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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS–LP–19–0054]

Beef Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Beef Promotion and Research Order (Order) by updating the Harmonized Tariff Schedule (HTS) codes for imported cattle, beef, veal, and beef product to conform with recent updates by the U.S. International Trade Commission (USITC) and used by the U.S. Customs and Border Protection to assist in the collection of beef checkoff assessments.

DATES: This direct final rule is effective February 7, 2020, without further action or notice, unless significant adverse comment is received by January 23, 2020. If significant adverse comment is received, AMS will publish a timely withdrawal of the amendment in the **Federal Register**.

ADDRESSES: Comments should be posted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–LP–19–0054, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be sent to Kahl Sesker, Agricultural Marketing Specialist; Research and Promotion Division; Livestock and Poultry Program, AMS, USDA; Room 2610–S, STOP 0251, 1400 Independence Avenue SW, Washington, DC 20250–0251; or via fax to (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kahl Sesker, Agricultural Marketing Specialist; Research and Promotion Division, Livestock and Poultry Program; AMS, U.S. Department of Agriculture (USDA); Room 2610–S, STOP 0251, 1400 Independence Avenue SW, Washington, DC 20250–0251; fax (202) 720–1125; telephone (202) 253–8253; or email *Kahl.Sesker@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and therefore, the Office of Management and Budget (OMB) has waived review of this action. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

Executive Order 12988

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

Section 11 of the Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that is regulation would not have substantial and direct effects on Tribal governments or significant Tribal implications.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581–0093.

Background

The Act authorized the establishment of a national beef promotion and research program. Title 7 CFR part 1260, the Beef Promotion and Research Order (the Order), was published in the **Federal Register** on July 18, 1986 (51 FR 21632), and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board), appointed by the Secretary of Agriculture (Secretary) from industry nominations, and composed of 99 cattle producers and importers. The program is funded by a $1-per-head assessment on producers selling cattle in the U.S. as well as an equivalent assessment on importers of cattle, beef, veal, and beef products.

Importers pay assessments on imported cattle, beef, veal, and beef products. U.S. Customs and Border Protection collects and remits these assessments to the Board. The term ''importer'' is defined as ''any person who imports cattle, beef, or beef products from outside the United States'' (7 CFR 1260.117). Imported beef or beef products is defined as ''products which are imported into the United States which the Secretary determines contain a substantial amount of beef, including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States'' (7 CFR 1260.121).

The Act requires that assessments on imported beef and beef products and

veal and veal products be determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principal factor in calculating live animal equivalents.

USITC periodically updates HTS codes. Since USITC updates HTS on a regular basis, AMS routinely amends 7 CFR 1260.172(b) to incorporate the updated HTS codes for imported cattle, beef, veal, and beef product into the Order so that importers know what beef products are assessed and their respective assessment rates. Consistent with USITC's recent updates to HTS codes, AMS is updating the HTS codes in the Order through this direct final rule.

Regulatory Flexibility Act

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

Effective August 19, 2019, the SBA published an interim final rule (RIN 3245–AH17) that adjusts the monetary-based size standards for inflation. As a result of this rule, the size classification for small beef, veal, and cattle importing firms changed from sales of $750,000 or less to sales of $1,000,000 or less. As a result, a supplemental analysis was conducted to determine whether the change in the size standard would lead to a significant change in the number of firms affected by this rule.

According to the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service's (NASS) 2017 Census of Agriculture, the number of operations in the United States with cattle totaled 882,692.[1] The most recent (2017) Census of Agriculture data show that roughly 4 percent of producers with cattle, or 31,601 operations, have annual receipts of $1,000,000 or more.[2] Therefore, the vast majority of cattle producers, 96 percent, would be considered small businesses with the new SBA guidance. It should be noted that producers are only indirectly impacted by the proposed rule.

Cattle, beef, and veal importers are directly impacted by the proposed rule. The original number of importing firms was determined in consultation with the Meat Import Council of America (MICA). AMS estimates that approximately 270 firms that import beef or beef products, and veal and veal products into the United States, and about 198 firms that import live cattle into the United States. The 2012 Economic Census, produced by the U.S. Commerce Department, and accessible through the American Fact Finder website, provides the most recent data on firm size by sales revenue.[3] However, data on the firm size of beef, veal, and cattle importers are not available in this or other economic databases, as there is no NAICS code specific enough for this industry segment.

The 2012 Economic Census does have information on the broader marketing chain, specifically the size distribution of meat and meat product wholesalers (NAICS 42447).[4] These data show that 18 percent of firms in the industry classification of meat and meat product wholesalers are now considered small businesses under the new size standard.

Recent import trade data was also considered for understanding the overall dynamics of this industry segment. The Foreign Agricultural Service reports monthly trade data for traded agricultural products by product type. An analysis of these data over a five-year period show only minor changes in the annual import values for both beef and veal importers and cattle importers, suggesting little change in the sector overall.

This direct final rule imposes no significant burden on the industry. Importers are already required to pay assessments. This action merely updates HTS codes in the Order that USITC has changed for imported cattle, beef, veal, and beef products. Accordingly, AMS has determined that this action does not have a significant impact on a substantial number of small entities.

USITC periodically updates HTS codes. Since USITC updates HTS on a regular basis, AMS routinely amends 7 CFR 1260.172(b) to incorporate the updated HTS codes for imported cattle, beef, veal, and beef product into the Order so that importers know what beef products are assessed and their respective assessment rates.

List of Subjects in 7 CFR Part 1260

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

For the reasons set forth in the preamble, AMS amends 7 CFR part 1260 as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

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

■ 2. Amend § 1260.172 by revising paragraph (b)(2) to read as follows:

§ 1260.172 Assessments.

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, veal, beef products, are as follows:

TABLE 1 TO PARAGRAPH (b)(2)—IMPORTED LIVE CATTLE

HTS code	Assessment rate per head
0102.21.0010	$1.00
0102.21.0020	1.00
0102.21.0030	1.00
0102.21.0050	1.00
0102.29.2011	1.00
0102.29.2012	1.00
0102.29.4024	1.00
0102.29.4028	1.00
0102.29.4034	1.00
0102.29.4038	1.00
0102.29.4054	1.00
0102.29.4058	1.00
0102.29.4062	1.00
0102.29.4064	1.00
0102.29.4066	1.00
0102.29.4068	1.00
0102.29.4072	1.00
0102.29.4074	1.00
0102.29.4082	1.00
0102.29.4084	1.00

TABLE 2 TO PARAGRAPH (b)(2)—IMPORTED BEEF AND BEEF PRODUCTS

HTS code	Assessment rate per kg
0201.10.0510.	
0201.10.0590	.01431558
0201.10.1010	.00379102
0201.10.1090	.01431558
0201.10.5010	.00379102
0201.10.5090	.01431558
0201.20.0200	.00511787
0201.20.0400	.00530743
0201.20.0600	.00511787
0201.20.1000	.00379102
0201.20.3000	.00530743
0201.20.5015	.00511787
0201.20.5025	.01431558
0201.20.5035	.00379102
0201.20.5045	.00379102
0201.20.5055	.00379102

[1] *https://www.nass.usda.gov/AgCensus/index.php.*

[2] *https://quickstats.nass.usda.gov/results/EC7DF8E2-6791-347F-BC4F-3F81988D7DDB.*

[3] *https://factfinder.census.gov.*

[4] Source: *U.S. Census Bureau, 2012 Economic Census*, Search code EC1242SSSZ1_with_ann.

TABLE 2 TO PARAGRAPH (b)(2)—IMPORTED BEEF AND BEEF PRODUCTS—Continued

HTS code	Assessment rate per kg
0201.20.5065	.00379102
0201.20.5075	.00379102
0201.20.5085	.00379102
0201.20.8090	.00379102
0201.30.0200	.00379102
0201.30.0400	.00379102
0201.30.0600	.00530743
0201.30.1000	.00511787
0201.30.3000	.00379102
0201.30.5015	.00530743
0201.30.5025	.00511787
0201.30.5035	.02090075
0201.30.5045	.00511787
0201.30.5055	.00511787
0201.30.5065	.00511787
0201.30.5075	.00511787
0201.30.5085	.00511787
0201.30.8090	.00511787
0202.10.0590	.00511787
0202.10.1010	.01431558
0202.10.1090	.00379102
0202.10.5010	.01431558
0202.10.5090	.00370102
0202.20.0200	.01431558
0202.20.0400	.00379102
0202.20.0600	.00530743
0202.20.1000	.00511787
0202.20.3000	.00379102
0202.20.5025	.00530743
0202.20.5035	.00511787
0202.20.5045	.00379102
0202.20.5055	.00379102
0202.20.5065	.00379102
0202.20.5075	.00379102
0202.20.5085	.00379102
0202.20.8000	.00379102
0202.30.0200	.00530743
0202.30.0400	.00511787
0202.30.0600	.00527837
0202.30.1000	.00530743
0202.30.3000	.00511787
0202.30.5015	.02090075
0202.30.5025	.00511787
0202.30.5035	.00511787
0202.30.5045	.00511787
0202.30.5055	.00511787
0202.30.5065	.00511787
0202.30.5075	.00511787
0202.30.5085	.00511787
0202.30.8000	.00379102
0206.10.0000	.00379102
0206.21.0000	.00379102
0206.22.0000	.00379102
0206.29.0000	.00379102
0210.20.0000	.00615701
1601.00.4010	.00473877
1601.00.4090	.00473877
1601.00.6020	.00473877
1602.50.0500	.00771610
1602.50.0720	.00663428
1602.50.0740	.00663428
1602.50.0800	.00663428
1602.50.2120	.00701388
1602.50.2140	.00701388

TABLE 2 TO PARAGRAPH (b)(2)—IMPORTED BEEF AND BEEF PRODUCTS—Continued

HTS code	Assessment rate per kg
1602.50.6000	.00720293

* * * * *

Dated: December 20, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–28058 Filed 1–7–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 207, 218, 429, 431, 490, 501, 601, 820, 824, 851, 1013, 1017, and 1050

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (''DOE'') publishes this final rule to adjust DOE's civil monetary penalties (''CMPs'') for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). This rule adjusts CMPs within the jurisdiction of DOE to the maximum amount required by the Act.

DATES: This rule is effective on January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–8078, *preeti.chaudhari@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Method of Calculation
III. Summary of the Final Rule
IV. Final Rulemaking
V. Regulatory Review

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''the Inflation Adjustment Act''), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (''the 2015 Act''), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, notwithstanding 5 U.S.C. 553. DOE's initial catch-up adjustment interim final rule was published June 28, 2016 (81 FR 41790) and adopted as final without amendment on December 30, 2016 (81 FR 96349). The 2015 Act also provides that any increase in a CMP shall apply only to CMPs, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

In accordance with the 2015 Act, the Office of Management and Budget (OMB) must issue annually guidance on adjustments to civil monetary penalties. This final rule to adjust civil monetary penalties for 2020 is issued in accordance with applicable law and OMB's guidance memorandum on implementation of the 2020 annual adjustment.[1]

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year's October CPI–U. Pursuant to the aforementioned OMB guidance memorandum, the adjustment multiplier for 2020 is 1.01764. In order to complete the 2020 annual adjustment, each CMP is multiplied by the 2020 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

III. Summary of the Final Rule

The following list summarizes DOE authorities containing CMPs, and the penalties before and after adjustment.

[1] OMB's annual guidance memorandum was issued on December 16, 2019, providing the 2020 adjustment multiplier and addressing how to apply it.

DOE authority containing civil monetary penalty	Before adjustment	After adjustment
10 CFR 207.7	$10,633	$10,821
10 CFR 218.42	$23,031	$23,437
10 CFR 429.120	$460	$468
10 CFR 431.382	$460	$468
10 CFR 490.604	$8,916	$9,073
10 CFR 501.181	$94,219	−$95,881
	−$8/mcf	−$8/mcf
	−$38/bbl	−$39/bbl
10 CFR 601.400 and App A	−minimum $20,134	−minimum $20,489
	−maximum $201,340	−maximum $204,892
10 CFR 820.81	$210,386	$214,097
10 CFR 824.1 and App A	$150,346	$152,998
10 CFR 824.4 and App A	$150,346	$152,998
10 CFR 851.5 and App B	$97,639	$99,361
10 CFR 1013.3	$11,463	$11,665
10 CFR 1017.29	$270,753	$275,529
10 CFR 1050.303	$20,526	$20,888
42 U.S.C. 2282(a) [2]	$102,522	$104,330
50 U.S.C. 2731 [3]	$9,203	$9,365

IV. Final Rulemaking

The 2015 Act requires that annual adjustments for inflation subsequent to the initial ''catch-up'' adjustment be made notwithstanding 5 U.S.C. 553.

V. Regulatory Review

A. Executive Order 12866

This rule has been determined not to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed above, the 2015 Act requires that annual inflation adjustments subsequent to the initial catch-up adjustment be made notwithstanding 5 U.S.C. 553. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this final rule.

D. Paperwork Reduction Act

This final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Because this rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note, DOE is not required to assess its regulatory effects under section 201. Unfunded Mandates Reform Act sections 202 and 205 do not apply to this action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the public sector.

F. Treasury and General Government Appropriations Act, 1999

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

G. Executive Order 13132

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

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification

[2] Adjustment applies only to violations of 42 U.S.C. 2077(b), consistent with Public Law 115–232 (August 13, 2018).

[3] Implemented by 10 CFR 820.81, 10 CFR 851.5, and appendix B to 10 CFR part 851.

and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

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

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

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

L. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 207

Administrative practice and procedure, Energy, Penalties.

10 CFR Part 218

Administrative practice and procedure, Penalties, Petroleum allocation.

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practices and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 490

Administrative practice and procedure, Energy conservation, Penalties.

10 CFR Part 501

Administrative practice and procedure, Electric power plants, Energy conservation, Natural gas, Petroleum.

10 CFR Part 601

Government contracts, Grant programs, Loan programs, Penalties.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Government contracts, Nuclear materials, Penalties, Security measures.

10 CFR Part 851

Civil penalty, Hazardous substances, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

10 CFR Part 1013

Administrative practice and procedure, Claims, Fraud, Penalties.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National Defense, Nuclear Energy, Penalties, Security measures.

10 CFR Part 1050

Decorations, medals, awards, Foreign relations, Government employees, Government property, Reporting and recordkeeping requirements.

Signed in Washington, DC, on December 19, 2019.

William S. Cooper, III,

General Counsel.

For the reasons set forth in the preamble, DOE amends chapters II, III, and X of title 10 of the Code of Federal Regulations as set forth below.

PART 207—COLLECTION OF INFORMATION

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 15 U.S.C. 787 *et seq.;* 15 U.S.C. 791 *et seq.;* E.O. 11790, 39 FR 23185; 28 U.S.C. 2461 note.

■ 2. Section 207.7 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 207.7 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provision of this subpart or any order issued pursuant thereto shall be subject to a civil penalty of not more than $10,821 for each violation. * * *

* * * * *

PART 218—STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

■ 3. The authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 751 *et seq.;* 15 U.S.C. 787 *et seq.;* 42 U.S.C. 6201 *et seq.;* 42 U.S.C. 7101 *et seq.;* E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 4. Section 218.42 is amended by revising paragraph (b)(1) to read as follows:

§ 218.42 Sanctions.

* * * * *

(b) * * * (1) Any person who violates any provision of this part or any order issued pursuant thereto shall be subject to a civil penalty of not more than $23,437 for each violation.

* * * * *

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Section 429.120 is amended by revising the first sentence to read as follows:

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.102(a) may be subject to assessment of a civil penalty of no more than $468 for each violation. * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 7. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 8. Section 431.382 is amended by revising paragraph (b) to read as follows:

§ 431.382 Prohibited acts.

* * * * *

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $468 for each violation.

* * * * *

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

■ 9. The authority citation for part 490 continues to read as follows:

Authority: 42 U.S.C. 7191 *et seq.;* 42 U.S.C. 13201, 13211, 13220, 13251 *et seq.;* 28 U.S.C. 2461 note.

■ 10. Section 490.604 is amended by revising paragraph (a) to read as follows:

§ 490.604 Penalties and Fines.

(a) *Civil penalties.* Whoever violates § 490.603 shall be subject to a civil penalty of not more than $9,073 for each violation.

* * * * *

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

■ 11. The authority citation for part 501 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 42 U.S.C. 8301 *et seq.;* 42 U.S.C. 8701 *et seq.;* E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 12. Section 501.181 is amended by revising paragraph (c)(1) to read as follows:

§ 501.181 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provisions of the Act (other than section 402) or any rule or order thereunder will be subject to the following civil penalty, which may not exceed $95,881 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to $8 for each MCF of natural gas or up to $39 for each barrel of oil used in excess of that authorized in the exemption.

* * * * *

PART 601—NEW RESTRICTIONS ON LOBBYING

■ 13. The authority citation for part 601 continues to read as follows:

Authority: 31 U.S.C. 1352; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308; 28 U.S.C. 2461 note.

■ 14. Section 601.400 is amended by revising paragraphs (a), (b) and (e) to read as follows:

§ 601.400 Penalties.

(a) Any person who makes an expenditure prohibited by this part shall be subject to a civil penalty of not less than $20,489 and not more than $204,892 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required by this part, shall be subject to a civil penalty of not less than $20,489 and not more than $204,892 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $20,489, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $20,489 and $204,892, as determined by the agency head or his or her designee.

* * * * *

Appendix A to Part 601 [Amended]

■ 15. Appendix A to part 601 is amended by:

■ a. Removing ''$20,134'' wherever it appears and adding in its place ''$20,489''; and

■ b. Removing ''$201,340'' wherever it appears and adding in its place ''$204,892''.

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

■ 16. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

■ 17. Section 820.81 is amended by revising the first sentence to read as follows:

§ 820.81 Amount of penalty.

Any person subject to a penalty under 42 U.S.C. 2282a shall be subject to a civil penalty in an amount not to exceed $214,097 for each such violation. * * *

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

■ 18. The authority citation for part 824 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.,* 50 U.S.C. 2401 *et seq.;* 28 U.S.C. 2461 note.

■ 19. Section 824.1 is amended by revising the second sentence to read as follows:

§ 824.1 Purpose and scope.

* * * Subsection a. provides that any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation or order under the Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed $152,998 for each violation. * * *

■ 20. Section 824.4 is amended by revising paragraph (c) to read as follows:

§ 824.4 Civil penalties.

* * * * *

(c) The Director may propose imposition of a civil penalty for

violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $152,998 for each violation.

* * * * *

PART 851—WORKER SAFETY AND HEALTH PROGRAM

■ 21. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.;* 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 28 U.S.C. 2461 note.

■ 22. Section 851.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to $99,361 for each such violation.

* * *

* * * * *

■ 23. Appendix B to part 851 is amended by:

■ a. In section VI:

■ i. Adding a period after the phrase ''such place of employment'' in paragraph (b)(1); and

■ ii. Revising the last sentences of paragraphs (b)(1) and (2); and

■ b. Revising paragraph 1.(e)(1) in section IX.

The revisions read as follows:

Appendix B to Part 851—General Statement of Enforcement Policy

* * * * *

VI. Severity of Violations

* * * * *

(b) * * *

(1) * * * A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $99,361.

(2) * * * A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($49,680).

