflow		
13. Secured wholesale funding and asset exchange outflow		
14. Additional outflow requirements, of which:		
15. Outflow related to derivative exposures and other collateral requirements		
16. Outflow related to credit and liquidity facilities including unconsolidated structured transactions and mortgage commitments		
17. Other contractual funding obligation outflow		
18. Other contingent funding obligations outflow		
19. Total Cash Outflow		
Cash Inflow Amounts		
20. Secured lending and asset exchange cash inflow		
21. Retail cash inflow		
22. Unsecured wholesale cash inflow		
23. Other cash inflows, of which:		

TABLE 1 TO § 249.91(a)—DISCLOSURE TEMPLATE—Continued

XX/XX/XXXX to YY/YY/YYYY (In millions of U.S. dollars)	Average unweighted amount	Average weighted amount
24. Net derivative cash inflow		
25. Securities cash inflow		
26. Broker-dealer segregated account inflow		
27. Other cash inflow		
28. Total Cash Inflow		
		Average amount [1]
29. HQLA Amount		
30. Total Net Cash Outflow Amount Excluding The Maturity Mismatch Add-On		
31. Maturity Mismatch Add-On		
32. Total Unadusted Net Cash Outflow Amount		
33. Outflow Adjustment Percentage		
34. Total Adjusted Net Cash Outflow Amount		
35. Liquidity Coverage Ratio (%)		

[1] The amounts reported in this column may not equal the calculation of those amounts using component amounts reported in rows 1–28 due to technical factors such as the application of the level 2 liquid asset caps and the total inflow cap.

* * * * *

(c) * * *

(32) The average amount of the total net cash outflow amount as calculated under § 249.30 prior to the application of the applicable outflow adjustment percentage described in Table 1 to § 249.30(c) (row 32);

(33) The applicable outflow adjustment percentage described in Table 1 to § 249.30(c) (row 33);

(34) The average amount of the total net cash outflow as calculated under § 249.30 (row 34); and

(35) The average of the liquidity coverage ratios as calculated under § 249.10(b) (row 35).

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Supplementary Information section, chapter III of title 12 of the Code of Federal Regulations is to be amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

■ 37. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 38. In § 324.1, add paragraph (f)(4) to read as follows:

§ 324.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(f) * * *

(4) An FDIC-supervised institution that changes from one category of FDIC-supervised institution to another of such categories must comply with the requirements of its category in this part, including applicable transition provisions of the requirements in this part, no later than on the first day of the second quarter following the change in the FDIC-supervised institution's category.

■ 39. In § 324.2, add the definitions of ''Category II FDIC-supervised institution'', ''Category III FDIC-supervised institution'', ''FR Y–15'', and ''FR Y–9LP'' in alphabetical order to read as follows:

§ 324.2 Definitions.

* * * * *

Category II FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a consolidated subsidiary of a company that is identified as a Category II banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) An FDIC-supervised institution that:

(i) Is not a subsidiary of a depository institution holding company;

(ii)(A) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent quarters, total consolidated assets is based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraph (2)(ii) of this definition, an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution has:

(A)(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form; or

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

Category III FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a subsidiary of a Category III banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) An FDIC-supervised institution that is a subsidiary of a depository institution that meets the criteria in paragraph (3)(iii)(A) or (B) of this definition; or

(3) A depository institution that:

(i) Is an FDIC-supervised institution;

(ii) Is not a subsidiary of a depository institution holding company; and

(iii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; and

(*2*) At least one of the following in paragraphs (3)(iii)(B)(*2*)(*i*) through (*iii*) of this definition, each calculated as the average of the four most recent calendar quarters, or if the depository institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a depository institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iv) After meeting the criteria in paragraph (3)(iii) of this definition, an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution:

(A) Has:

(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is an FDIC-supervised institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II FDIC-supervised institution.

* * * * *

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

FR Y–15 means the Systemic Risk Report.

* * * * *

■ 40. In § 324.10, revise paragraphs (a)(5), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 324.10 Minimum capital requirements.

(a) * * *

(5) For advanced approaches FDIC-supervised institutions or, for Category III FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches and Category III capital ratio calculations.* An advanced approaches FDIC-supervised institution that has completed the parallel run process and received notification from the FDIC pursuant to § 324.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches FDIC-supervised institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution meets any of the criteria in § 324.100(b)(1). A Category III FDIC-supervised institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution is identified as a Category III FDIC-supervised institution.