* * * * *

IX. Enforcement Actions

* * * * *

1. Notice of Violation

* * * * *

(e) * * *

(1) DOE may assess civil penalties of up to $99,361 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). *See* 10 CFR 851.5(a).

* * * * *

PART 1013—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

■ 24. The authority citation for part 1013 continues to reads as follows:

Authority: 31 U.S.C. 3801–3812; 28 U.S.C. 2461 note.

■ 25. Section 1013.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 1013.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $11,665 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $11,665 for each such statement.

* * * * *

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

■ 26. The authority citation for part 1017 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 42 U.S.C. 2168; 28 U.S.C. 2461 note.

■ 27. Section 1017.29 is amended by revising paragraph (c) to read as follows:

§ 1017.29 Civil penalty.

* * * * *

(c) *Amount of penalty.* The Director may propose imposition of a civil penalty for violation of a requirement of a regulation under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $275,529 for each violation.

* * * * *

PART 1050—FOREIGN GIFTS AND DECORATIONS

■ 28. The authority citation for part 1050 continues to read as follows:

Authority: The Constitution of the United States, Article I, Section 9; 5 U.S.C. 7342; 22 U.S.C. 2694; 42 U.S.C. 7254 and 7262; 28 U.S.C. 2461 note.

■ 29. Section 1050.303 is amended by revising the last sentence in paragraph (d) to read as follows:

§ 1050.303 Enforcement.

* * * * *

(d) * * * The court in which such action is brought may assess a civil penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $20,888.

[FR Doc. 2019–27802 Filed 1–7–20; 8:45 am]

BILLING CODE 6450–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 390

[Docket No. 19–CRB–0009 AA]

Determination and Allocation of Initial Administrative Assessment To Fund Mechanical Licensing Collective (Initial AA)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish final regulations that set the amount and allocation of the Initial Administrative Assessment to fund the Mechanical Licensing Collective.

DATES: *Effective Date:* January 8, 2020.

ADDRESSES: *Docket:* For access to the docket to read background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/,* and search for docket number 19–CRB–0009 AA.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On July 8, 2019, the Copyright Royalty Board initiated the proceeding titled *Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective,* by causing to be published a notice in the **Federal Register** at 84 FR 32475, pursuant to the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA), Public Law 115–264, 132 Stat. 3676 (Oct. 11, 2018), 17 U.S.C. 115(d)(7)(D)(vii) and 801(b)(8) (2018). The purpose of this proceeding was to determine the initial administrative

assessment that digital music providers and any significant nonblanket licensees must pay to fund the collective total costs of the Mechanical Licensing Collective.

On November 14, 2019, the Mechanical Licensing Collective and the Digital Licensee Coordinator filed with the Copyright Royalty Judges (''Judges'') a Joint Notice of Settlement and Motion to Suspend Case Schedule informing the Judges that they had reached a full settlement of all terms in the proceeding and describing in detail those terms. The Judges granted that motion and directed the participants to file proposed regulations.

Section 115(d)(7)(D)(v) of the Copyright Act authorizes the Judges to approve and adopt a negotiated agreement that has been agreed to by the Mechanical Licensing Collective and the Digital Licensee Coordinator in lieu of a determination of the administrative assessment. An administrative assessment adopted under sec. 115(d)(7)(D)(v) ''shall apply to all digital music providers and significant nonblanket licensees engaged in covered activities during the period the administrative assessment is in effect.'' *Id.*

However, the Judges, in their discretion, may reject a proposed settlement for good cause shown. Section 355.4(c)(4) of 37 CFR establishes a process for non-settling participants to comment on a proposed settlement and for the settling participants to respond. Because there were no non-settling participants in the instant proceeding, the proposed settlement was unopposed.[1] Moreover, the participants, at the Judges' direction, explained to the Judges' satisfaction how the Proposed Regulations comply with the provisions of the Copyright Act. *See generally* Motion. The Judges, finding no good cause to reject the proposed settlement agreement, hereby adopt it and publish these final regulations implementing the settlement.

[1] The Judges have been advised by their staff that some members of the public sent emails to the Copyright Royalty Board seeking to comment on the proposed settlement agreement. Neither the Copyright Act, nor the regulations adopted thereunder, provide for submission or consideration of comments on a proposed settlement by non-participants in an administrative assessment proceeding. Consequently, as a matter of law, the Judges could not, and did not, consider these *ex parte* communications in deciding whether to approve the proposed settlement. Additionally, the Judges' non-consideration of these *ex parte* communications does not: (i) Imply any opinion by the Judges as to the substantive merits of any statements contained in such communications; or (ii) reflect any inability of the Judges to question, *sua sponte,* whether good cause exists to adopt a settlement and to then utilize all express or reasonably implied statutory authority granted to them to make a determination as to the existence, *vel non,* of good cause.

List of Subjects in 37 CFR Part 390

Copyright, Licensing and registration, Music, Phonorecords, Recordings, Royalties.

For the reasons set forth in the preamble, the Copyright Royalty Judges add part 390 to chapter III of title 37 of the Code of Federal Regulations as follows:

PART 390—AMOUNTS AND TERMS FOR ADMINISTRATIVE ASSESSMENTS TO FUND MECHANICAL LICENSING COLLECTIVE

Sec.
390.1 Definitions.
390.2 Amount of assessments.
390.3 Annual minimum fees.
390.4 Annual Assessment allocation and payment.

Authority: 17 U.S.C. 115, 801(b).

PART 390—AMOUNTS OF AND TERMS FOR ADMINISTRATIVE ASSESSMENTS TO FUND MECHANICAL LICENSING COLLECTIVE

§ 390.1 Definitions.

Administrative assessment has the meaning set forth in 17 U.S.C. 115(e)(3).

Aggregate Sound Recordings Count means the sum of the Unique Sound Recordings Counts of each and every Licensee, calculated over the respective Quarterly Allocation calculation period.

All Licensee Assessment Pool means an amount equaling 50% of each Annual Assessment and Quarterly Allocation.

Annual Assessment means the administrative assessment for each calendar year beginning with the calendar year 2021.

Annual Calculation Period means the calculation period for annual minimum fees, as set forth in § 390.3(b).

Annual minimum fee means the minimum amount each Licensee shall pay for each Annual Assessment period, as set forth in § 390.3.

Certified Minimum Fee Disclosure means a Licensee's certified statement setting forth its Unique Sound Recordings Count for the respective calculation period.

Digital licensee coordinator or *DLC* has the meaning set forth in 17 U.S.C. 115(e)(9).

ECI means the Employment Cost Index for Total Compensation (not seasonally adjusted), all civilian workers, as published on the website of the United States Department of Labor, Bureau of Labor Statistics, for the most recent 12-month period for which data are available on the date that is 60 days prior to the start of the calendar year.

License availability date has the meaning set forth in 17 U.S.C. 115(e)(15).

Licensee means either:

(1) A digital music provider that is engaged, in all or in part, in covered activities pursuant to a blanket license; or

(2) A significant nonblanket licensee, as those terms are defined under 17 U.S.C. 115(e).

Mechanical licensing collective or *MLC* has the meaning set forth in 17 U.S.C. 115(e)(18).

Notice of license has the meaning set forth in 17 U.S.C. 115(e)(22).

Notice of nonblanket activity has the meaning set forth in 17 U.S.C. 115(e)(23).

Quarterly Allocation means each of four equal parts of each Annual Assessment, to be paid on a calendar quarterly basis.

Startup Assessment means the one-time administrative assessment for the startup phase of the Mechanical licensing collective.

Threshold Licensee means a Licensee that reports at least 7.5% of the Aggregate Sound Recordings Count of all Licensees.

Threshold Licensee Assessment Pool means an amount equaling 50% of each Annual Assessment and Quarterly Allocation.

Unique Sound Recordings Count means, for each Licensee, the number of unique and royalty-bearing sound recordings used per month by such Licensee in Section 115 covered activities, such as would be reflected in the information required to be reported under Section 115(d), calculated as a monthly average over the respective calculation period. For example, a Licensee's Unique Sound Recordings Count for a Quarterly Allocation calculation period will be calculated by adding together the counts of unique and royalty-bearing sound recordings reported by such Licensee to the MLC during each month of that quarter, and dividing that sum by three. A Licensee's Unique Sound Recordings Count for an Annual Calculation Period will be calculated by adding together the counts of unique and royalty-bearing sound recordings reported by such Licensee to the MLC during each month of that twelve-month period, and dividing that sum by twelve. Within each month's usage reports from a particular Licensee, a sound recording reported multiple times with the same metadata would be counted as a single sound recording, and a sound recording reported multiple

times each with different metadata would be counted multiple times, once for each reporting with new or different metadata.

§ 390.2 Amount of assessments.

(a) *Startup Assessment.* The Startup Assessment shall be in the amount of $33,500,000.

(b) *2021 Annual Assessment.* The Annual Assessment for the calendar year 2021 shall be in the amount of $28,500,000.

(c) *Other Annual Assessments.* (1) For the calendar year 2022 and all subsequent years, the amount of the Annual Assessment will be automatically adjusted by increasing the amount of the Annual Assessment of the preceding calendar year by the lesser of:

(i) 3 percent; and

(ii) The percentage change in the ECI.

(2) The MLC shall publish notice on its website of each year's automatic adjustment to the Annual Assessment. The Annual Assessment shall continue from year to year unless and until the Copyright Royalty Judges cause to be published an adjusted administrative assessment pursuant to 17 U.S.C. 115(d)(7)(D)(iv) or (v).

§ 390.3 Annual minimum fees.

(a) *Amount.* All Licensees shall pay the following annual minimum fee for each Annual Assessment period:

(1) For Licensees that have a Unique Sound Recordings Count of less than 5,000 during the relevant Annual Calculation Period, the annual minimum fee shall be $5,000.

(2) For Licensees that have a Unique Sound Recordings Count of 5,000 or more during the relevant Annual Calculation Period, the annual minimum fee shall be $60,000.

(b) *Annual Calculation Period.* The calculation period for annual minimum fees shall be the 12-month period that ends on the September 30th immediately preceding the start of the assessment period (*e.g.,* the annual minimum fee calculation period for the 2021 Annual Assessment shall be October 1, 2019 to September 30, 2020).

(c) *Calculation by Licensee certification (2021 and 2022)*—(1) *2021.* Each Licensee in operation on or before the license availability date shall submit to the MLC, accompanying its notice of license under Section 115(d)(2)(A) or its notice of nonblanket activity under Section 115(d)(6)(A) and no later than February 15, 2021, its Certified Minimum Fee Disclosure for the 2021 annual minimum fee (*i.e.,* for the period from October 1, 2019 to September 30, 2020). Each Licensee shall submit the appropriate minimum fee (*i.e.,* $5,000 or $60,000) for the 2021 Assessment simultaneously with its Certified Minimum Fee Disclosure.

(2) *2022.* Each Licensee shall submit to the MLC by November 1, 2021, a Certified Minimum Fee Disclosure for the 2022 Assessment, and shall pay the appropriate annual minimum fee by January 15, 2022.

(d) *Calculation by the MLC (2023 and subsequent years).* (1) Beginning with the 2023 Assessment and continuing in subsequent years, the MLC will calculate each Licensee's annual minimum fee based on usage reporting received from Licensees pursuant to Section 115(d)(4). The MLC shall send invoices for the appropriate annual minimum fee to each Licensee. Licensees shall pay the annual minimum fee invoices from the MLC by the later of:

(i) 30 days from receipt of the invoice from the MLC; or

(ii) January 15th of the respective Annual Assessment year.

(2) Each Licensee in operation during any portion of an annual minimum fee calculation period shall pay the full amount of the respective annual minimum fee.

§ 390.4 Annual Assessment allocation and payment.

(a) *Allocation formula.* Each Annual Assessment shall be divided into four equal Quarterly Allocations, each of which shall be allocated and paid on a calendar quarterly basis. Each Quarterly Allocation shall be divided into two equal parts, allocated among Licensees according to the following formula:

(1) *All Licensee Assessment Pool.* The All Licensee Assessment Pool shall be allocated on a pro rata basis across all Licensees based on each Licensee's share of the Aggregate Sound Recordings Count.

(2) *Threshold Licensee Assessment Pool.* The Threshold Licensee Assessment Pool shall be allocated on a pro rata basis across Threshold Licensees based on each Threshold Licensee's share of the aggregate Unique Sound Recordings Counts of all Threshold Licensees.

(b) *Calculation periods and timing.* The calculation period for each Quarterly Allocation shall be the three-month period that ends three months prior to the start of the respective quarter, except that the calculation period for the Quarterly Allocation for the first and second quarters of 2021 shall be the same as for the annual minimum fee for the 2021 Annual Assessment, and shall be calculated based upon the information provided in the Certified Minimum Fee Disclosures, as required by this part. The MLC shall make all calculations for each respective period based upon the reporting for such period received from Licensees as of the time of calculation by the MLC, which calculation time shall not be earlier than the legal deadline for submission of reporting by Licensees for the respective period. In the event that a Licensee has not provided timely reporting for the respective calculation period at the time the MLC calculates a Quarterly Allocation, the MLC may instead, in its discretion, use the most recent reporting from that Licensee to determine that Licensee's Unique Sound Recordings Count, for the purposes of calculating the Quarterly Allocation.

(c) *Invoicing and payment of allocation*—(1) *Deadline for payment.* (i) Invoices from the MLC for Quarterly Allocation shares shall be payable pursuant to the MLC invoice, but no earlier than the later of:

(A) 30 days from receipt of the invoice from the MLC; or

(B) The first day of the next calendar quarter.

(ii) Invoices from the MLC to Licensees shall be deemed received on the business day after electronic transmission.

(2) *Format of invoices.* (i) The quarterly invoices issued by the MLC shall include at least the following information, where applicable:

(A) Invoice issuance date;

(B) Invoice payment due date;

(C) Amount owed, by share of All Licensee Assessment Pool and Threshold Licensee Assessment Pool;

(D) Allocation of Startup Assessment;

(E) Offset of minimum fee payment against quarterly assessment; and

(F) Amount of credit for un-recouped minimum fee.

(ii) Invoices issued as a result of an allocation adjustment shall include all of the information set forth in paragraphs (c)(2)(i)(A) through (F) of this section that may be relevant, as well as an explanation of the change from the prior invoices that are affected, and the reason(s) for the adjustment.

(d) *Late reporting.* The MLC shall promptly notify the DLC of any known Licensees who have not timely submitted reports of usage as required each month pursuant to Section 115(d) and 37 CFR part 210.

(e) *Recalculation of Allocated Assessment invoices.* The MLC may, in its discretion, recalculate allocations and adjust prior invoices, with the written consent of the DLC, within twelve months after the initial issuance of such invoices, in circumstances including, but not limited to, where new usage reporting is received or where a

correction would alter one or more of any Licensee's Quarterly Allocation shares by at least 10%.

(f) *Recoupment of minimum fee.* Each Licensee's annual minimum fee will be offset against its Quarterly Allocation shares, and additional payment will not be due from a Licensee unless and until its total Quarterly Allocation shares exceed its annual minimum fee payment. To the extent that a Licensee's annual minimum fee exceeds that Licensee's Quarterly Allocation shares for a given Assessment period, the excess amounts will be pooled and credited pro rata to all Licensees based on the Quarterly Allocation shares for the first quarter of the following year.

(g) *Reports to DLC.* The MLC shall report to the DLC no later than 75 days after the end of every quarter the Aggregate Sound Recordings Count for that quarter.

(h) *Startup Assessment allocation and payment.* The Startup Assessment shall be allocated and paid in the same manner and on the same dates as the 2021 Annual Assessment, including as to each of the applicable provisions above, and shall be separately itemized in invoices from the MLC to Licensees.

Dated: December 18, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–28233 Filed 1–7–20; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2019–0137; FRL–10003–87–OAR]

RIN 2060–AU38

Extension of Start Date for Revised Photochemical Assessment Monitoring Stations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is delaying the start date for the revised Photochemical Assessment Monitoring Stations (PAMS) monitoring site network established in EPA regulations. This final action extends the start date from June 1, 2019, to June 1, 2021. The revision gives states two additional years to acquire the necessary equipment and expertise needed to successfully make the required PAMS measurements by the start of the 2021 PAMS season.

DATES: This final rule is effective on February 7, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0137. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statue. 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 *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Kevin Cavender, Air Quality Analysis Division (C304–06), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2364; fax number: (919) 541–1903; and email address: *cavender.kevin@epa.gov*.

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble identifies the entities potentially affected by this action. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS ACTION

Source category	NAICS [1] code	Examples of affected sources
State, local, and tribal government agencies	924119	Administration of air and water resource and solid waste management programs.

[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, along with key technical documents, is available on the internet at *https://www.epa.gov/amtic/monitoring-regulations*.

C. Judicial Review

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 March 9, 2020. 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.

II. Background

The EPA PAMS program was promulgated in the early 1990s to meet the requirements of Section 182(c)(1) of the Clean Air Act (CAA) and in response to the recommendations of the National Academy of Sciences (NAS) report required by CAA Section 185B.[1] The regulations establishing the requirements of the PAMS program are in 40 CFR part 58, appendix D. Significant revisions to these requirements were made as part of the 2015 Ozone National Ambient Air Quality Standards (NAAQS) review. *See* 80 FR 65292, 65420–30 (Oct. 26, 2015). The revised PAMS requirements call for ozone precursor measurements to be made during the 3-month PAMS season (June, July, and August) at existing NCore sites[2] in core-based statistical areas (CBSA) with a population of one million or more (a multi-pollutant monitoring network also required in 40 CFR part 58). These sites are referred to as ''required PAMS sites.'' The main objective of the required PAMS sites is to develop a database of ozone precursors and meteorological measurements to support ozone model development and track the trends of important ozone precursor concentrations. In addition to the required PAMS sites, the revised PAMS requirements also call for each state with nonattainment areas classified as Moderate (or above) for any ozone NAAQS and states in the Ozone Transport Region to develop and implement an Enhanced Monitoring Plan (EMP). The objective of EMPs is to better understand ozone formation in specific areas through enhanced ozone and ozone precursor monitoring activities.

The revised PAMS requirements reduced the number of required PAMS sites (from 75 to 43) while improving spatial distribution. Of the 43 required PAMS sites, 16 were existing PAMS sites and 27 are new PAMS sites. While the new PAMS requirements leverage the existing NCore network and infrastructure providing significant long-term cost savings, many states (including those with existing PAMS sites due to the age of the existing equipment) need to install new equipment to comply with the revised PAMS requirements (*e.g.,* automated gas chromatographs (auto-GCs) to measure hourly volatile organic compounds (VOCs), true NO_2 analyzers, ceilometers (to measure mixing height), rain gauges, solar radiation sensors, and support equipment).

In revising the PAMS requirements, the EPA ''recognize[d] that the changes to the PAMS requirements will require resources and a reasonable timeline in order to be successfully implemented.'' 80 FR 65428. ''The PAMS program,'' the EPA explained, ''is funded, in part, as part of the EPA's section 105 grants.''[3] *Id.* At the time of the 2015 PAMS revisions, ''EPA believe[d] that the current national funding level of the PAMS program [was] sufficient to support these final changes . . . .'' *Id.* Additionally, the EPA explained that monitoring agencies would need time ''to make capital investments (primarily for the installation of auto-GCs, NO_2 monitors, and ceilometers), prepare appropriate [Quality Assurance] documents, and develop the expertise needed to successfully collect PAMS measurements via training or otherwise.'' *Id.*

Prior to this final action, the revised PAMS requirements required states to start making PAMS measurements by June 1, 2019. To assist states in acquiring the necessary equipment, the EPA has been working on national contracts[4] to provide much of the needed equipment for making PAMS measurements—specifically contracts for auto-GCs, ceilometers, and true NO_2 analyzers. The EPA informed the states of its intent to make the national contracts available to them for the purchase of the listed PAMS equipment during numerous meetings, conferences, and workgroup calls (See docket items EPA–HQ–2019–0137–0001, EPA–HQ–2019–0137–0001, and EPA–HQ–2019–0137–0001 for examples of these communications). Due to budget constraints[5] and delays in EPA's contracting process, many of the states relying on the national contracts for equipment did not have all the necessary equipment in time for the start date. However, the EPA has obtained some of the necessary PAMS equipment, which has been delivered to participating states. At the time of this final action, roughly two thirds of the sites have received and are operating auto-GCs but only one third of the sites will have the ceilometer and true NO_2 analyzers in 2019. Sites will need all of the equipment, however, to satisfy all of the PAMS requirements. The EPA is currently working on a national contract to purchase the remaining auto-GCs, but the remaining auto-GCs were not available by the June 1, 2019 start date. Moreover, once the remaining auto-GCs are delivered, states will need adequate time to install the new devices and develop the expertise to successfully collect PAMS measurements. The EPA is also working on a national contract to purchase the true NO_2 analyzers and ceilometers. That contract will not be funded until 2020 and the states will

[1] Section 182(c)(1) of the Clean Air Act (CAA), 42 U.S.C. 7511a, requires the Administrator to promulgate rules for enhanced monitoring of ozone, oxides of nitrogen and volatile organic compounds for areas classified as serious (or above) in order to obtain more comprehensive and representative data on ozone air pollution. CAA Section 185B required the EPA to work with the National Academy of Sciences to conduct a study on the role of ozone precursors in tropospheric ozone formation and control. CAA sections 110(a)(2)(B), 114 and 319 also address monitoring requirements and authorize the Administrator to require monitoring and to promulgate regulations defining monitoring obligations. In addition, section 301 gives the Administrator authority to prescribe such regulations as are necessary to allow him to carry out his functions under the CAA.

[2] NCore sites are National Core multi-pollutant monitoring stations. *See* 40 CFR 58.1.

[3] Section 105 grants are provided through the State and Tribal Air Grant (STAG) funds.

[4] The EPA assists states by negotiating and awarding national contracts for ambient air sampling and analysis services and large-scale monitoring equipment and supplies for efficiency and consistency in the monitoring networks. National contracts provide many benefits to EPA and the states, including simplified acquisition, national consistency, and sometimes better pricing options. For large-scale equipment contracts, the EPA coordinates closely with state monitoring agencies to determine interest before pursuing actual contracting vehicles. For those states planning to use the national contracts for PAMS equipment, the EPA will purchase the equipment using STAG funds on behalf of the state and have the equipment delivered directly to the state.

[5] The EPA is using STAG funds to purchase equipment on behalf of participating states under the national contracts. Approximately $8 million dollars was estimated to be needed to purchase the equipment. To minimize disruption to existing initiatives being funded by STAG, the EPA set aside $2 million in STAG funds per year over Fiscal Years 2017, 2018, 2019, and 2020 to fund the purchases of the new equipment on a rolling basis (*i.e.,* when a contract is established and equipment can be purchased).

not receive that equipment until the summer of 2020.

III. What actions did we propose?

In light of the delays in acquiring necessary equipment and the need for a reasonable training period to become proficient with new equipment, the EPA proposed (84 FR 25221) to extend the start date for required PAMS monitoring until the beginning of the PAMS season in 2021 (*i.e.,* June 1, 2021). The delays in the national contracts do not impact the state driven EMPs, and as such, we did not propose any change to the current EMP date.

In the proposal, the EPA also took comment on whether the start date should be extended only for sites that have not received the necessary equipment and considered two alternative options. Under the first alternative, the EPA would require each remaining site to begin measurements once *all* of the necessary equipment has been delivered (and taking into account a reasonable training period), rather than having a uniform start date for all sites. Under the second alternative, the EPA would require sites to begin measurements as the necessary equipment has been delivered (and taking into account a reasonable training period).

IV. What comments did we receive?

The EPA received seven comments on the proposed extension. Six comments were from state or local monitoring agencies affected by the PAMS requirements. The seventh comment was from a trade organization for state and local monitoring agencies. All commenters supported extending the PAMS start date to June 1, 2021, and no comments were received in support of the alternative options the EPA requested comment on. One commenter stated that ''the start date for the PAMS network was unattainable because of a lack of funding for equipment and the national contract equipment delays'' and urged the EPA to ''maintain the uniform start-up extension date of June 1, 2021 for all PAMS sites.'' Another commenter stated that ''due to the lack of critical funding, equipment procurement, and training, the two-year timeline extension proposed in this rule makes sense and should be finalized uniformly nationwide.'' Another commenter stated, ''a blanket extension is the most straightforward way to address the problem and would provide the most certainty for state and local agencies.''

V. What action are we taking in this final rule?

For the reasons discussed in this preamble and in consideration of the comments received, the EPA is extending the PAMS start date by two years to June 1, 2021, as proposed. Many of the states relying on the EPA's assistance in acquiring equipment for the required PAMS sites did not have all the necessary equipment by June 1, 2019. In addition, many states are new to making PAMS measurements and will need time to become proficient with the equipment after it has been delivered. For these reasons, EPA has concluded that it is appropriate to extend the start date for required PAMS monitoring for all sites until the start of the PAMS season following the delivery of the remaining PAMS equipment. Based on current expectations, the last equipment will be delivered in the summer of 2020. Accordingly, the EPA is extending the start date for required PAMS monitoring to June 1, 2021.

This extension will provide state and local monitoring agencies the necessary time to acquire, install, and become proficient with the necessary equipment to make PAMS measurements. The EPA agrees with the commenters that a blanket two-year extension provides more clarity and certainty for the monitoring agencies and will reduce confusion as compared to the options on which EPA sought comment. The agencies cannot be certain when they will receive the necessary equipment and it would be difficult for agencies to plan for and coordinate the start of sampling with staggered start dates that are not yet known. EPA thus decided to finalize the blanket two-year extension as proposed instead of the alternatives that would have created staggered start dates based on when equipment is delivered.

VI. What are the impacts of the actions taken in this final rule?

As stated above, the main objective of the PAMS program is to develop a database of ozone precursors and meteorological measurements to support ozone model development and track the trends of important ozone precursor concentrations. The EPA and other scientists use the data collected from the PAMS network to develop, evaluate, and improve ozone models. The delay in PAMS implementation will reduce the amount of precursor and meteorological data available from the PAMS season in 2019 and 2020. Nevertheless, sites which have already received the necessary equipment will likely begin making PAMS measurements as soon as possible, and as such, about two thirds of the required PAMS sites may begin making speciated VOC measurements in 2019, with the remaining third beginning to make speciated VOC measurements in 2020. One-third of the sites will have the ceilometer and true NO_2 analyzers in 2019, with the remainder receiving the equipment in fiscal year 2020. In addition, many of the required PAMS measurements are already being made at these sites as part of the NCore network, including ozone, total reactive nitrogen (NOy), and several meteorological measurements. Accordingly, while not a complete data set, PAMS data users will have much of the data necessary to develop, evaluate, and improve ozone models regardless of the delay in the start date for required PAMS monitoring.

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 not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by giving states 2 additional years to begin PAMS monitoring. A 2-year delay in the required PAMS site start date will result in cost savings for the network due to a savings in operating costs for those measurements not being made during the delay.

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 regulations and has assigned OMB control number 2060–0084. The burden associated with conducting and reporting PAMS monitoring data has been fully incorporated into the Ambient Air Quality Surveillance 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 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 action would reduce burden on the affected state and local monitoring agencies by delaying implementation and the associated costs of PAMS monitoring by 2 years. 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 any 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. This action only applies to state and local monitoring agencies operating NCore monitoring sites in Core Based Statistical Areas of 1,000,000 people or more. No tribal governments will be subject to the PAMS monitoring requirements. 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 is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

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 58

Ambient air monitoring, Ozone, Photochemical assessment monitoring stations, Precursor monitoring.

Dated: December 20, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending part 58 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

■ 1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7405, 7410, 7414, 7601, 7611, 7614, and 7619.

■ 2. Section 58.13 is amended by revising paragraph (h) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(h) The Photochemical Assessment Monitoring sites required under appendix D of this part, section 5(a), must be physically established and operating under all of the requirements of this part, including the requirements of appendix A, C, D, and E of this part, no later than June 1, 2021.

[FR Doc. 2019–28219 Filed 1–7–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[WC Docket Nos. 19–195 and 11–10; DA 19–1240; FRS 16319]

Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program; Corrections

AGENCY: Federal Communications Commission.

ACTION: Technical amendments.

SUMMARY: In this document, the Federal Communications Commission (Commission), Managing Director, adopted an Order implementing non-substantive revisions of the Commission's rules to eliminate a redundant provision and modify related rules for consistency with the amendments that the Commission adopted in a Report and Order published in the **Federal Register**.

DATES: Effective on January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Daniel Daly, Office of Managing Director at (202) 418–1832.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 19–1240, released December 6, 2016. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/DA-19-1240A1.pdf.*

In the Report and Order, FCC 19–79, 84 FR 43705, August 22, 2019, the Commission revised 47 CFR parts 1, 20, and 43 of the Commission's rules to create a new Digital Opportunity Data Collection program and to modify its existing FCC Form 477 Data Program. This Order implements related revisions to eliminate redundancy and conform other rules to the amendments adopted in the Report and Order.

Specifically, both §§ 1.7002 and 43.01(d) of the Commission's rules (47 CFR 1.7002, 43.01(d)) establish requirements regarding the frequency and content of FCC Form 477 filings. This Order eliminates this potentially confusing redundancy by deleting § 43.01(d). In turn, the deletion of

paragraph (d) of § 43.01 requires that paragraph (b) of § 43.01 be amended to remove the cross-reference to the deleted paragraph (d). In addition, § 20.15(b)(1) of the rules (47 CFR 20.15(b)(1)) contains references to §§ 1.7001 and 43.11 (47 CFR 1.7001, 43.11) that are inconsistent with the Commission's recent amendment of § 1.7001 and its repeal of § 43.11. Accordingly, this Order removes § 43.01(d), revises §§ 20.15(b)(1) and 43.01(b) for conformity with these rule amendments, and corrects an error in § 1.7001(a)(2)(iv). These changes should not be construed to change any substantive requirements.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Broadband, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 20

Commercial mobile services, Reporting and recordkeeping requirements.

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Accordingly, 47 CFR parts 1, 20, and 43 are revised by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

§ 1.7001 [Amended]

■ 2. In § 1.7001(a)(2)(iv), remove the words ''Wireless service'' and add, in its place, the words ''Wireless spectrum''.

PART 20—COMMERCIAL MOBILE SERVICES

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 4. In § 20.15, revise the first sentence of paragraph (b)(1) to read as follows:

§ 20.15 Requirements under Title II of the Communications Act.

* * * * *

(b) * * *

(1) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with §§ 1.781 through 1.814 and 43.21 of this chapter; except that commercial radio service providers that are facilities-based providers of broadband service or facilities-based providers of mobile telephony service, as described in § 1.7001(b)(1) and (3) of this chapter, are required to file reports pursuant to §§ 1.7000–1.7002 of this chapter. * * *

* * * * *

PART 43—REPORTS OF COMMUNICATIONS COMMON CARRIERS, PROVIDERS OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES

■ 5. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 35–39, 154, 211, 219, 220; sec. 402(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 129.

■ 6. In § 43.01, revise paragraph (b) and remove paragraph (d) to read as follows:

§ 43.01 Applicability.

* * * * *

(b) Except as provided in paragraph (c) of this section, carriers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of this part.

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–27644 Filed 1–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; FCC 19–104]

Connect America Fund; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects errors in the **SUPPLEMENTARY INFORMATION** portion of a **Federal Register** document reviewing performance measures for recipients of Connect America Fund high-cost universal services support to ensure that those standards strike the right balance between ensuring effective use of universal service funds while granting the flexibility providers need given the practicalities of network deployment in varied circumstances. The summary was published in the **Federal Register** on December 9, 2019.

DATES: Effective January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This summary contains corrections to the **SUPPLEMENTARY INFORMATION** portion of a **Federal Register** summary, 84 FR 67220 (December 9, 2019). The full text of the Commission's Order on Reconsideration in WC Docket No. 10–90; FCC 19–104, released on October 31, 2019 is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554.

In Final rule FR Doc. 2019–26448, published December 9, 2019 (84 FR 67220), make the following correction:

■ 1. On page 67235, in the first column, in the third, fourth, fifth and sixth lines, the text ''except for paragraphs 15, 16, 19, 22, 23, 26, 31 through 38, 43 through 49, 52, 53, 64 and 75 through 91'' is corrected to read ''except for paragraphs 8, 9, 12, 15, 16, 19, 24 through 31, 37 through 42, 45, 46, 57, and 68 through 84.''

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2019–28182 Filed 1–7–20; 8:45 am]

BILLING CODE 6712–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1022

[Docket No. EP 716 (Sub-No. 5)]

Civil Monetary Penalties—2020 Adjustment

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing a final rule to implement the annual inflationary adjustment to its civil monetary penalties, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, section 701, 129 Stat. 584, 599–601, requires agencies to adjust their civil penalties for inflation annually, beginning on July 1, 2016, and no later than January 15 of every year thereafter. In accordance with the 2015 Act, annual inflation adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for October of the previous year and the October CPI–U of the year before that. Penalty level adjustments should be rounded to the nearest dollar.

II. Discussion

The statutory definition of civil monetary penalty covers various civil penalty provisions under the Rail (Part A); Motor Carriers, Water Carriers, Brokers, and Freight Forwarders (Part B); and Pipeline Carriers (Part C) provisions of the Interstate Commerce Act, as amended. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. 11901–11908. The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. 14901–14916. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. 16101–16106.[1] The Board has regulations at 49 CFR part 1022 that codify the method set forth in the 2015 Act for annually adjusting for inflation the civil monetary penalties within the Board's jurisdiction.

As set forth in this final rule, the Board is amending 49 CFR part 1022 to make an annual inflation adjustment to the civil monetary penalties in conformance with the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations that occur after the effective date of this regulation.

In accordance with the 2015 Act, the annual adjustment adopted here is calculated by multiplying each current penalty by the cost-of-living adjustment factor of 1.01764, which reflects the percentage change between the October 2019 CPI–U (257.346) and the October 2018 CPI–U (252.885). The table at the end of this decision shows the statutory citation for each civil penalty, a description of the provision, the adjusted statutory civil penalty level for 2019, and the adjusted statutory civil penalty level for 2020.

III. Final Rule

The final rule set forth at the end of this decision is being issued without notice and comment pursuant to the rulemaking provision of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), which does not require that process ''when the agency for good cause finds'' that public notice and comment are ''unnecessary.'' Here, Congress has mandated that the agency make an annual inflation adjustment to its civil monetary penalties. The Board has no discretion to set alternative levels of adjusted civil monetary penalties, because the amount of the inflation adjustment must be calculated in accordance with the statutory formula. Given the absence of discretion, the Board has determined that there is good cause to promulgate this rule without soliciting public comment and to make this regulation effective immediately upon publication.

IV. Regulatory Flexibility Statement

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

V. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as a non-major rule, as defined by 5 U.S.C. 804(2).

VI. Paperwork Reduction Act

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 49 CFR Part 1022

Administrative practice and procedures, Brokers, Civil penalties, Freight forwarders, Motor carriers, Pipeline carriers, Rail carriers, Water carriers.

It is ordered:

1. The Board amends its rules as set forth in this decision. Notice of the final rule will be published in the **Federal Register**.

2. This decision is effective on its date of publication in the **Federal Register**.

Decided: January 2, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, part 1022 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1022—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 1022 continues to read as follows:

Authority: 5 U.S.C. 551–557; 28 U.S.C. 2461 note; 49 U.S.C. 11901, 14901, 14903, 14904, 14905, 14906, 14907, 14908, 14910, 14915, 14916, 16101, 16103.

■ 2. Revise § 1022.4(b) to read as follows:

§ 1022.4 Cost-of-living adjustments of civil monetary penalties.

* * * * *

(b) The cost-of-living adjustment required by the statute results in the following adjustments to the civil monetary penalties within the jurisdiction of the Board:

TABLE 1 TO PARAGRAPH (b)

U.S. code citation	Civil monetary penalty description	Adjusted penalty amount 2019	Adjusted penalty amount 2020
Rail Carrier Civil Penalties			
49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	$7,987	$8,128

[1] The Board also has various criminal penalty authority, enforceable in a federal criminal court. Congress has not, however, authorized federal agencies to adjust statutorily prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.

TABLE 1 TO PARAGRAPH (b)—Continued

U.S. code citation	Civil monetary penalty description	Adjusted penalty amount 2019	Adjusted penalty amount 2020
49 U.S.C. 11901(b)	For each violation under Section 11124(a)(2) or (b)	799	813
49 U.S.C. 11901(b)	For each day violation continues.	41	42
49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under Sections 10901–10906	7,987	8,128
49 U.S.C. 11901(d)	For each violation under Section 11123 or 11124(a)(1)	159–799	162–813
49 U.S.C. 11901(d)	For each day violation continues	80	81
49 U.S.C. 11901(e)(1), (4)	For each violation under Sections 11141–11145, for each day	799	813
49 U.S.C. 11901(e)(2), (4)	For each violation under Section 11144(b)(1), for each day	159	162
49 U.S.C. 11901(e)(3)–(4)	For each violation of reporting requirements, for each day	159	162
Motor and Water Carrier Civil Penalties			
49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day	1,093	1,112
49 U.S.C. 14901(a)	For each violation under Section 13901 or 13902(c)	10,932	11,125
49 U.S.C. 14901(a)	For each violation related to transportation of passengers	27,331	27,813
49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under Section 3001 of the Solid Waste Disposal Act.	21,865–43,730	22,251–44,501
49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	1,597	1,625
49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	15,976	16,258
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	39,936	40,640
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule	3,195	3,251
49 U.S.C. 14901(e)	Minimum penalty for each additional violation	7,987	8,128
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation	159,750	162,568
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect	319	325
49 U.S.C. 14904(a)	For all subsequent violations	400	407
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders	799	813
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations	3,195	3,251
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under Section 13702	799	813
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations	3,195	3,251
49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of Section 14103(a), and knowingly authorizing, consenting to, or permitting a violation of Section 14103(a) or (b).	15,976	16,258
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation	2,187	2,226
49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation	5,466	5,562
49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations	7,987	8,128
49 U.S.C. 14908(a)(2)	Maximum penalty for violation of Section 14908(a)(1).	3,195	3,251
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	799	813
49 U.S.C. 14915(a)(1)–(2)	Minimum penalty for holding a household goods shipment hostage, for each day	12,695	12,919
49 U.S.C. 14916(c)(1)	Maximum penalty for each violation under Section 14916(a) by knowingly authorizing, consenting to, or permitting unlawful brokerage activities.	10,932	11,125
Pipeline Carrier Civil Penalties			
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day	7,987	8,128
49 U.S.C. 16101(b)(1), (4)	For each recordkeeping violation under Section 15722, each day	799	813
49 U.S.C. 16101(b)(2), (4)	For each inspection violation liable under Section 15722, each day	159	162
49 U.S.C. 16101(b)(3)–(4)	For each reporting violation under Section 15723, each day	159	162
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information	1,597	1,625

[FR Doc. 2020–00089 Filed 1–7–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 679

[Docket No.: 191219–0121]

RIN 0648–BI65

Fisheries of the Exclusive Economic Zone off Alaska; Authorize the Retention of Halibut in Pot Gear in the BSAI; Amendment 118

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that implements Amendment 118 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and a regulatory amendment that revises regulations on Vessel Monitoring System (VMS) requirements in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA). This final rule is necessary to improve efficiency and provide economic benefits for the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) fleets, minimize whale depredation and seabird interactions in the IFQ and CDQ fisheries, and reduce the risk of exceeding an overfishing limit for any species. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Northern Pacific Halibut Act of 1982 (Halibut Act), the BSAI FMP, and other applicable laws.