* * * * *

(4) * * *

(i) An advanced approaches FDIC-supervised institution's or a Category III FDIC-supervised institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter of which is calculated as the sum of:

* * * * *

■ 41. In § 324.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 324.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(b) * * *

(1) *General.* An advanced approaches FDIC-supervised institution or a Category III FDIC-supervised institution must calculate a countercyclical capital buffer amount in accordance with paragraph (b) of this section for purposes of determining its maximum payout ratio under Table 1 to this section.

* * * * *

(ii) *Amount.* An advanced approaches FDIC-supervised institution or a Category III FDIC-supervised institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the FDIC-supervised institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 42. In § 324.22, revise paragraph (b)(2)(ii) to read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

* * * * *

(b) * * *

(2) * * *

(ii) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must make its AOCI opt-out election in the Call Report:

(A) If the FDIC-supervised institution is a Category III FDIC-supervised institution or a Category IV FDIC-supervised institution, during the first reporting period after the FDIC-supervised institution meets the definition of a Category III FDIC-supervised institution or a Category IV FDIC-supervised institution in § 324.2; or

(B) If the FDIC-supervised institution is not a Category III FDIC-supervised institution or a Category IV FDIC-supervised institution, during the first reporting period after the FDIC-supervised institution is required to comply with subpart A of this part as set forth in § 324.1(f).

* * * * *

■ 43. In § 324.63, add paragraphs (d) and (e) to read as follows:

§ 324.63 Disclosures by FDIC-supervised institutions described in § 324.61.

* * * * *

(d) A Category III FDIC-supervised institution that is required to publicly disclose its supplementary leverage ratio pursuant to § 324.172(d) is subject to the supplementary leverage ratio disclosure requirement at § 324.173(a)(2).

(e) A Category III FDIC-supervised institution that is required to calculate a countercyclical capital buffer pursuant to § 324.11 is subject to the disclosure requirement at Table 4 to § 324.173, ''Capital Conservation and Countercyclical Capital Buffers,'' and not to the disclosure requirement at Table 4 to this section, ''Capital Conservation Buffer.''

■ 44. In § 324.100, revise paragraph (b)(1), remove paragraph (b)(2), and redesignate paragraph (b)(3) as paragraph (b)(2) to read as follows:

§ 324.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) * * *

(1) This subpart applies to an FDIC-supervised institution that:

(i) Is a subsidiary of a global systemically important BHC, as identified pursuant to 12 CFR 217.402;

(ii) Is a Category II FDIC-supervised institution;

(iii) Is a subsidiary of a depository institution that uses the advanced approaches pursuant to 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or this subpart (FDIC) to calculate its risk-based capital requirements;

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses the advanced approaches pursuant to subpart E of 12 CFR part 217 to calculate its risk-based capital requirements; or

(v) Elects to use this subpart to calculate its risk-based capital requirements.

* * * * *

■ 45. In § 324.172, revise paragraph (d)(2) to read as follows:

§ 324.172 Disclosure requirements.

* * * * *

(d) * * *

(2) An FDIC-supervised institution that meets any of the criteria in § 324.100(b)(1) on or after January 1, 2015, or a Category III FDIC-supervised institution must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution becomes an advanced approaches FDIC-supervised institution or a Category III FDIC-supervised institution. This disclosure requirement applies without regard to whether the FDIC-supervised institution has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d).

■ 46. In § 324.173, revise the section heading and paragraph (a)(2) to read as follows:

§ 324.173 Disclosures by certain advanced approaches FDIC-supervised institutions and Category III FDIC-supervised institutions.

(a) * * *

(2) An advanced approaches FDIC-supervised institution and a Category III FDIC-supervised institution that is required to publicly disclose its supplementary leverage ratio pursuant to § 324.172(d) must make the disclosures required under Table 13 to this section unless the FDIC-supervised institution is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

* * * * *

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 47. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 48. Revise § 329.1 to read as follows:

§ 329.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard for certain FDIC-supervised institutions on a consolidated basis, as set forth in this part.

(b) *Applicability.* (1) An FDIC-supervised institution is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a:

(A) GSIB depository institution supervised by the FDIC;

(B) Category II FDIC-supervised institution; or

(C) Category III FDIC-supervised institution; or

(ii) The FDIC has determined that application of this part is appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company;

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i); or

(iii) An insured branch.

(3) In making a determination under paragraph (b)(1)(ii) of this section, the FDIC will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 324.5.

■ 49. Amend § 329.3 by:

■ a. Adding a definition for ''Average weighted short-term wholesale funding'' in alphabetical order;

■ b. Revising the definition of ''Calculation date'';
■ c. Adding definitions for ''Call Report'', ''Category II FDIC-supervised institution'', and ''Category III FDIC-supervised institution'' in alphabetical order;
■ d. Revising the definition of ''Covered depository institution holding company'';
■ e. Adding definitions for ''FR Y–9LP'', ''FR Y–15'', ''Global systemically important BHC'', and ''GSIB depository institution'' in alphabetical order;
■ f. Revising the definition of ''Regulated financial company''; and
■ g. Adding definitions for ''State'' and ''U.S. intermediate holding company'' in alphabetical order.