DATES: This rule is effective on February 7, 2020.

ADDRESSES: Electronic copies of the Environmental Assessment and the Regulatory Impact Review (collectively referred to as the ''Analysis'') and the Finding of No Significant Impact prepared for this final rule may be obtained from *https://*

www.regulations.gov or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska*.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS published the Notice of Availability for Amendment 118 in the **Federal Register** on August 21, 2019 (84 FR 43570), with public comments invited through October 21, 2019. NMFS published the proposed rule to implement Amendment 118 in the **Federal Register** on October 3, 2019 (84 FR 52852), and a correction to the proposed rule on October 28, 2019 (84 FR 57687), with public comments invited through November 4, 2019.

The following summarizes the IFQ Program, the CDQ Program, the need for this final rule, and the anticipated effects of the final rule. Additional detail about this rule is provided in the preamble of the proposed rule and in the Analysis.

Background

The North Pacific Fishery Management Council (Council) recommended Amendment 118 to the BSAI FMP (Amendment 118) to require the retention of halibut by vessels using pot gear in the IFQ and CDQ fisheries in the BSAI, to prohibit the use of pot gear in the Pribilof Island Habitat Conservation Zone (PIHCZ), to require vessels using pot gear to fish IFQ and CDQ to use logbooks and VMS, and to develop regulations that allow NMFS to limit or close IFQ or CDQ fishing for halibut if a groundfish or shellfish overfishing level (OFL) is approached, consistent with existing regulations for groundfish. In recommending Amendment 118, the Council intended to address whale depredation in the IFQ and CDQ fisheries and to improve harvest efficiency of halibut. The following sections summarize the IFQ and CDQ Program, the retention of halibut, limitations on the use of pot gear, and whale depredation in the BSAI. Additional detail is provided in the preamble to the proposed rule (84 FR 52852, October 3, 2019).

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Halibut Act. The IPHC develops regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea. The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS promulgates the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The final rule implementing the 2019 annual management measures published March 14, 2019 (84 FR 9243).

The IFQ and CDQ Programs

The commercial halibut and sablefish fisheries in the GOA and the BSAI management areas are managed under the IFQ Program that was implemented in 1995 (58 FR 59375, November 9, 1993). Section 4.5 of the Analysis (see **ADDRESSES**) and the preamble to the proposed rule (84 FR 52852, October 3, 2019) provide additional information on the sablefish and halibut IFQ Program.

The Western Alaska Community Development Program (CDQ Program) was implemented in 1992 (57 FR 54936, November 23, 1992). Section 4.5.2 of the Analysis provides additional detail on the history of the CDQ halibut fishery.

The IFQ and CDQ fisheries are prosecuted in accordance with catch limits established by regulatory areas. The sablefish IFQ regulatory areas defined for sablefish in the BSAI are the Bering Sea (BS) and the Aleutian Islands (AI). The sablefish regulatory areas are shown in Figure 14 to 50 CFR part 679.

This rule implements provisions that affect IFQ halibut and CDQ halibut fisheries in the BSAI. The IPHC defines halibut regulatory areas (Areas). The Areas are defined in 50 CFR part 679 and described in Figure 15 to 50 CFR part 679 and Section 1.3 of the Analysis. Action 1 under this final rule is described below and applies within Areas 4B, 4C, 4D, 4E, and that portion of Area 4A that occurs in the Bering Sea and Aleutian Islands Management Area defined in the BSAI FMP.

Retention of Halibut by IFQ Sablefish Fishermen Using Authorized Gear

In the BSAI, IFQ sablefish fishermen who also hold halibut IFQ are required to retain halibut of legal-size. Many IFQ fishermen hold both sablefish and halibut IFQ, and the species can overlap in some fishing areas (see Section 4.5.2 of the Analysis).

In 2018, the IPHC recommended, and the U.S. approved, regulations to authorize the retention of halibut by vessels using pot gear throughout Alaska (83 FR 10390, March 9, 2018). Section 20(1) of the IPHC's 2019 annual management measures authorizes a person to retain and possess IFQ halibut or CDQ halibut taken with hook-and-line or pot gear in the IFQ or CDQ fisheries provided retention and possession is authorized by NMFS regulations published at 50 CFR part 679. If the Secretary approves a final rule to implement Amendment 118, these new regulatory requirements would ensure consistency with the regulations promulgated under the Halibut Act (16 U.S.C. 773c(c)).

Limitations on the Use of Pot Gear To Reduce Bycatch Concerns

Pribilof Islands Blue King Crab (PIBKC) occurs in the BSAI and is overfished and experienced overfishing most recently in 2016. Bycatch of PIBKC in pot gear is a concern in the BSAI, particularly in areas where PIBKC are concentrated. The greatest concentration of PIBKC is within the PIHCZ, a portion of the BSAI that overlaps with IFQ and CDQ halibut and sablefish fisheries. Section 3.6 of the Analysis provides more information about PIBKC and the PIHCZ.

In addition to the current closure of the PIHCZ to all trawl gear and Pacific cod pot gear, regulations in § 679.25 provide NMFS with inseason management authority to issue precise closures to BSAI groundfish and shellfish fisheries if a stock, in this case PIBKC, is approaching the OFL and if the closure is necessary to prevent overfishing.

Whale Depredation in the BSAI

Participants in the BSAI IFQ fisheries indicated to the Council and NMFS that authorizing the use of pot gear for IFQ halibut fishing could reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line to pot gear. Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 118 and this final rule.

This Final Rule

This section describes the changes to current regulations. This final rule includes two actions that revise 50 CFR part 300, 50 CFR part 600, and 50 CFR part 679. The primary action, Action 1, implements management measures that authorize retention of legal-size halibut in pot gear in the BSAI. The scope of this action does not authorize the retention of IFQ or CDQ halibut in other directed pot fisheries, including crab fisheries and Pacific cod fisheries. Action 2 modifies regulations to provide clarity and to remove from regulation two VMS requirements that are no longer necessary.

Action 1: Authorize the Use of Pot Gear To Retain Halibut and Other Related Regulatory Provisions

Action 1 includes the following five elements: (1) Authorizes retention of

legal-size halibut in pot-and-line or longline pot gear used to fish for IFQ or CDQ halibut or sablefish in the BSAI and requires retention of legal-sized halibut provided the IFQ or CDQ permit holder holds sufficient halibut IFQ or CDQ for that retained halibut; (2) closes the PIHCZ to all groundfish and halibut fishing with pot gear; (3) removes the requirement for a 9-inch maximum width tunnel opening when an IFQ or CDQ permit holder fishes for halibut or sablefish IFQ in the BSAI with pot gear and is required to retain halibut; (4) clarifies the inseason management measures, as well as the required determinations, that NMFS will use to limit or close IFQ or CDQ fishing for halibut if an OFL is approached for a groundfish or shellfish species, consistent with regulations in place for groundfish; and (5) requires logbooks and VMS for all vessels using pot gear to retain halibut and sablefish and adds requirements for reporting on the Prior Notice Of Landing (PNOL).

Action 1 does not authorize the retention of IFQ halibut or CDQ halibut in other directed pot fisheries, other than IFQ or CDQ sablefish or IFQ or CDQ halibut. An IFQ permit holder or a vessel fishing on behalf of a CDQ group is not permitted, nor required, to retain halibut on a pot fishing trip while directed fishing in other pot fisheries (*e.g.,* Pacific cod or crab), even if they hold available IFQ or CDQ.

The first element of Action 1 authorizes the harvest of IFQ halibut or CDQ halibut with pot gear and provides halibut quota holders the opportunity to use pot gear on a trip solely intended to harvest halibut, or on a mixed trip in which both halibut and sablefish are the intended target, provided the vessel has quota for the appropriate areas for both species. Section 679.7(f)(11) prohibits IFQ permit holders from discarding halibut or sablefish caught with fixed gear for which they hold unused halibut or sablefish IFQ for that vessel and IFQ regulatory area. Consistent with that regulatory requirement and with § 679.42(m)(2) and (3), Action 1 prohibits IFQ and CDQ permit holders fishing in the BSAI with pot gear from discarding legal-size halibut for which they have the necessary quota. IFQ and CDQ participants that hold both sablefish and halibut quota will have more flexibility to use their quota opportunistically and minimize variable costs.

This final rule revises the definition of ''Fishing'' at § 300.61 to include the deployment of pot gear in the BSAI halibut IFQ or CDQ fishery.

This final rule revises § 679.2 to include pot gear as authorized fishing gear in the BSAI IFQ and CDQ fisheries. Specifically, this final rule revises the definition of ''Fixed gear'' under the definition of ''Authorized fishing gear'' at § 679.2(4)(v) to include pot gear as an authorized gear in the BSAI IFQ halibut or CDQ halibut fishery. The regulations currently define fixed gear for sablefish harvested in the BSAI to include hook-and-line gear and pot gear (§ 679.2(4)(ii)). Fixed gear is a general term that describes multiple gear types allowed to fish sablefish and halibut under the IFQ and CDQ Programs and is referred to throughout 50 CFR part 679. This final rule revises § 679.24 (and § 679.42, discussed later) to require retention of halibut in pot gear in the BSAI IFQ and CDQ fisheries. Specifically, this final rule revises § 679.24(b) to require retention of groundfish for any person using longline pot gear while fishing for halibut in the BSAI. As revised, § 679.24(b) now requires retention of groundfish for any person using longline pot gear while fishing for both sablefish and halibut in the BSAI.

This final rule revises § 679.42(b)(1)(i) to specify that IFQ halibut may be harvested using pot gear, but the final rule will not change the existing prohibition on the use of trawl gear to harvest IFQ halibut in any IFQ regulatory area.

The second element of Action 1 closes the PIHCZ to all directed fishing for groundfish and halibut with pot gear. This final rule revises § 679.22(a)(6) to implement that closure. Regulations at § 679.22 already prohibit the use of pot gear to harvest Pacific cod in the PIHCZ. The Pacific cod pot fishery is the largest groundfish pot fishery in the BSAI. Closing the PIHCZ to all pot gear is necessary to avoid groundfish fishery and area closures that could be triggered by approaching an OFL for the PIBKC. Section 3.6 of the Analysis provides additional details on the distribution of halibut and potential overlap with PIBKC in the PIHCZ.

The third element of Action 1 amends regulations at § 679.2(15) that describe the definition of ''Authorized Fishing Gear'' to exempt vessel operators fishing halibut or sablefish IFQ or CDQ with pot gear from the requirement to have a tunnel opening no wider and no taller than 9 inches when the vessel operator is required to retain halibut. If the tunnel opening requirement remained in effect, the extent to which halibut quota holders in the BSAI could target halibut with pot gear would be greatly reduced, contrary to the intent of Amendment 118. Section 4.7.4.2 of the Analysis describes this element in more detail.

The fourth element of Action 1 specifies the management measures, and required determinations, that NMFS will use to limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish. Under existing regulations at § 679.25, NMFS has the authority to limit or close groundfish fisheries, including the IFQ or CDQ sablefish fishery, to prevent overfishing of groundfish and shellfish species. However, these regulations do not apply to the IFQ or CDQ halibut fishery to prevent overfishing of groundfish or shellfish. While NMFS has authority under section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) to enact emergency regulations to limit fishing to avoid exceeding an OFL and authority under the Halibut Act to implement measures that are in addition to and not in conflict with those adopted by the IPHC (16 U.S.C. 773c(c)), the specific regulatory measures that NMFS could use to limit or close halibut fishing to prevent overfishing are not described in regulation. This final rule revises § 679.25 to specify the management measures NMFS can use, and the determinations required, to limit or close halibut fisheries in the BSAI and GOA in the event an OFL is approached for a groundfish or shellfish species, consistent with regulations in place for directed fishing for groundfish. These changes provide the public with a clear understanding of NMFS's regulatory authority to limit or close halibut directed fishing in the event that the OFL for PIBKC, or other groundfish or shellfish species, is approached. Section 4.7.6 of the Analysis further describes this element in greater detail.

The fifth element of Action 1 requires all vessels fishing IFQ or CDQ sablefish or halibut with pot gear to complete the Daily Fishing Logbook (DFL), to use VMS, and to provide additional pot gear information on the PNOL. A vessel operator records where and when fishing activity occurs and the number of sets and hauls in the DFL. There are several types of logbooks, including a DFL required by NMFS (§ 679.5) and an IPHC logbook. The Council's intent for this element is to require all vessels fishing IFQ or CDQ sablefish or halibut with pot gear to complete the DFL, and the final rule revises regulations at § 679.5 accordingly. In addition, this final rule requires vessels to report specific information on the use of pot gear in the BSAI on the PNOL under § 679.5, including adding the requirement to report the number of

pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds, in addition to the information they currently submit in the PNOL.

Due to concern over additional pot fishing in the PIHCZ and within the PIBKC stock boundary area, this final rule revises § 679.7(f)(26) to prohibit vessels using pot gear to fish for IFQ or CDQ sablefish or halibut in the BSAI without functioning VMS equipment as required under § 679.42(m).

All vessels that participated in the BSAI IFQ or CDQ sablefish pot fishery have VMS and maintain a DFL already. However, additional vessels may use pot gear to harvest IFQ or CDQ halibut or sablefish in the future. Any additional vessels will be required to install VMS and begin maintaining a DFL, as well as report pot gear information on the PNOL, under this final rule. Section 4.7.5 of the Analysis provides more information supporting these monitoring and reporting provisions.

To effectuate each of the five elements described above, the final rule revises § 679.42 to specify at § 679.42(m) the requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear. This includes the requirements that all vessel operators must retain legal-sized halibut provided the operator has sufficient IFQ or CDQ for the retained halibut; that all vessel operators must comply with the VMS requirements; that all vessel operators must complete a DFL; and that all vessels operators must report pot gear set, lost, and left deployed on the fishing grounds when they submit a PNOL.

Finally, to promote consistency and clarity with the provisions of this rule, this final rule makes editorial revisions throughout regulations at 50 CFR part 679. Existing regulations implementing the Observer Program state the gear type (hook-and-line) used to harvest halibut in the applicability paragraph for which vessels are in partial coverage or full coverage. Regulations at § 679.51(a)(1)(i) are modified to remove the language describing the specific gear type used to fish for halibut, which is in accordance with this action that authorizes another specific gear type (pot) in addition to hook-and-line gear. This is an editorial change that does not modify existing observer coverage requirements for vessels participating in the IFQ or CDQ halibut or sablefish fisheries.

Action 2: NMFS's Regulatory Amendment To Modify VMS Regulations

Action 2 modifies regulations to remove certain provisions that are no longer required for management and enforcement purposes and makes other minor revisions to the regulations governing VMS. However, Action 2 does not materially change existing VMS coverage, requirements, or equipment.

First, this final rule removes from § 679.28 a check-in requirement for vessel owners activating VMS for the first time. Currently, vessel owners are required to check in by fax to register a new unit with the NMFS Office of Law Enforcement (OLE) (§ 679.28(f)(4)(ii)). This faxed check-in is no longer necessary because the information OLE needs about a new VMS unit is provided automatically by the VMS unit when the new unit is activated.

Second, this action removes from § 679.42 a requirement for vessel operators in the IFQ sablefish fisheries in BSAI and GOA to contact NMFS by phone and receive confirmation that their VMS unit is operating. Currently, vessel operators are required to call OLE at least 72 hours prior to fishing for IFQ sablefish in the BSAI and prior to using longline pot gear to fish for IFQ sablefish in the GOA (§ 679.42(k)). These vessel clearance requirements are no longer needed because the VMS unit provides the information needed by OLE to monitor these fisheries.

This action also modifies in § 679.28(f)(6) the list of circumstances in which a VMS unit must be transmitting to include reference to all of the VMS requirements elsewhere in 50 CFR part 679 and 50 CFR part 680. The current list is only a partial list of the VMS requirements in Federally-managed fisheries off Alaska. Completion of the list will reduce confusion about the VMS requirements under § 679.28(f), but it will not alter existing VMS requirements at § 679.28(f) when a VMS transmitter must be transmitting. The action also revises two cross references to the VMS requirements in § 679.7(a)(21) and (22) to more accurately refer to the VMS regulations in § 679.28(f). This revision will provide greater clarity and specificity in the VMS regulations without changing existing VMS requirements.

Anticipated Effects of This Final Rule

This section describes the final rule implementing Amendment 118 and the anticipated effects on fishery participants and the environment.

This final rule authorizes the use of pot gear in the IFQ and CDQ halibut fisheries and requires retention of legal-sized halibut in pot gear used in the existing IFQ and CDQ sablefish pot gear fisheries and in the new IFQ and CDQ halibut pot gear fisheries if the operator has sufficient IFQ or CDQ for the retained halibut. Pot gear includes pot-and-line gear and longline pot gear. For additional information on longline gear, pot-and-line gear, and longline pot gear, see the definition of ''Authorized Fishing Gear'' in § 679.2. This final rule could improve operational efficiency of vessels participating in the IFQ or CDQ halibut or sablefish pot fisheries by reducing the discard mortality associated with halibut discard in the existing sablefish pot fisheries and reducing whale depredation for vessels that choose to switch to pot gear instead of hook-and-line gear. Reducing bycatch and discard mortality of halibut in the sablefish pot fishery and reducing whale depredation of halibut and sablefish caught with pot gear will provide conservation benefits to these fishery resources (halibut and sablefish).

Based on the analysis in Section 4.7.2 of the Analysis, the overall impact of this final rule on the hook-and-line IFQ or CDQ halibut fishery is likely to be small. As explained in Section 4.5.2 of the Analysis, vessel operators who switch to pot gear to harvest halibut could benefit from this final rule from reduced whale depredation, reduced operating costs, and reduced fishing time. The Analysis (see Section 4.7.2.1) recognizes that it is not possible to estimate how many hook-and-line vessel operators will switch to pot gear to harvest halibut under this final rule. The total number of vessels using pot gear will be limited by the costs of pot gear and vessel reconfiguration. For some vessel operators, reconfiguration costs will be prohibitive.

To implement the Council's recommendation to close the PIHCZ to all fishing with pot gear, the final rule requires that all vessels retaining IFQ or CDQ halibut or sablefish in pot gear use logbooks and VMS to ensure consistency in monitoring fishery behavior.

Section 304(d)(2)(A) of the Magnuson-Stevens Act obligates NMFS to recover the actual costs of management, data collection, and enforcement (direct program cost) of catch share programs, such as the IFQ fisheries (16 U.S.C. 1854(d)(2)(A)). Therefore, NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). The cost to implement and manage the IFQ sablefish and halibut pot gear fishery are included in the annual calculation of NMFS's recoverable costs, and this final

rule is included under this cost recovery program. These costs are part of the total management and enforcement costs used in the calculation of the annual fee percentage. While costs specific to the CDQ Program for halibut are recoverable through a separate cost recovery program (81 FR 150, January 5, 2016), this rule does not change the process that harvesters use to pay cost recovery fees.

Whale and Seabird Interactions

If some portion of the IFQ and CDQ halibut fleet switches to pot gear, interactions between whales and the halibut fishery could decrease. Unaccounted halibut mortality due to depredation is expected to decline as IFQ and CDQ halibut fishermen voluntarily switch from hook-and-line gear to pot gear. Because the amount of depredation is not known with certainty, the potential effects of reduced depredation from this final rule cannot be quantified. Section 3.5 of the Analysis and the preamble of the proposed rule provides available information on the interactions of the IFQ fishery with killer whales and sperm whales. Section 3.5.3.2 of the Analysis and the preamble of the proposed rule describes whale entanglement with vertical gear lines in the water.

This final rule will likely reduce the incidental catch of seabirds in the IFQ and CDQ halibut fisheries because it provides vessel operators with the opportunity to use pot gear, which has a lower incidental catch rate of seabirds than hook-and-line gear. In Section 3.9 of the Analysis, NMFS compared the number of seabird mortalities by hook-and-line and pot gear and determined that a higher level of seabird mortality occurred with hook-and-line gear than pot gear.

Comments and Responses

NMFS received 6 comment letters on the proposed rule. NMFS has summarized and responded to the 11 unique comments below. The comments were from individuals and industry representatives representing IFQ fishermen, CDQ communities, and crab fishermen.

Comment 1: NMFS should prohibit all commercial fishing as well as prohibit pot gear, longline nets, and trawling in the PIHCZ.

Response: NMFS disagrees. Prohibiting all commercial fishing would be outside of the scope of this final rule. This final rule is intended to authorize the retention of halibut in pot gear in the BSAI, while considering the impact on other species, consistent with the requirements of the Magnuson-Stevens Act and the Halibut Act. Under existing regulations at § 679.22(a)(6), the PIHCZ is closed to all directed fishing for groundfish using trawl gear, and directed fishing for Pacific cod using pot gear. This final rule prohibits the use of any pot gear in the PIHCZ to minimize bycatch of PIBKC to the extent practicable, prevent overfishing, and support rebuilding of the PIBKC stock. Additional detail on the purpose of this rule is provided in the preamble to the proposed rule and Section 3.6 of the EA. Longline nets are not an authorized gear type in the BSAI.

Comment 2: NMFS is too generous in fishing regulations and all species are going extinct, including marine mammals. It is time to stop commercial fishermen and to stop polluting our waters, including keeping out large tourist boats.

Response: NMFS disagrees. NMFS implements conservation and management measures as recommended by the Council, and the flexibility provided by this final rule will not create an overfished condition or contribute to overfishing in the groundfish and shellfish fisheries in the BSAI. Sections 3.4 and 3.7 of the Analysis describes the current BSAI halibut and sablefish fisheries. Section 3.3 and 3.5.3 of the Analysis and the preamble of the proposed rule describe the cumulative effects on the environment, including marine mammals and seabirds. In recommending Amendment 118, the Council and NMFS considered the impacts of Amendment 118 and this final rule on marine mammals and seabirds, and based on the Analysis concluded that there may be only minimal, if any, adverse effects on marine mammals. In addition, NMFS determined the final rule was not likely to adversely affect ESA-listed marine mammals and seabirds. The regulation of maritime pollution and tour vessels is outside of the scope of this final rule.

Comment 3: Several commenters expressed support for Amendment 118 to allow pot gear to be used by halibut fisheries in the BSAI as an alternative to longline gear and to avoid whale depredation sometimes experienced with longline gear. Several commenters also expressed support that Amendment 118 would prohibit the use of pot gear in sensitive habitats like the PIHCZ. One commenter requests that the Council and NMFS consider whether areas around St. Matthew Island should be closed to protect habitat and reduce bycatch of St. Matthew blue king crab.

Response: NMFS acknowledges this comment. This final rule prohibits the use of any pot gear in the PIHCZ to minimize bycatch of PIBKC to the extent practicable, prevent overfishing, and support rebuilding of the PIBKC stock, and the revised regulations will prohibit directed fishing for groundfish using trawl gear or pot gear or fishing for halibut using pot gear in the PIHCZ (§ 679.22(a)(6)). St. Matthew blue king crab was declared overfished in 2018, and the Council and NMFS are currently developing a rebuilding plan. The St. Matthew Island blue king crab directed fishery has been closed since the 2016/2017 season. Extending closures around St. Matthew Island would be beyond the scope of this final rule. However, NMFS has established a range of measures to protect St. Matthew blue king crab. The St. Matthew Island Habitat Conservation Area (SMIHCA) was created in 2008 and expanded in 2010 to protect blue king crab habitat (see Table 46 to 50 CFR part 679). Vessels fishing with nonpelagic trawl gear are prohibited from fishing in the SMIHCA (§ 679.22(a)(20)). Other fishery closure areas include a 20nm Steller sea lion closure around the southern tip of Hall Island (near St. Matthew Island) to trawling, hook-and-line, and pot fisheries for pollock, Pacific cod, and Atka mackerel (§ 679.22(a)(7)). In addition, all nearby state waters around St. Matthew Island are closed to the taking of king crab and to commercial groundfish fishing. At this time, NMFS and the Council are developing a rebuilding plan and will consider any potential sablefish and halibut pot gear fishery impacts in the development of conservation and management measures for the St. Matthew Island blue king crab.

Comment 4: The proposed rule states that after implementation of Amendment 101 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), IFQ sablefish fishermen requested greater consistency between the regulatory requirements in the BSAI and GOA. Amendment 118 should prohibit the deployment of gear before the IFQ sablefish fishing period such as in § 679.7(f)(17) for GOA sablefish pots, which prohibits deploying, conducting fishing with, or retrieving longline pot gear in the GOA before the start or after the end of the IFQ sablefish fishing period.

Response: NMFS acknowledges this comment. During the Council process for development of this action, the Council recommended revisions to regulations on the type of authorized gear for halibut but did not recommend new regulations or revisions to existing regulations on the timing of the

deployment of pot gear in the IFQ fishery, or in other groundfish fisheries in the BSAI. Section 2.2 of the Analysis and the preamble of the proposed rule state that the scope of this rule would not allow for the retention of halibut IFQ or CDQ in other directed pot fisheries, such as those for groundfish (other than sablefish) or shellfish. An IFQ permit holder would not be required *nor* permitted to retain halibut on a pot fishing trip while directed fishing in other pot fisheries (such as Pacific cod or crab), even if they hold available IFQ.

As described in the proposed rule and Section 3.1.1.2 of the Analysis, under Amendment 118 and this final rule, catches of IFQ sablefish or halibut will be authorized only during the IFQ fishing period specified at § 679.23(f)(1) and (g)(1) and established by the Council and NMFS through the annual harvest specifications for sablefish (84 FR 9000, March 13, 2019) and the annual management measures for halibut (84 FR 9243, March 14, 2019).

Comment 5: We would like to highlight ongoing coordination among halibut, Pacific cod, and crab fishermen, as well as gear manufacturers, that has come about, in part, from the this action to allow halibut pots in the BSAI. Fishermen are working together on gear designs to allow halibut and cod fishermen to maximize their target catch while minimizing crab bycatch.

Response: NMFS acknowledges this comment. The Analysis and preamble of the proposed rule recognize that industry-led innovation to develop gear specifications to minimize bycatch could be more responsive, flexible, and effective than regulations to address the range of bycatch issues that may be experienced with a new gear type. However, NMFS and the Council will continue to review the performance of pot gear, and if bycatch increases, additional regulatory revisions could be undertaken.

Comment 6: Several commenters raised concerns over additional crab bycatch with the increased use of pot gear in the IFQ and CDQ sablefish and halibut fisheries. One commenter requests that crab bycatch be tracked closely by NMFS in this developing fishery and be reported to the Council and the public through NMFS's annual inseason report. In addition, this commenter supports NMFS authority to limit or close IFQ or CDQ fishing for halibut if an OFL is approached for a groundfish or shellfish species.

Response: NMFS acknowledges the support for inseason management authority. Section 4.7.7 of the Analysis provides further information on inseason management reports. NMFS inseason management produces a report every year which provides an overview of the catch in that region for the preceding year to the Council. The report began including statistics on the number of GOA sablefish pot vessels, metric tons of sablefish harvested, and percent of sablefish harvest by gear type and sub-area in the GOA after Amendment 101 to the GOA FMP was implemented. Assuming three or more vessels participate in a BSAI halibut pot fishery (so the confidential information can be released in aggregate form), similar information could be reported for a BSAI halibut pot fishery to track the changes in the fishery. This accords with the Council's request, as outlined in the Analysis, that NMFS include pot gear effort in its annual inseason management report to the Council. The Council also intends to review the effects from this final rule authorizing retention of halibut in pot gear within three years after implementation.

Comment 7: NMFS should include a requirement for biodegradable panels in BSAI halibut pot gear, if not already in regulation.

Response: NMFS agrees and notes this requirement is currently in regulation. As described in Section 4.7.4.3 of the Analysis, all groundfish pots in federal fisheries are required at § 679.2 to be equipped with a biodegradable panel at least 18 inches. This requirement to include a biodegradable panel will also apply to pot gear used to harvest halibut in the BSAI.

Comment 8: Many fishermen fish both Pacific cod and halibut. When all of the species seasons and areas are open for fishing, NMFS should allow retention of halibut in any pot fishery and minimize discards of all species. I believe fishermen who fish for halibut with pot gear will routinely catch more Pacific cod than halibut in many areas. We do not want to require discards of Pacific cod. I think, at a minimum, when both seasons are open for Pacific cod and halibut that the maximum retention requirement (20%) should not be in effect.

Response: NMFS disagrees. Authorizing retention of halibut when directed fishing for Pacific cod would be outside of the scope of this final rule. This final rule is intended to authorize the retention of halibut in pot gear in the directed IFQ and CDQ halibut and sablefish fisheries. The scope of this action and the Council's intent is described in further detail in Section 2 of the Analysis and in the preamble of the proposed rule. The scope of this action would not allow for the retention of IFQ or CDQ halibut in other directed pot fisheries, such as those for groundfish (other than sablefish) or shellfish. An IFQ permit holder would not be required nor permitted to retain halibut on a pot fishing trip while directed fishing in other pot fisheries, such as Pacific cod, even if they hold available IFQ. Similarly, CDQ participants would not be required nor permitted to retain halibut on a pot fishing trip while directed fishing in other pot fisheries, such as Pacific cod, even if they hold available CDQ.

Comment 9: The elements of Amendment 118 are responsive to the MSA National Standards, including (1) optimum yield; (2) use of best scientific information available; (4) non-discrimination among residents of different states; (5) efficiency in utilization of fishery resources; (7) minimization of costs and unnecessary duplication; (8) taking into account the sustained participation of communities (in this case halibut dependent communities) in utilization of fishery resources; (9) minimization of bycatch and mortality to the extent practicable; and (10) promotion of the safety of life at sea. This commenter also noted that the requirement that all vessels over 79 feet maintain and abide by their stability instructions for their vessels and gear ensures that the safety of participants in this fishery will not be unduly endangered.

Response: NMFS acknowledges this support and agrees that the Council and NMFS have considered and balanced the ten National Standards under the Magnuson-Stevens Act (16 U.S.C. 1851) and that this final action is consistent with those National Standards. Section 5.1 of the Analysis describes how the Council considered and balanced the National Standards under the Magnuson-Stevens Act when recommending its preferred alternative. Amendment 118 and this final rule implement the Council's preferred action, without significant change, and are consistent with the Magnuson-Stevens Act's ten National Standards, for the reasons discussed in the Analysis and in the Notice of Availability for Amendment 118 (84 FR 43570, August 21, 2019).

Comment 10: Our concern is about the appropriate management of CDQ halibut quota that is held by the CDQ entity, but normally fished on a vessel with a skipper who does not actually hold that quota personally. We are not certain how implementing regulations would deal with a vessel fishing for CDQ sablefish with pots, and catching legal-size halibut. Would that vessel be required to retain that halibut if the CDQ entity held unused halibut CDQ?

Response: Yes, under § 679.42(m), vessels fishing for CDQ sablefish with pot gear would be required to retain legal-sized halibut on board provided there is a permit holder on board with unused halibut IFQ or CDQ for that IFQ regulatory area.

Comment 11: One commenter recommends that the conservation benefits of Amendment 118 be spelled out. This commenter also noted the conservation benefits of the action, including: (1) The allowance of the retention of halibut in pots in the IFQ or CDQ sablefish fishery is expected to reduce halibut bycatch and mortality, as well as reduce duplicative efforts in different target fisheries, resulting in greater conservation and efficiency; (2) fishing for halibut in pot gear rather than longline gear is expected to reduce halibut mortality based on predation by whales, which will result in conservation of the halibut resource and greater efficiency in fishing efforts; (3) the use of pot gear in targeting halibut is expected to reduce the incidental catch of seabirds given that seabirds are attracted to baited hooks in longline gears, which will lead to greater conservation of seabird populations, as well as reduce inefficiencies resulting from lost baits or catches on hooks; (4) the prohibition of pot gear to target halibut in the PIHCZ is responsive to concerns over additional pot fishing activity impacting overfished PIBKC as well as other crab species in the area, and ensuring that bycatch of PIBKC and other crab species within the PIHCZ will not result from this action adds to existing conservation efforts.

Response: NMFS agrees with the commenter regarding the conservation benefits of the final rule to implement Amendment 118. NMFS notes that the preamble to the proposed rule (84 FR 52852, October 3, 2019) and the Analysis describe potential benefits, including conservation benefits, in detail. NMFS provides a summary response here. First, the final rule authorizes the retention of halibut in pots in the IFQ sablefish fishery, while requiring retention of halibut pursuant to §§ 679.7(f)(11) and 679.42(m). This will reduce regulatory discards of halibut, which in turn will reduce halibut bycatch and mortality, thereby providing a conservation benefit for the halibut resource. Fishing with pot gear, instead of hook-and-line gear, is also expected to reduce whale predation of halibut and sablefish that occurs with hook-and-line gear. The reduced mortality associated with reduced whale predation with pot gear is another conservation benefit to these fishery resources.

In addition, the final rule provides greater flexibility for participants in the BSAI by allowing them options to fish their quota opportunistically with either hook-and-line or pot gear. Section 4.7.2 of the Analysis provides more detail; in summary, this may increase their economic efficiency and reduce opportunity costs that are incurred from avoiding whales. Another potential benefit occurs from increased efficiency in the use of the resource and possibly better accounting for unobserved mortality due to whale depredation.

The final rule also provides a conservation benefit for seabirds. Section 3.9.2.2 states that pot gear has the lowest seabird bycatch rates and it is assumed that the impact to seabirds is insignificant. The use of pot gear, rather than hook-and-line gear, is therefore expected to reduce the incidental catch of seabirds in the IFQ and CDQ fisheries. The final rule also addresses conservation concerns in the PIHCZ and for PIBKC. The final rule closes the PIHCZ to all fishing with pot gear for groundfish and halibut, in addition to the existing prohibition on the use of trawl gear and pot gear for Pacific cod. Section 3.6.3.2 of the Analysis and the proposed rule preamble describe that closing the PIHCZ is in response to conservation concerns over any additional pot gear activity and associated shellfish bycatch.

Changes From Proposed to Final Rule

There were no changes from the proposed to final rule.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 118 to the BSAI FMP and this final rule are necessary for the conservation and management of the groundfish and halibut fishery and are consistent with the Magnuson-Stevens Act and other applicable laws.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5(c) of the Halibut Act allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations (16 U.S.C. 773c(c)). This final rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska. The Halibut Act provides the Secretary with the general responsibility to carry out the Convention with the authority, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act (16 U.S.C. 773c(a) & (b)). This final rule is consistent with the Halibut Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule is considered an Executive Order 13771 deregulatory action.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule include a detailed description of the actions necessary to comply with this rule and as part of this rulemaking process, NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide: *https://www.fisheries.noaa.gov/action/amendment-118-fmp-groundfish-bering-sea-and-aleutian-islands-management-area*. This rule does not require any additional compliance from small entities that is not described in the preambles. Copies of this final rule are available from NMFS at the following website: *https://www.fisheries.noaa.gov/region/alaska*.

Final Regulatory Flexibility Analysis (FRFA)

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the final rule.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code (5 U.S.C. 553), after being required by that section or any other law to publish a general notice of proposed

rulemaking, the agency shall prepare a FRFA (5 U.S.C. 604). Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preambles to the proposed rule (84 FR 52852, October 3, 2019) and the proposed rule correction (84 FR 57687, October 28, 2019), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

An IRFA was prepared in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA.

Number and Description of Small Entities Regulated by This Final Rule

NMFS estimates that, between the BSAI and the GOA, 815 vessels participated in the IFQ or CDQ commercial halibut fisheries in 2018; 802 of which are considered small entities based on the $11.0 million threshold. All of these small entities in the BSAI or GOA could be directly regulated by that aspect of the final rule that specify NMFS's regulatory authority to limit or close IFQ or CDQ halibut fishing if NMFS determined it was necessary in the event of a conservation concern for groundfish or shellfish. In addition, vessels that currently participate in the GOA fisheries will be directly regulated by the final rule if they choose to participate in the IFQ or CDQ halibut or sablefish fisheries in the BSAI. NMFS estimates that, in the BSAI, 152 vessels participated in the IFQ or CDQ halibut or sablefish fisheries in 2018. Of those vessels, 125 are considered small entities. In the BSAI sablefish pot fishery, 5 of the 9 vessels that participated in 2018 are considered small entities. Therefore, NMFS estimates a total of 130 small entities that could be directly regulated by this final rule if they decide to use pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish. In addition, a portion of these small entities engaged in the IFQ or CDQ halibut or sablefish fisheries are subject to the requirements for using pot gear if they choose to use pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries. In addition, this final rule closes the PIHCZ to all fishing with pot gear. No entities are currently using pot gear to fish within the PIHCZ. Therefore, no additional entities other than the 130 entities engaged in the IFQ or CDQ fisheries are affected by this provision. Those entities engaged in the IFQ or CDQ fisheries with pot gear in the BSAI are required to use logbooks and VMS and submit additional pot gear information on the PNOL while IFQ or CDQ fishing with pot gear in the BSAI.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements of some vessels affected by this final rule will be increased slightly. This final rule contains new requirements for vessels participating in the IFQ and CDQ halibut pot fishery in the BSAI. This final rule removes two unnecessary VMS check-in requirements in the BSAI and GOA.