The additions and revisions read as follows:

§ 329.3 Definitions.

* * * * *

Average weighted short-term wholesale funding means the average of the FDIC-supervised institution's weighted short-term wholesale funding for each of the four most recent calendar quarters as reported quarterly on the FR Y–15 or, if the FDIC-supervised institution has not filed the FR Y–15 for each of the four most recent calendar quarters, for the most recent quarter or averaged over the most recent quarters, as applicable.

* * * * *

Calculation date means, for purposes of subparts A through F of this part, any date on which an FDIC-supervised institution calculates its liquidity coverage ratio under § 329.10.

Call Report means the Consolidated Reports of Condition and Income.

Category II FDIC-supervised institution means:

(1)(i) An FDIC-supervised institution that:

(A) Is a consolidated subsidiary of:

(*1*) A company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(*2*) A U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5; or

(*3*) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable. After meeting the criteria under this paragraph (1), an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the FDIC-supervised institution is no longer a consolidated subsidiary of an entity described in paragraph (1)(i)(A)(*1*), (*2*), or (*3*) of this definition; or

(2) An FDIC-supervised institution that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution:

(A)(*1*) Has less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

Category III FDIC-supervised institution means:

(1)(i) An FDIC-supervised institution that:

(A) Is a consolidated subsidiary of:

(*1*) A company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(*2*) A U.S. intermediate holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5; or

(*3*) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable. After meeting the criteria under this paragraph (1), an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the FDIC-supervised institution is no longer a consolidated subsidiary of an entity described in paragraph (1)(i)(A)(*1*), (*2*), or (3) of this definition; or

(2) An FDIC-supervised institution that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent quarters as reported on the Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(*2*) One or more of the following in paragraphs (2)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each measured as the average of the four most recent calendar quarters, or if the depository institution has not filed the FR Y–9LP or equivalent reporting form, Call Report, or FR Y–15 or equivalent reporting form, as applicable for each of the four most recent calendar quarters, for the most recent quarter or the average of the most quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution:

(A)(*1*) Has less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Has less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report; and

(*4*) Has less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II FDIC-supervised institution; or

(D) Is a GSIB depository institution.

* * * * *

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company;

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (3)(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System; or

(4) A U.S. intermediate holding company.

* * * * *

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

FR Y–15 means the Systemic Risk Report.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or the average of the most recent calendar quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) website,[2] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under 12 CFR part 249;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of

[2] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1a); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462);

(7) A U.S. intermediate holding company; and

(8) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (7) of this definition (*e.g.,* a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(9) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

* * * * *

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

* * * * *

U.S. intermediate holding company means a top-tier company that is required to be established pursuant to 12 CFR 252.153.

* * * * *

■ 50. In § 329.10, revise paragraph (a) to read as follows:

§ 329.10 Liquidity coverage ratio.

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, an FDIC-supervised institution must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day in accordance with this part. An FDIC-supervised institution must calculate its liquidity coverage ratio as of the same time on each calculation date (the elected calculation time). The FDIC-supervised institution must select this time by written notice to the FDIC prior to December 31, 2019. The FDIC-supervised institution may not thereafter change its elected calculation time without prior written approval from the FDIC.

* * * * *

■ 51. In § 329.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 329.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, an FDIC-supervised institution's total net cash outflow amount equals the FDIC-supervised institution's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 329.32(a) through (l); *minus*

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 329.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; *plus*

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* An FDIC-supervised institution's outflow adjustment percentage is determined pursuant to Table 1 to this paragraph (c).

TABLE 1 TO § 329.30(c)—OUTFLOW ADJUSTMENT PERCENTAGES

	Percent
Outflow adjustment percentage	
GSIB depository institution supervised by the FDIC	100
Category II FDIC-supervised institution	100
Category III FDIC-supervised institution that: (1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part, in each case with $75 billion or more in average weighted short-term wholesale funding; or (2) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part.	100
Category III FDIC-supervised institution that: Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part, in each case with less than $75 billion in average weighted short-term wholesale funding; or (2) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part.	85

(d) *Transition into a different outflow adjustment percentage.* (1) An FDIC-supervised institution whose outflow adjustment percentage increases from a lower to a higher outflow adjustment percentage may continue to use its previous lower outflow adjustment percentage until the first day of the third calendar quarter after the outflow adjustment percentage increases.