NMFS currently requires catcher vessels 60 feet (ft) or greater length overall (LOA), using fixed gear, setline, or pot gear to harvest IFQ sablefish or IFQ halibut to maintain a longline and pot gear Federal DFL. Catcher/processors currently must also maintain a daily catcher/processor logbook (DCPL). All vessels participating in the BSAI sablefish IFQ or CDQ pot fishery maintain a longline and pot gear DFL. This final rule revises regulations to also require all vessels using pot gear to harvest IFQ or CDQ halibut in the BSAI to maintain a longline and pot gear DFL.

NMFS currently requires vessels in the BSAI to have an operating VMS on board while participating in the IFQ or CDQ sablefish pot fishery. This final rule revises regulations to extend this requirement to vessels using pot gear in the BSAI IFQ or CDQ halibut fishery.

NMFS currently requires all vessels in the IFQ sablefish and halibut fisheries to submit a PNOL to NMFS. This final rule revises regulations to require vessels using pot gear in the BSAI IFQ or CDQ halibut fishery to report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds in addition to the information they currently submit in the PNOL.

Two regulations are removed because they are no longer necessary, but these removals do not materially change existing VMS coverage, requirements, or equipment. This final rule removes a check-in requirement for vessel operators activating VMS for the first time and removes a requirement for vessel operators to contact NMFS and receive a VMS confirmation number at least 72 hours prior to fishing for IFQ sablefish in the BSAI or using longline pot gear to fish for IFQ sablefish in the GOA.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. BSAI halibut harvesters that are directly regulated by this final rule are expected to benefit from the additional flexibility to use a new gear type in order to minimize the costs of whale depredation that occurs on hook-and-line gear. Additional impacts may be expected for small directly regulated IFQ or CDQ halibut and sablefish harvesters in terms of potential additional costs for daily fishing logbooks, reporting on the PNOLs, or VMS requirements. Small entities will be required to comply with the requirements for using pot gear in the BSAI IFQ and CDQ halibut and sablefish fisheries. Authorizing halibut retention in pot gear in this final rule provides an opportunity for small entities to choose whether to use hook-and-line or pot gear to increase harvesting efficiencies and reduce operating costs in the IFQ and CDQ halibut and sablefish fisheries. Because NMFS currently has statutory authority under section 305(c) of the Magnuson-

Stevens Act to enact emergency regulations to prevent overfishing (16 U.S.C. 1855(c)), NMFS does not anticipate additional costs to small entities from potential inseason closures. However, NMFS expects that this final rule will provide better clarity and certainty to the regulated public by specifying in regulation the management measures, and required determinations, that NMFS would use to limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish.

As noted in Section 4.7.12 of the Analysis, the requirements for using pot gear are not expected to adversely impact small entities because such entities can voluntarily choose to use pot gear or continue to use hook-and-line gear. In addition, the requirements for using pot gear will not be expected to restrict existing sablefish harvesting operations. The Council and NMFS considered requirements that would have imposed larger costs on directly regulated small entities. These included requiring all vessels to remove gear from the fishing grounds each time the vessel made a landing and requiring gear modifications, such as escape mechanisms for bycatch. The Council and NMFS determined that the costs of additional requirements on the existing fleet outweighed the benefits of increased regulations because, while the preferred specifications for gear modifications to reduce bycatch are unknown at this time, industry could develop them in the future if allowed the flexibility to innovate. This final rule therefore meets the objectives of the final rule while minimizing adverse impacts on fishery participants.

Small entities are required to comply with additional recordkeeping and reporting requirements under this final rule if they choose to use pot gear in the BSAI IFQ or CDQ halibut fishery. Directly regulated small entities using pot gear are required to maintain and submit logbooks to NMFS, report specific information on the PNOL, and have an operating VMS on board the vessel. These additional recordkeeping and reporting requirements are not expected to adversely impact directly regulated small entities because the costs of complying with these requirements is *de minimis* relative to total gross fishing revenue that the opportunity to fish with pot gear will provide. More detail can be found in Section 4.7.5 of the Analysis. In addition, it is likely that vessels will not incur new costs under the final rule because many of the vessels that may choose to use pot gear under this final rule likely currently comply with the logbook and VMS reporting requirements when participating in the IFQ sablefish fishery and in other fisheries.

The Council and NMFS considered alternatives to implement additional requirements to report locations of deployed and lost gear in an electronic database. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of the rule; could undermine other aspects of the Magnuson-Stevens Act because coordinates of lost pot gear are confidential under section 402(b) of the MSA (16 U.S.C. 1881a(b)); and were not practicable at this time because NMFS cannot enforce a location reporting requirement because it is not currently possible to verify the location of lost fishing gear. In addition, this final rule eliminates the requirement for a one-time report that must be faxed into NMFS OLE, which results in an estimated savings of $1,340 a year in personnel and miscellaneous costs to the industry. This final rule also eliminates the requirements for vessels using pot gear to harvest IFQ sablefish to check-in when using VMS, which results in estimated annual savings of $268 for all vessel operators in the BSAI and GOA. Accordingly, this final rule meets the objectives of the action while minimizing the reporting burden for fishery participants.

There are no significant alternatives to this final rule that accomplish the objectives to authorize retention of halibut in pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries and that minimize adverse economic impacts on small entities.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted requirements under Control Numbers 0648–0213 and 0648–0445 to OMB for approval. A collection-of-information requirement under Control Number 0648–0272 has been approved by OMB.

OMB Control Number 0648–0213

Public reporting burden is estimated to average 35 minutes per individual response for the Catcher Vessel Longline and Pot Gear Daily Fishing Logbook.

OMB Control Number 0648–0272

Public reporting burden is estimated to average 15 minutes per individual response for the Prior Notice of Landing.

OMB Control Number 0648–0445

While the number of participants who will use VMS transmissions will increase, such transmissions are not assigned a reporting burden because the transmissions are automatic. Public reporting burden is expected to decrease because the requirements for the VMS check-in report (estimated average of 12 minutes per individual response) and the sablefish call-in (estimated average of 12 minutes) are being removed because they are no longer necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *https://www.reginfo.gov/public/do/PRASearch#.*

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing regulations, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 20, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61, in the definition of ''Fishing'':

■ a. Remove ''or'' at the end of paragraph (1);
■ b. Remove the period at the end of paragraph (2) and add ''; or'' in its place; and
■ c. Add paragraph (3).
The addition reads as follows:

§ 300.61 Definitions.

* * * * *

Fishing * * *

(3) The deployment of pot gear as defined in § 679.2 of this title in Commission regulatory areas 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170°00′ W long.

* * * * *

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 3. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 4. In § 600.725, revise paragraph (v) table entry ''7. Pacific Halibut Fishery (Non-FMP):'' row A to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
VII. North Pacific Fishery Management Council	
* * * * * * *	
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ)	A. Hook and line, pot.
* * * * * * *	

* * * * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 5. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 6. In § 679.2, for the definition of ''Authorized fishing gear,'' add paragraphs (4)(v) and (15)(iii) to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

(4) * * *

(v) For halibut harvested from any IFQ regulatory area in the BSAI, all pot gear, if the vessel operator is fishing for IFQ or CDQ halibut in accordance with § 679.42.

* * * * *

(15) * * *

(iii) *Halibut retention exception.* If required to retain halibut when harvesting halibut from any IFQ regulatory area in the BSAI, vessel operators are exempt from requirements to comply with a tunnel opening for pots when fishing for IFQ or CDQ halibut or IFQ or CDQ sablefish in accordance with § 679.42(m).

* * * * *

■ 7. In § 679.5, revise paragraphs (a)(4)(i), (c)(3)(i)(B) heading, (c)(3)(i)(B)(*1*) and (*3*), and (l)(1)(iii)(I) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(*1*) of this section and the vessel activity report described at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) *IFQ or CDQ halibut, or IFQ or CDQ sablefish fisheries.* (*1*) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA, or using pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(*2*) of this section.

* * * * *

(*3*) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the BSAI must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(*2*) of this section, when using hook-and-line gear or pot gear to harvest IFQ or CDQ sablefish, and when using pot gear or gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

* * * * *

(l) * * *

(1) * * *

(iii) * * *

(I) If using longline pot gear in the GOA or pot gear in the BSAI, report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds.

* * * * *

■ 8. In § 679.7:
■ a. In paragraphs (a)(21) and (22), remove the reference ''§ 679.28'' and add in its place ''§ 679.28 (f)'';
■ b. Remove paragraph (f)(6)(ii) and redesignate paragraph (f)(6)(iii) as paragraph (f)(6)(ii); and
■ c. Add paragraph (f)(26).
The revisions and additions read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(26) Operate a catcher vessel or a catcher/processor using pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI and fail to use functioning VMS equipment as required in § 679.42(m).

* * * * *

■ 9. In § 679.22, revise paragraph (a)(6) to read as follows:

§ 679.22 Closures.

(a) * * *

(6) *Pribilof Islands Habitat Conservation Zone.* Directed fishing for groundfish using trawl gear or pot gear,

or fishing for halibut using pot gear, is prohibited at all times in the area defined in Figure 10 to this part as the Pribilof Islands Habitat Conservation Zone.

* * * * *

■ 10. In § 679.24, add paragraph (b)(1)(iv) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(iv) While fishing for IFQ or CDQ halibut in the BSAI.

* * * * *

■ 11. In § 679.25:

■ a. Revise paragraph (a)(1) introductory text;

■ b. Add paragraph (a)(1)(v); and

■ c. Revise paragraphs (a)(2)(i) introductory text and (a)(2)(iii)(C).

The additions and revisions read as follows:

§ 679.25 Inseason adjustments.

(a) * * *

(1) *Types of adjustments.* Inseason adjustments for directed fishing for groundfish or fishing for IFQ or CDQ halibut issued by NMFS under this section include:

* * * * *

(v) Inseason closures of an area, district, or portions thereof, of harvest of specified halibut fisheries.

(2) * * *

(i) Any inseason adjustment taken under paragraph (a)(1)(i), (ii), (iii), or (iv) of this section must be based on a determination that such adjustments are necessary to prevent:

* * * * *

(iii) * * *

(C) Closure of a management area or portion thereof, or gear type, or season to all groundfish or halibut fishing; or

* * * * *

■ 12. In § 679.28:

■ a. Remove and reserve paragraph (f)(4)(ii);

■ b. In paragraph (f)(6)(iv), remove ''or'';

■ c. In paragraph (f)(6)(v), remove the period and add a semicolon in its place; and

■ d. Add paragraphs (f)(6)(vi) through (ix).

The revisions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(vi) You operate an Amendment 80 catcher/processor (see § 679.5(s));

(vii) You are fishing for IFQ sablefish in the Bering Sea or Aleutian Islands (see § 679.42(k));

(viii) You are fishing for IFQ sablefish in the GOA using longline pot gear (see § 679.42(l)) or fishing for IFQ or CDQ halibut or CDQ sablefish in the BSAI using pot gear (see § 679.42(m)); or

(ix) You are required under the Crab Rationalization Program regulations at 50 CFR 680.23(d).

* * * * *

■ 13. In § 679.42, revise paragraphs (b)(1)(i) and (k)(1) and (2) and add paragraph (m) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(1) * * *

(i) *IFQ halibut.* IFQ halibut must not be harvested with trawl gear in any IFQ regulatory area.

* * * * *

(k) * * *

(1) *Bering Sea or Aleutian Islands.* Any vessel operator who fishes for IFQ sablefish in the Bering Sea or Aleutian Islands must possess a transmitting VMS transmitter while fishing for IFQ sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3) through (5).

(2) *Gulf of Alaska.* A vessel operator using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska must possess a transmitting VMS transmitter while fishing for sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3) through (5).

* * * * *

(m) *BSAI halibut and sablefish pot gear requirements.* Additional regulations that implement specific requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear are set out under § 300.61 of this title and §§ 679.2, 679.5, 679.7, 679.20, 679.22, 679.24, 679.25, 679.28, 679.42, and 679.51.

(1) *Applicability.* Any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish with pot gear in the BSAI must comply with the requirements of paragraph (m) of this section. The IFQ regulatory areas in the BSAI include 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170°00′ W long.

(2) *General.* To use pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, a vessel operator must:

(i) Retain IFQ or CDQ halibut caught in pot gear if sufficient halibut IFQ or CDQ is held by persons on board the vessel as specified in paragraph (m)(3) of this section; and

(ii) Comply with other requirements as specified in paragraph (m)(4) of this section.

(3) *Retention of halibut.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear must retain IFQ or CDQ halibut if:

(i) The IFQ or CDQ halibut is caught in any IFQ regulatory area in the BSAI in accordance with paragraph (m) of this section; and

(ii) An IFQ or CDQ permit holder on board the vessel has unused halibut IFQ or CDQ for the IFQ regulatory area fished and IFQ vessel category.

(4) *Other requirements.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear in the BSAI must:

(i) Complete a longline and pot gear Daily Fishing Logbook (DFL) or Daily Cumulative Production Logbook (DCPL) as specified in § 679.5(c); and

(ii) Possess a transmitting VMS transmitter and comply with the VMS requirements at § 679.28(f)(3) through (5).

(iii) Report pot gear information required when submitting a PNOL as described in § 679.5.

§ 679.51 [Amended]

■ 14. In § 679.51(a)(1)(i) introductory text, remove the phrase ''with hook-and-line gear''.

[FR Doc. 2019–27903 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02; RTID 0648–XY061]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod total allowable catch (TAC) from trawl catcher vessels and American Fisheries Act (AFA) trawl catcher/processors to catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management

area. This action is necessary to allow the 2019 TAC of Pacific cod to be harvested.

DATES: Effective January 7, 2020, through 2400 hours, Alaska local time (A.l.t.), December 31, 2020.

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

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

The 2019 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI is 32,160 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019), and two reallocations (84 FR 43727, August 21, 2019 and 84 FR 59968, November 7, 2019).

The 2019 Pacific cod TAC specified for AFA trawl catcher/processors in the BSAI is 3,711 mt as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

The 2019 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the BSAI is 8,800 mt as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and three reallocations (84 FR 2068, February 6, 2019, 84 FR 43727, August 21, 2019, and 84 FR 59968, November 7, 2019).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 470 mt of the 2019 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*) and AFA trawl catcher/processors will not be able to harvest 530 mt of the 2019 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*7*).

Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS reallocates 470 mt from the trawl catcher vessel apportionment and 530 mt from AFA trawl catcher/processor allocation to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and three reallocations (84 FR 2068, February 6, 2019, 84 FR 43727, August 21, 2019, 84 FR 59968, and November 7, 2019) are revised as follows: 31,690 mt to catcher vessels using trawl gear, 3,181 mt to AFA trawl catcher/processors, and 9,800 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocations of Pacific cod to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 17, 2019.

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

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

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

Dated: December 20, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–28042 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 5
Wednesday, January 8, 2020

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2008–0582, NRC–2000–0019]

RIN 3150–AG98

Modifications to Pressure-Temperature Limits

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking activity; denial of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing the rulemaking activity, ''Modifications to Pressure-Temperature Limits,'' and denying the associated petition for rulemaking, (PRM)–50–69. The NRC determined that its relevant past decisions and current policies are sufficient to protect the public health and safety in this area and that the potential benefits of proceeding with a rulemaking do not outweigh the associated costs. The rulemaking activity will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: Effective January 8, 2020, the rulemaking activity discussed in this document is discontinued and PRM–50–69 is denied.

ADDRESSES: Please refer to Docket IDs NRC–2008–0582 (rulemaking activity) and NRC–2000–0019 (petition for rulemaking) when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket IDs NRC–2008–0582 (rulemaking activity) and NRC–2000–0019 (petition for rulemaking). Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if it is available in ADAMS) is provided the first time that it is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Ilka T. Berrios, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2404; email: *Ilka.Berrios@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 10 of the *Code of Federal Regulations* (10 CFR) 2.802, ''Petition for rulemaking—requirements for filing,'' provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation. On November 4, 1999, Westinghouse Electric Company, LLC (petitioner) (ADAMS Accession No. ML003683190), submitted PRM–50–69, requesting that the NRC amend appendix G to 10 CFR part 50, by removing requirements related to the metal temperature of the closure head flange and reactor vessel flange regions. Specifically, the petitioner requested that the agency remove footnotes (2) and (6) from Table 1 of appendix G to 10 CFR part 50. In response to this petition, the NRC initially determined that it would consider the issues raised in PRM–50–69 in an ongoing rulemaking to amend appendix G to 10 CFR part 50. On January 28, 2009, the NRC published a notification in the **Federal Register** (74 FR 4911), stating that the NRC will consider the issues raised in PRM–50–69 in the NRC's rulemaking process, and closed Docket ID NRC 2000–0019 for PRM–50–69. That **Federal Register** notification also stated that if the ongoing work to establish the technical basis for this rulemaking did not support the issuance of a proposed rule, the NRC would issue a supplemental **Federal Register** notification that addressed why the NRC did not adopt the petitioner's requested rulemaking changes.

II. Discussion

A. Discontinuation of Rulemaking To Amend Appendix G to 10 CFR Part 50

In SECY–16–0009, ''Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities'' (January 31, 2016) (ADAMS Accession No. ML16028A189), the staff requested Commission approval of work to be shed, deprioritized, or performed with fewer resources. One of the items identified to be shed (*i.e.,* discontinued) was the development of a technical basis for the rulemaking effort, ''Modifications to Pressure-Temperature Limits'' (appendix G rulemaking, Item 50 of Enclosure 1 to SECY–16–0009).

During the development of the regulatory basis for a rulemaking to amend appendix G to 10 CFR part 50, the staff determined that discontinuation of this rulemaking would have a minimal adverse impact on the NRC's mission, principles, or values. In addition, the research did not establish any information that would serve as the technical basis to revise appendix G to 10 CFR part 50.

The Commission approved the discontinuation of this rulemaking effort in staff requirements memorandum (SRM)–SECY–16–0009, ''Staff Requirements—SECY–16–0009—Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities'' (April 13, 2016) (ADAMS Accession No. ML16104A158).

Prior to the discontinuation of the rulemaking effort, the NRC staff evaluated the technical merits of the petition and concluded that the technical basis for the proposal, as described in the petition, was insufficient to serve as the technical basis for an appendix G rulemaking.

B. Denial of Petition for Rulemaking, PRM–50–69

Under 10 CFR 2.803(i)(2), if the NRC decides not to complete a rulemaking, any associated petition for rulemaking is documented as denied. In SRM–SECY–16–0009, the Commission approved discontinuation of the appendix G rulemaking, as discussed above, which was the rulemaking identified to address PRM–50–69. Therefore, the staff is denying the associated petition, PRM–50–69, for the same reasons that the appendix G rulemaking was discontinued.

III. Conclusion

The NRC previously terminated the appendix G rulemaking and is denying associated PRM–50–69 for the reasons discussed in this document. The NRC has determined that there was insufficient new information to warrant the requested changes in light of the NRC's relevant past decisions and current policies. In the next edition of the Unified Agenda, the NRC will update the entry for the rulemaking activity and reference this document to indicate that the rulemaking is no longer being pursued. The rulemaking activity will appear in the completed actions section of that edition of the Unified Agenda (*i.e.,* it will not appear in future editions).

Dated at Rockville, Maryland, this 20th of December, 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2019–28061 Filed 1–7–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2019–OESE–0147; CFDA Number: 84.368A]

Proposed Priorities—Competitive Grants for State Assessments

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

ACTION: Proposed priorities.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities under the Competitive Grants for State Assessments (CGSA) program. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2020 and later years. We take this action to focus Federal financial assistance related to student assessments on innovative assessments. We intend the priorities to increase the number of States using flexibility under the Innovative Assessment Demonstration Authority (IADA) and to support high-quality work among those States that do so.

DATES: We must receive your comments on or before February 7, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term ''Competitive Grants for State Assessments—Comments'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov*'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed priorities, address them to the Office of Elementary and Secondary Education, Attention: Donald Peasley, Competitive Grants for State Assessment—Comments, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W106, Washington, DC 20202–6132.

Privacy Note: The Department of Education's (Department's) policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Donald Peasley, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W106, Washington, DC 20202. Telephone: (202) 453–7982. Email: *Donald.Peasley@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities by accessing *regulations.gov.* You may also inspect the comments in person in Room 3W106, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this document. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the CGSA program is to enhance the quality of assessment instruments and assessment systems used by States for measuring the academic achievement of elementary and secondary school students.

Program Authority: Section 1203(b)(1) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 6363(b)(1)).

Proposed Priorities: This notice contains two proposed priorities.

Background: The purpose of the CGSA program is to support States' efforts to improve the technical quality of their assessment systems—both the quality of individual State assessments and the overall field of State assessments. To do so, we encourage States to develop new forms of, or formats for administering, test items or assessment designs.

The Department is proposing these priorities to encourage State educational agencies (SEAs) to consider new approaches to their State assessment systems. These priorities would build

on the flexibility in section 1204 of the ESEA, which establishes the Innovative Assessment Demonstration Authority (IADA). IADA provides an opportunity for an SEA to pilot a new and innovative approach to assessments by first implementing it in a subset of schools or LEAs. Students in those schools would take the innovative assessment in place of the statewide assessment and their results would be included in the State's accountability system. Over a period of five years, the SEA would scale up the innovative assessment to eventually replace the statewide assessment. These priorities would allow States to use CGSA funds to improve alignment with and support related work through the IADA.

In 2018 and 2019, the Department published notices inviting applications (NIAs) for IADA and approved four SEAs through this authority. During the initial demonstration period (as defined in ESEA section 1204(b)(3) and 34 CFR 200.104(d)), up to seven SEAs may be approved for IADA. After the initial demonstration period, and upon meeting the requirements in ESEA section 1204(d), the Secretary may grant IADA flexibility to additional SEAs. The Department is proposing these priorities for the CGSA program to support SEAs planning to apply for the authority to implement IADA or SEAs currently implementing an approved IADA plan. Approval for a CGSA grant for those SEAs planning to apply for IADA does not imply or infer that the Department will approve that SEA to implement its IADA proposal. However, the Department believes that the work to plan for IADA will strengthen the State's assessment system, even if the SEA is not ultimately granted IADA flexibility.

To the extent the Department uses the proposed priorities in this notice, the Department anticipates establishing project periods and budget ranges that may differ for applicants seeking CGSA funds to implement an IADA proposal as compared with those seeking CGSA funds to plan for an IADA proposal. The Department will establish specific project periods and budget ranges in a notice inviting applications. In particular, the Department anticipates that a planning grant might be available for a period of 12–18 months while an implementation grant might be available for 36–48 months. Since a planning grant is intended to provide support only during the preparation of an IADA proposal, this would give an SEA or consortium sufficient time to prepare an application for submission. Similarly, the Department anticipates that the budget request for a planning grant would be substantially lower than for an implementation grant, both because the project period would be shorter and because the work would be more targeted, preliminary, and smaller in scope.

Each SEA seeking IADA approval must submit a separate IADA application consistent with 34 CFR 200.104 through 200.108 and the applicable IADA NIA announcing the availability of IADA to additional SEAs, and successfully complete the Department's separate review process for IADA applications. Currently, in addition to the four SEAs approved for IADA, SEAs have been invited to seek approval through a notice published in the **Federal Register** (84 FR 57709) on October 28, 2019.

Section 1203(b)(1)(A) of the ESEA identifies the six allowable uses of funds under CGSA. In brief, these uses include developing or improving assessments for English learners; developing or improving models to measure and assess student progress or student growth on assessments; developing or improving assessments for children with disabilities; allowing for collaboration with institutions of higher education or other organizations to improve the quality, validity, and reliability of State academic assessments; measuring student academic achievement using multiple measures of student academic achievement from multiple sources; and evaluating student academic achievement using comprehensive academic assessment instruments (such as performance and technology-based academic assessments, computer adaptive assessments, projects, or extended performance task assessments) that emphasize the mastery of standards and aligned competencies in a competency-based education model. An SEA, or consortium of SEAs, applying for funds under CGSA must describe in its application how it is meeting one or more of these six allowable uses of funds. Since an SEA has flexibility to request IADA with regard to any of the assessments required under ESEA section 1111(b)(2)(B)(v), including alternate assessments aligned with alternate academic achievement standards, and must ensure the inclusion of all students who take that assessment, including English learners and children with disabilities, an SEA could potentially use CGSA funds under any or all of the CGSA uses of funds in service of an IADA assessment. Further, the CGSA uses of funds related to using multiple measures of student academic achievement from multiple sources and evaluating student academic achievement through comprehensive academic assessments that emphasize a competency-based education model (section 1201(a)(2)(K) and (L) of the ESEA, as incorporated into CGSA by ESEA section 1203(b)(1)(A)) are particularly aligned with the flexibility envisioned in IADA.

Since all SEAs may apply for a CGSA grant, in any competition in which we use one or both of these priorities, we will also make funding opportunities available to an SEA that is not planning for or implementing IADA. For example, the Department may choose to use a priority from among the priorities established in the Department's Notice of Final Priorities—Enhanced Assessment Instruments published in the **Federal Register** on August 8, 2016 (81 FR 52341), which emphasized innovative assessment item types and design approaches, in keeping with CGSA uses of funds related to using multiple measures of student academic achievement from multiple sources and evaluating student academic achievement through comprehensive academic assessments that emphasize a competency-based education, among others.

Proposed Priority 1—Implementing the Innovative Assessment Demonstration Authority (IADA).

(a) Under this priority an SEA, or consortium of SEAs, must—

(1) Be approved for IADA as of the date of its CGSA application. If applying as part of a consortium (or in partnership with other SEAs), each SEA must be approved for IADA as of the date of its CGSA application;

(2) Be implementing IADA, consistent with all requirements of section 1204 of the ESEA and applicable regulations as of the date of its CGSA application. If applying for CGSA as part of a consortium (or in partnership with other SEAs), each SEA must individually meet this requirement;

(3) Describe how the SEA will use CGSA funds to implement its approved IADA plan; and

(4) Describe how the proposed project aligns with one or more of the CGSA statutory uses of funds in section 1201(a)(2)(C), (H), (I), (J), (K), or (L) of the ESEA and as required under section 1203(b)(1)(A) of the ESEA.

(b) Any competition that uses this priority must also include another priority under which any SEA may apply.

Proposed Priority 2—Planning to Apply for the Innovative Assessment Demonstration Authority (IADA).

(a) Under this priority, an SEA, or consortium of SEAs, must—

(1) Provide an assurance by an authorized representative that the SEA(s) intends to apply for flexibility under the IADA, when made available by the Department. If applying for CGSA as part of a consortium (or in partnership with other SEAs), each SEA must provide an assurance that it intends to apply for flexibility under the IADA;

(2) If applying as a consortium of SEAs during the initial demonstration authority for IADA, not include more than four SEAs;

(3) Describe its approach to innovative assessments in terms of the subjects and grades it anticipates addressing, the proposed assessment design, proposed item types (*e.g.,* item prototypes), and other relevant features; and

(4) Describe how the proposed projects align with one or more of the CGSA statutory uses of funds in section 1201(a)(2)(C), (H), (I), (J), (K), or (L) of the ESEA.

(b) Any competition that uses this priority must also include another priority under which any SEA may apply.

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

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

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

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

Final Priorities: We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to the proposed priorities and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

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

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

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

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

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

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priorities would be used in connection with one or more discretionary grant programs, Executive Order 13771 does not apply.

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

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

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

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

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

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

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

We issue these proposed priorities only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these proposed regulations are consistent with the principles in Executive Order 13563.

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

Potential Costs and Benefits

We have reviewed the proposed priorities in accordance with Executive Order 12866 and do not believe that these priorities would generate a considerable increase in burden. We believe any additional costs imposed by the proposed priorities would be negligible, primarily because they would create new opportunities to prioritize applicants that may have submitted applications regardless of these changes, changes that do not impose additional burden. Moreover, we believe any costs will be significantly outweighed by the potential benefits of making funding opportunities available that leverage maximum flexibility under ESEA and allow for State and local innovation. In addition, generally, participation in a discretionary grant program is entirely voluntary; as a result, these proposed priorities would not impose any particular burden except when an entity voluntarily elects to apply for a grant.

Proposed Priority 1 would give the Department the opportunity to prioritize an applicant to the CGSA program that already has approval for IADA. We believe that this proposed priority could result in changes in the behavior of CGSA applicants. First, while SEAs with IADA approval could previously apply for CGSA (and one of the two SEAs then approved for IADA did apply for CGSA in 2019), we believe that SEAs that have IADA flexibility would be more likely to apply for CGSA if the Department includes Proposed Priority 1 since use of the priority would demonstrate particular Department interest in such projects. Second, we believe that the proposed priority would shift at least some of the Department's grants and prioritize a portion of CGSA funds for those SEAs with IADA approval. However, because this proposed priority would be used in concert with another priority or priorities such that all SEAs could apply for and receive CGSA funds, it would neither expand nor restrict the universe of eligible entities for any Department grant program. Since application submission and participation in our discretionary grant programs is voluntary, we do not think that it would be appropriate to characterize any increased participation in our grant competitions or differences in which entities receive awards as costs associated with this priority.

Proposed Priority 2, which would give the Department the opportunity to prioritize an applicant to the CGSA program that plans to apply for IADA flexibility, would similarly not create costs or benefits, but may have the result of shifting at least some of the Department's grants among eligible entities. We believe that this proposed priority could result in changes in the behavior of applicants. First, while SEAs that may seek future IADA approval could previously have applied for CGSA in 2019, we believe that SEAs that are interested in IADA flexibility would be more likely to apply for CGSA under Proposed Priority 2 since use of the priority would demonstrate particular Department interest in such projects. Second, we believe that the proposed priority could shift at least some of the Department's grants among eligible entities. However, as with Proposed Priority 1, because this proposed priority would be used in concert with another priority or priorities such that all SEAs could apply for and receive CGSA funds, it would neither expand nor restrict the universe of eligible entities for any Department grant program. Again, since application submission and participation in our discretionary grant programs is voluntary, we do not think that it would be appropriate to characterize any increased participation or differences in which entities receive awards as costs associated with this priority.

Both Proposed Priority 1 and Proposed Priority 2 may result in benefits in the form of increased innovation in State assessment.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the available support for meeting existing obligations to provide statewide student assessment. Therefore, we do not believe that the proposed priorities would significantly impact small entities beyond the potential for receiving additional support from their SEA should the SEA receive a competitive grant from the Department.

Paperwork Reduction Act

The proposed priorities contain information collection requirements approved under OMB 1894–0006.

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

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

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

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

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

Dated: December 31, 2019.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–28532 Filed 1–7–20; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 111

Seamless Changes for Detached Mail Unit (DMU) and Full-Service Mailings

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to require Detached Mail Unit (DMU) mailers and mailers that enter full-service mailings at a Business Mail Entry Unit (BMEU) to participate in Seamless Parallel by March 1, 2020 and enroll in the Seamless Acceptance Program by February 1, 2021 at all DMU sites. All full-service mailings entered at a BMEU would then be verified using automated sampling and verification processes by July 1, 2021.

DATES: Submit comments on or before February 7, 2020.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *ProductClassification@usps.gov,* with a subject line of ''Seamless Changes for Detached Mail Unit and Full-Service Mailings''. Faxed comments are not accepted.

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Lance Bell at (407) 782–2972, or Jacqueline Erwin at (202) 268–2158.

SUPPLEMENTARY INFORMATION: Seamless Acceptance leverages electronic documentation (eDoc) and the Intelligent Mail barcodes (IMbs) on containers, handling units, and mailpieces required under full-service. Mailpiece scans collected from mail processing equipment (MPE) and samples from hand-held scanning devices are reconciled to the mailer eDoc to confirm proper mail preparation for the discounts claimed and postage paid. This capability avoids the need for verification of mail at acceptance.

For purposes of clarification, the Postal Service provides the following definitions of key terms/concepts used in this document:

Terms

90 Percent Full-Service Volume: eDoc submitter must apply a unique Intelligent Mail barcode (IMb) to each postcard, letter, and flat, tray or sacks, and placards for containers when required, for 90 percent of all mailing volume submitted.

Auto-finalization: Postage statements are finalized by the *PostalOne!* system on the mailing date indicated within the eDoc. At this time, permit balance checks are performed. Beginning January 26, 2020, Seamless Acceptance mailings will auto-finalize without presort fees being paid.

Census Verification: The comparison of eDoc to MPE scans for a mailing. Census verifications validate that the delivery point and nesting/sortation information reflected in the eDoc aligns with the information captured by MPE. Census verifications also check for undocumented mailpieces within a mailing.

Electronic Induction (eInduction): An electronic alternative to the manual preparation and submission of PS Forms 8125, 8125–C, 8125–CD, and 8017. Additional information, including verification and associated assessments, is provided in Publication 685, *Publication for Streamlined Mail Acceptance for Letters and Flats,* at: *https://postalpro.usps.com/StreamlinedMailAcceptLettersFlatsPub685.*

Sampling Verification: Hand-held scanners are used to collect mailing characteristics that are not collected during automated mail processing. These characteristics include the following information about the payment method, piece weight, mailpiece content, nonprofit eligibility, mail class, and processing category of the mailing. The information collected in the sample is used later in the process to check the mail preparation quality. A complete sample includes one container, three handling units from that container, and 30 mailpieces from the container (10 mailpieces are selected from each handling unit).

Seamless Mailing: Any mailing submitted by an eDoc submitter whose Customer Registration ID (CRID) is enrolled in Seamless Acceptance.

Seamless Parallel: A pre-requisite for Seamless Acceptance participation. During Seamless Parallel, there are no changes to the mailer's current acceptance and verification procedures. Mailings continue to be accepted without interruption (except in cases of manual verification failures). At the same time, Seamless monitoring, sampling, and reporting features are activated to evaluate mail quality. Mailers can utilize the Mailer Scorecard to monitor and improve mail quality, business processes, and software prior to enrollment in Seamless Acceptance. Mailers need to work with their local BMEU, Business Acceptance Performance Specialist (BAPS), or Major Mailer Support Analyst (MMSA) to resolve any Seamless mail quality and electronic documentation (eDoc) submission errors prior to enrolling in Seamless Acceptance.

Undocumented Mailpiece: Any mailpiece scanned by MPE that is not associated with a valid eDoc submission over the past 45 days.

Proposal

The Postal Service proposes to require:

1. Participation in Seamless Acceptance for all mailers with an authorized Detached Mail Unit (DMU) by February 1, 2021.

- Mailers with an authorized DMU consistently submitting at least 90 percent full-service eligible volume for First-Class Mail, Periodicals, USPS Marketing Mail letters and flats, and Bound Printed Matter (BPM) barcoded flats will have their mailings verified under the Seamless Acceptance Program on February 1, 2021.

2. Performance of Seamless Acceptance verifications on all BMEU entered mailings that claim the full-service discount by July 1, 2021.

- While BMEU mailers will not be required to enroll in Seamless Acceptance, all full-service mailings will be verified using the automated verification processes utilized by the Seamless Acceptance program. Current manual verification processes will be retired for full-service mailings of First-Class Mail, Periodicals, USPS Marketing Mail letters and flats, and BPM barcoded flats and replaced with the automated processes beginning July 1, 2021.

DMU and BMEU mailers will be required to:

- Meet all content and price eligibility standards for the price claimed.
- Participate in eInduction for DMU-verified origin entry and destination entry drop-shipments (would be applicable to DMUs only).
- Participate in Seamless Parallel by March 1, 2020.

Any DMU mailer that anticipates they will be unable to comply with Seamless Acceptance requirements by February 1, 2021 must request an extension by November 1, 2020. Extension requests must be sent to the Mail Entry and Payment Technology (MEPT) mailbox at *HQMailEntry@usps.gov,* certifying the date that compliance with Seamless Acceptance requirements will be achieved.

Beginning July 1, 2021, manual verifications will be retired for all BMEU-entered full-service mailings. The Postal Service will begin utilizing automated census and sampling verifications for all mailings claiming the full-service discount. Postage assessments will be based on the data received through census and sampling verifications for each calendar month. Verification results will be documented on the Mailer Scorecard for each mailer Customer Registration ID (CRID). Non-full-service mailings will continue to be accepted and will be verified using traditional manual verifications.

Information regarding verification and associated assessments for the eInduction and Seamless Acceptance Programs, is available in Publication 685, *Publication for Streamlined Mail Acceptance for Letters and Flats,* available at: *https://postalpro.usps.com/StreamlinedMailAcceptLetters FlatsPub685.*

Benefits of Seamless Acceptance include:

- Longer mail production cycle
- Mailer control over postage statement finalization date
- Mailer control over mail release timing
- Elimination of the need for postal employees to release containers in the Drop Shipment Management Systems (DSMS)
- Seamless Acceptance and eInduction eliminates the need for PS Forms 8125–C, 8125–CD (Plant-Verified Drop Shipment (PVDS) Consolidated Verification and Clearance), PS Form 8125 (Plant-Verified Drop Shipment (PVDS) Verification and Clearance), and PS Form 8017 (Expedited Plant-Load Shipment Clearance)
  - Note: Participation in eInduction is required for mailers participating in the Seamless Acceptance program
- Elimination of Special Postage Payment System (SPPS) Authorizations
  - Elimination of hard copy/electronic itemized or batched manifests for letter and flats
- Seamless Mailers no longer have to use Manifest key-lines when using the traditional ACS product
- Standardization of acceptance and electronic verification procedures
- Elimination of all manual verifications for Seamless mailings
- Improved mail quality feedback
- Trend-based verifications measuring mail quality across a calendar month

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

22.0 Seamless Acceptance Program

22.1 Description

[Revise the first and add new second sentence of 22.1; to read as follows:]

Seamless Acceptance leverages electronic documentation (eDoc) and Intelligent Mail barcodes (IMbs) on containers, handling units and mailpieces that full-service provides. Mailpiece scans collected from USPS mail processing equipment (MPE) and samples from hand held scanning devices are reconciled to the mailer eDoc to confirm proper mail preparation for the discounts claimed and postage paid. Seamless Acceptance is available for First-Class Mail cards, letters, and flats, Periodicals, USPS Marketing Mail letters and flats, and Bound Printed Matter flats.* * *

[Revise the title of 22.2; to read as follows:]

22.2 Seamless Participation

[Revise the text of 22.2 to read as follows:]

Mailers may initiate participation in the Seamless Acceptance Program by contacting a local BMEU or the *PostalOne!* Helpdesk at 1–800–522–9085.