(2) An FDIC-supervised institution whose outflow adjustment percentage decreases from a higher to a lower outflow adjustment percentage must continue to use its previous higher outflow adjustment percentage until the first day of the first calendar quarter after the outflow adjustment percentage decreases.

■ 52. Revise § 329.50 to read as follows:

§ 329.50 Transitions.

(a) *No transition for certain FDIC-supervised institutions.* An FDIC-supervised institution that is subject to the minimum liquidity standard and other requirements of this part prior to December 31, 2019 must comply with the minimum liquidity standard and other requirements of this part as of December 31, 2019.

(b) [Reserved]

(c) *Initial application.* (1) An FDIC-supervised institution that initially becomes subject to the minimum liquidity standard and other requirements of this part under § 329.1(b)(1)(i) must comply with the requirements of this part beginning on the first day of the third calendar quarter after which the FDIC-supervised institution becomes subject to this part, except that an FDIC-supervised institution must:

(i) For the first two calendar quarters after the FDIC-supervised institution begins complying with the minimum liquidity standard and other requirements of this part, calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(ii) Beginning the first day of the fifth calendar quarter after the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part and continuing thereafter, calculate and maintain a liquidity coverage ratio on each calculation date.

(2) An FDIC-supervised institution that becomes subject to the minimum liquidity standard and other requirements of this part under § 329.1(b)(1)(ii), must comply with the requirements of this part subject to a transition period specified by the FDIC.

(d) *Transition into a different outflow adjustment percentage.* (1) An FDIC-supervised institution whose outflow adjustment percentage changes is subject to transition periods as set forth in § 329.30(d).

(2) An FDIC-supervised institution that is no longer subject to the minimum liquidity standard and other requirements of this part pursuant to § 329.1(b)(1)(i) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, the instructions to the FR Y–9LP or the FR Y–15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with this part as of the first day of the first quarter after it is no longer subject to § 329.1(b)(1).

(e) *Reservation of authority.* The FDIC may extend or accelerate any compliance date of this part if the FDIC determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the FDIC will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with this part, and the actions the FDIC-supervised supervised institution is taking to come into compliance with this part.

Dated: October 10, 2019.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 15, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–23800 Filed 10–31–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 212 November 1, 2019

Part VIII

The President

Notice of October 31, 2019—Continuation of the National Emergency With Respect to Sudan

Federal Register
Vol. 84, No. 212
Friday, November 1, 2019

Presidential Documents

Title 3—

The President

Notice of October 31, 2019

Continuation of the National Emergency With Respect to Sudan

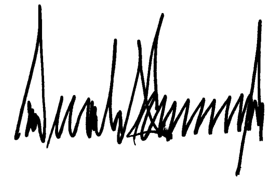
On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and took related steps to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Sudan. On April 26, 2006, by Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency declared in Executive Order 13067, and ordered the blocking of property of certain persons connected to the Darfur region. On October 13, 2006, by Executive Order 13412, the President took additional steps with respect to the national emergency declared in Executive Order 13067 and expanded in Executive Order 13400. In Executive Order 13412, the President also took steps to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

On January 13, 2017, by Executive Order 13761, the President found that positive efforts by the Government of Sudan between July 2016 and January 2017 improved certain conditions that Executive Orders 13067 and 13412 were intended to address. Given these developments, and in order to encourage the Government of Sudan to sustain and enhance these efforts, section 1 of Executive Order 13761 provided that sections 1 and 2 of Executive Order 13067 and the entirety of Executive Order 13412 would be revoked as of July 12, 2017, provided that the criteria in section 12(b) of Executive Order 13761 had been met.

On July 11, 2017, by Executive Order 13804, I amended Executive Order 13761, extending until October 12, 2017, the effective date in section 1 of Executive Order 13761. On October 12, 2017, pursuant to Executive Order 13761, as amended by Executive Order 13804, sections 1 and 2 of Executive Order 13067 and the entirety of Executive Order 13412 were revoked.

Despite recent positive developments, the crisis constituted by the actions and policies of the Government of Sudan that led to the declaration of a national emergency in Executive Order 13067 of November 3, 1997; the expansion of that emergency in Executive Order 13400 of April 26, 2006; and with respect to which additional steps were taken in Executive Order 13412 of October 13, 2006, Executive Order 13761 of January 13, 2017, and Executive Order 13804 of July 11, 2017, has not been resolved. These actions and policies continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. I have, therefore, determined that it is necessary to continue the national emergency declared in Executive Order 13067, as expanded by Executive Order 13400, with respect to Sudan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 31, 2019.

[FR Doc. 2019–24109
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Federal Register

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
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