* * * * *

[Revise the title of subsection 22.3.1; to read as follows:]

22.3.1 Seamless Parallel Program

[Revise the text of subsection 22.3.1; to read as follows:]

Detached Mail Unit (DMU) mailers and mailers that enter full-service mailings at a Business Mail Entry Unit (BMEU) must participate in the Seamless Parallel Program. Additional information on the Seamless Parallel Program is available in Publication 685, *Publication for Streamlined Mail Acceptance for Letters and Flats,* available at: *https://postalpro.usps.com/StreamlinedMailAcceptLetters FlatsPub685.*

* * * * *

23.0 Full-Service Automation Option

* * * * *

23.3 Fees

23.3.1 Eligibility for Exception to Payment of Annual Fees and Waiver of Deposit of Permit Imprint Mail Restrictions

* * * * *

c. * * * (*i.e.,* the percentage of all the permit holder's full-service eligible pieces that were actually mailed as full-service items) to fall:

[Revise the text of item 23.3.1c1; to read as follows:]

1. The annual mailing fee will be due and the mailing verification date will become the renewal or anniversary date of the permit fees. The full-service percentage will automatically set to 0 percent on each subsequent anniversary date. The first mailing presented after the anniversary date begins the cumulative process for the full-service percentage calculation. If the first mailing presented after the anniversary date is below 90 percent, the annual fee will need to be paid prior to the mail being finalized. Once the annual fees are paid, the next validation date will be the next anniversary date.

[Remove subsection 23.3.1c2; in its entirety:]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2019–28505 Filed 1–7–20; 8:45 am]

BILLING CODE 7710–12–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2522 and 2540

RIN 3045–AA69

National Service Criminal History Check

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule with request for comments.

SUMMARY: The Corporation for National and Community Service (CNCS) proposes changes to existing National Service Criminal History Check (NSCHC) regulations under the National and Community Service Act of 1990, as amended. These amendments will simplify the NSCHC requirements.

DATES: Comments must reach CNCS on or before March 9, 2020.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov.*

(2) By mail sent to: Corporation for National and Community Service; Attention Amy Borgstrom; 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the CNCS mailroom at the address above between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

Comments submitted in response to this Notice will be made available to the public through *www.regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom at the Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525, *aborgstrom@cns.gov,* phone 202–422–2781.

SUPPLEMENTARY INFORMATION:

I. Background

CNCS proposes updating its current National Service Criminal History Check (NSCHC) regulations. CNCS first established its NSCHC regulation in 2007. In 2009, Congress codified NSCHC requirements in Section 189D of the National and Community Service Act of 1990 (NCSA), as amended by the Serve America Act. CNCS issued regulations in 2009 and 2012 implementing the Serve America Act NSCHC provisions.

Grant recipient and subrecipient compliance with the NSCHC requirements has been an ongoing challenge. Successful implementation of the NSCHC process by grant recipients has been frustrated, in part, by access to state sources of criminal history record information, requirements of state law, and restrictions on sharing information. As such, Congressional hearings and CNCS Office of the Inspector General (OIG) reports have highlighted grantee noncompliance with this important statutory requirement.

Improving CNCS core functions—including eliminating barriers to compliance—is a primary goal of the CNCS Transformation and Sustainability Plan. In pursuit of that goal, CNCS has approved vendors for grant recipients to use to obtain the required NSCHC components. Since November 2018, CNCS grant recipients and subrecipients have had the ability to establish accounts and obtain the required National Sex Offender Public website (NSOPW), state, and FBI components of the NSCHC, through the approved vendors. Additionally, to help ensure grantee compliance with NSCHC requirements, CNCS made grant funds available for the purpose of rechecking individuals who needed to have an NSCHC conducted. And for those grant recipients who took the opportunity to ensure compliance by rechecking individuals in covered positions, CNCS announced that it would not, except in limited circumstances, take enforcement action for past noncompliance. As of September 25, 2019, 1,942 accounts were established with the new vendor resulting in 93,993 checks.

CNCS grant recipients must ensure that they identify individuals who need an NSCHC and ensure that it is done on time. The NSCHC must be conducted as a matter of law, and as a condition of receiving grant funds for individuals in covered positions working or serving under: Operational grants provided by AmeriCorps State and National, Foster Grandparent Program Grants, Retired Senior Volunteer Program Grants, Senior Companion Program Grants, Senior Corps Demonstration Program Grants that receive funding from CNCS, Martin Luther King, Jr. Day of Service Grants, September 11th Day of Service Grants, Social Innovation Fund Grants, Volunteer Generation Fund Grants, AmeriCorps VISTA Program Grants, or AmeriCorps VISTA Support Grants. Section 189D of the NCSA and these regulations do not apply to AmeriCorps NCCC and or AmeriCorps VISTA members, who serve in Federally-operated programs that have separate criminal history check requirements. For the purpose of NSCHC, individuals in covered positions are: The staff working under these grants, AmeriCorps State and National members, Foster Grandparents, and Senior Companion Volunteers.

II. Scope of Proposed Rule

In addition to the steps already taken to ensure that grantees have a clear path to obtaining the required NSCHC components, CNCS proposes this revision to its regulations. The intent of this revision is to recognize the impact of the availability of vendors and to reduce the complexity of the requirements. The proposed rule requires that grant recipients establish accounts, and conduct checks, through the CNCS-approved vendors. By establishing one path for obtaining compliant checks, CNCS will simplify the process and make use of technological innovations that will help CNCS and its grantees monitor and improve NSCHC compliance. A preliminary analysis of the agency's FY 2019 IPERIA test transactions shows that use of the vendor by CNCS grantees resolved the NSCHC component of the improper payment transactions in 88% of the transactions for which the NSCHC component rendered the payment improper.

Further, the proposed rule eliminates a distinction between the checks required for those serving vulnerable populations and those not serving vulnerable populations. All individuals in covered positions will require an NSCHC comprised of NSOPW, state, and FBI criminal history components available through the CNCS-approved vendors. In addition, the proposed rule requires that the NSCHC be completed before an individual works or serves in a covered position—including any

grant-funded training time. This eliminates the need for individuals to be accompanied while checks are pending. The proposed rule further clarifies which CNCS grant programs are required to comply with the NSCHC regulation and which individuals associated with a grant must have an NSCHC.

CNCS welcomes public comment on the proposed regulations, particularly on the scope of the proposed rule and its applicability to staff, volunteers, and members. CNCS's intent is to establish systems and requirements that allow grant recipients to effectively demonstrate compliance.

III. Effective Date

CNCS expects to make the final rule effective no earlier than 30 days after publication of the final rule.

IV. Regulatory Procedures

Executive Order 12866

CNCS has determined that the rule is not an ''economically significant'' rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) 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. Therefore, CNCS has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

Paperwork Reduction Act

The rule specifies that specific pieces of information must be obtained and maintained in order to demonstrate compliance with the regulatory procedures.

This requirement constitutes one set of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved information collections for the NSCHC requirement. The OMB Control Number is 3045–0145.

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information display valid control numbers. This rule's collections of information are contained in 45 CFR 2540.204 and .206.

This information is necessary to ensure that only eligible individuals serve in covered positions under CNCS grants.

The likely respondents to these collections of information are entities interested in or seeking to serve in covered positions and grant recipients.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have any Federalism implications, as described above.

List of Subjects

45 CFR 2522

Grant programs-social programs.

Reporting and recordkeeping requirements.

Volunteers.

45 CFR Part 2540

Administrative practice and procedure.

Grant programs-social programs.

Reporting and recordkeeping requirements.

Volunteers.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 1. The authority citation for Part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 2. Revise § 2522.205 to read as follows:

§ 2522.205 To whom must I apply eligibility criteria relating to criminal history?

You must apply eligibility criteria relating to criminal history to individuals specified in 45 CFR 2540.201.

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

Subpart B—REQUIREMENTS DIRECTLY AFFECTING THE SELECTION AND TREATMENT OF PARTICPANTS

■ 3. The authority citation for Part 2540 continues to read as follows:

Authority: E.O. 13331, 69 FR 9911; 18 U.S.C. 506, 701, 1017; 42 U.S.C. 12653, 12631–12637; 42 U.S.C. 5065.

■ 4. Revise § 2540.200 to read as follows:

§ 2540.200 Which entities are required to comply with the National Service Criminal History Check requirements in this part?

The National Service Criminal History Check is a requirement for entities that are recipients or subrecipients of the following grants:

(a) Operational grants provided by AmeriCorps State and National;

(b) Foster Grandparent Program Grants

(c) Retired Senior Volunteer Program Grants

(d) Senior Companion Program Grants

(e) Senior Corps Demonstration Program Grants that receive funding from CNCS

(f) Martin Luther King, Jr. Day of Service Grants

(g) September 11th Day of Service Grants

(h) Social Innovation Fund Grants

(i) Volunteer Generation Fund Grants

(j) AmeriCorps VISTA Program Grants

(k) AmeriCorps VISTA Support Grants

■ 5. Revise § 2540.201 to read as follows:

§ 2540.201 Which individuals require a National Service Criminal History Check?

(a) A National Service Criminal History Check must be conducted for individuals in covered positions. Individuals in covered positions are individuals selected, under a CNCS grant specified in 2540.200, by the recipient, subrecipient, or service site to work or serve in a position under a CNCS grant specified in § 2540.200:

(1) As an AmeriCorps State and National member, as described in 42 U.S.C. 12511 (30)(A)(i);

(2) As a Foster Grandparent who receives a stipend;

(3) As a Senior Companion who receives a stipend; or

(4) In a position in which they will receive a salary, and will be listed on the grant budget, under a cost reimbursement grant.

(b) A National Service Criminal History Check is not required for those individuals in (a) who are under the age of 18 on the first day of work or service in a covered position.

(c) A National Service Criminal History Check is not required for individuals whose activity is entirely included in the grant recipient's indirect cost rate.

■ 6. Revise § 2540.202 to read as follows:

§ 2540.202 What eligibility criteria apply to an individual for whom a National Service Criminal History Check is required?

An individual shall be ineligible to work or serve in a position specified in § 2540.201(a) if the individual—

(a) Refuses to consent to a criminal history check described in § 2540.204;

(b) Makes a false statement in connection with a criminal history check described in § 2540.204 of this chapter;

(c) Is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry; or

(d) Has been convicted of murder, as defined in 18 U.S.C. 1111.

■ 7. Revise § 2540.203 to read as follows:

§ 2540.203 May a grant recipient or subrecipient or service site establish and apply suitability criteria for individuals to work or serve in a position specified in § 2540.201(a)?

Grant recipients and subrecipients, or service sites, may establish suitability criteria, consistent with state and federal Civil Rights and nondiscrimination laws, for individuals working or serving in a position specified in § 2540.201(a). While members may be eligible to work or serve in a position specified in § 2540.201(a) based on the eligibility requirements of § 2540.202, a grant recipient, subrecipient, or service site may determine that an individual is not suitable to work or serve in such a position based on criteria that the grant recipient or subrecipient or service site establishes.

■ 8. Revise § 2540.204 to read as follows:

§ 2540.204 How is a National Service Criminal History Check obtained?

(a) Unless CNCS approves a waiver under § 2540.207, grant recipients or subrecipients must conduct and document a National Service Criminal History Check through CNCS-approved vendors. For each individual in a position specified in § 2540.201, grantees or subgrantees must, through the CNCS-approved vendors, obtain a nationwide check of the National Sex Offender Public website, a check of the state criminal history record repository or designated alternative for the individual's state of residence and state of service, and a fingerprint-based check of the FBI criminal history record database.

(b) In the case that a CNCS-approved vendor is not available to provide one or more of the National Service Criminal History Check components or if CNCS discontinues use of an approved vendor, CNCS will provide notice of such unavailability or discontinuation, and grant recipients or subrecipients must obtain, as appropriate, a nationwide check of the National Sex Offender Public website through NSOPW.gov, a check of the state criminal history record repository or designated alternative for the individual's state of residence and state of service, and a fingerprint-based check of the FBI criminal history record database through the state criminal history record repository.

■ 9. Revise § 2540.205 to read as follows:

§ 2540.205 By when must the National Service Criminal History Check be completed?

(a) The National Service Criminal History Check must be conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient based on the results of the National Service Criminal History Check *before* a person begins to work or serve in a position specified in § 2540.201(a).

(b) If a person serves consecutive terms of service with the same organization in a position specified in § 2540.201(a) and does not have a break in service longer than 180 days, then no additional National Service Criminal History Check is required, as long as the original check complied with the requirements of § 2540.204.

(c) Persons working or serving in positions specified in § 2540.201(a) who continue working or serving in a position specified in § 2540.201(a) more than 180 days after the effective date of this rule must have a National Service Criminal History Check conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient based on the results of the National Service Criminal History Check completed in accordance with this part. For these people, the National Service Criminal History Check must be completed no later than 180 days following the effective date of this rule.

■ 10. Revise § 2540.206 to read as follows:

§ 2540.206 What procedural steps are required, in addition to conducting the National Service Criminal History Check described in 2540.204?

(a) Grant recipients or subrecipients must:

(1) Obtain a person's consent before conducting the state and FBI components of the National Service Criminal History Check;

(2) Provide notice that selection for work or service specified in § 2540.201(a) is contingent upon the organization's review of the National Service Criminal History Check component results;

(3) Provide a reasonable opportunity for the person to review and challenge the factual accuracy of a result before action is taken to exclude the person from the position;

(4) Take reasonable steps to protect the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant;

(5) Maintain the results of the National Service Criminal History Check components as grant records; and

(6) Pay for the cost of the NSCHC. Unless specifically approved by CNCS under 2540.207, the person who is serving in the covered position may not be charged for the cost of any component of a National Service Criminal History Check.

(b) CNCS-approved vendors may facilitate obtaining and documenting the requirements of paragraphs (a)(1) through (5) of this section.

■ 11. Revise § 2540.207 to read as follows:

§ 2540.207 Waiver.

CNCS may waive provisions of sections 2540.200–.206 for good cause, or for any other lawful basis. To request a waiver, submit a written request to NSCHC Waiver Requests, 250 E Street SW, Washington, DC 20525, or send your request to *NSCHCWaiverRequest@cns.gov.*

Dated: December 31, 2019.

Timothy Noelker,

General Counsel.

[FR Doc. 2019–28489 Filed 1–7–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2019–0006; 4500030113]

RIN 1018–BC62

Endangered and Threatened Wildlife and Plants; Endangered Status for the Sierra Nevada Distinct Population Segment of the Sierra Nevada Red Fox

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Sierra Nevada Distinct Population Segment (DPS) of the Sierra Nevada red fox (*Vulpes vulpes necator*) as an endangered species under the Endangered Species Act (Act). This DPS of the Sierra Nevada red fox occurs along the highest elevations of the Sierra Nevada mountain range in California. If we finalize this rule as proposed, it would extend the Act's protections to this DPS. The effect of this rule will be to add this DPS to the List of Endangered and Threatened Wildlife.

DATES: We will accept comments received or postmarked on or before March 9, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 24, 2020.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2019–0006, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2019–0006, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825; telephone 916–414–6700. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species may be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this proposed rule does. This document proposes listing the Sierra Nevada DPS of the Sierra Nevada red fox (*Vulpes vulpes necator;* hereafter referred to as the Sierra Nevada red fox) as an endangered species; we determined that designating critical habitat is not prudent. The Sierra Nevada red fox is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing rule was previously precluded by other higher priority listing activities. This proposed rule reassesses (since the 2015 12-month finding (October 8, 2015, 80 FR 60990)) the best available information regarding the status of and threats to the Sierra Nevada red fox.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The Sierra Nevada red fox faces the following threats: (1) Deleterious impacts associated with small population size, such as inbreeding depression and reduced genomic integrity (Factor E); (2) hybridization with nonnative red fox (Factor E); and possibly (3) reduced prey availability and competition with coyotes (Factor E) resulting from reduced snowpack levels. Existing regulatory mechanisms and conservation efforts do not address the threats to the Sierra Nevada red fox to the extent that listing the DPS is not warranted.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five appropriate specialists regarding the Species Status Assessment (SSA) report, which informed the listing portion of this proposed rule. The purpose of peer review is to ensure that our listing and critical habitat determinations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in red fox biology, habitat, and stressors to the species. We received responses from two of the five peer reviewers, which we took into account in our SSA report and this proposed rule.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. We particularly seek comments concerning:

(1) The Sierra Nevada red fox's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this DPS and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this DPS, including the locations of any additional populations of the Sierra Nevada red fox.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. All comments submitted electronically via *http://www.regulations.gov* will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be received by the date specified in **DATES** at the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Species Status Assessment

A team of biologists prepared an SSA report for the Sierra Nevada red fox. The SSA team was composed of Service biologists, in consultation with other species experts, including coordination with the California Department of Fish and Wildlife (CDFW). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the Sierra Nevada red fox, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The SSA report underwent independent peer review by scientists with expertise in red fox biology, habitat management, and stressors (factors negatively affecting the DPS) to the species. The SSA report and other materials relating to this proposal can be found at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2019–0006, and at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On April 27, 2011, we received a petition dated April 27, 2011, from the Center for Biological Diversity, requesting that Sierra Nevada red fox be listed as an endangered or threatened species, and that critical habitat be designated under the Act. The petition also requested that we evaluate populations in the Cascade and Sierra Nevada mountain ranges as potential DPSs. On January 3, 2012, we published a positive 90-day finding (77 FR 45) that the petition presented substantial information indicating that listing may be warranted.

Following a stipulated settlement agreement requiring our completion of a status review of the species by September 30, 2015, we issued a 12-month finding (80 FR 60990) on October 8, 2015. We concluded at that time that there were two valid DPSs for the Sierra Nevada red fox: The Southern Cascades DPS and the Sierra Nevada DPS. We determined and reaffirm here that both the Southern Cascades and Sierra Nevada segments of the Sierra Nevada red fox's range are both discrete and significant based on marked physical separation (discreteness) and genetic variation/characteristics (discreteness and significance). Please see the 12-month finding (80 FR 60990) for a complete discussion of our DPS Policy and rationale for meeting the discreteness and significance criteria. Additionally, our September 30, 2015, 12-month finding concluded that: (1) Listing the Sierra Nevada red fox across its entire range was not warranted; (2) listing the Southern Cascades DPS was not warranted; and (3) listing the Sierra Nevada DPS was warranted, but temporarily precluded by higher priority listing actions.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, ecology, and overall viability of the Sierra Nevada red fox is presented in the SSA report (Service 2018; available at *http://www.regulations.gov*). This report summarizes the relevant biological data and a description of past, present, and likely future stressors, and presents an analysis of the potential viability of the Sierra Nevada red fox. The SSA report documents the results of the comprehensive biological status review

for the Sierra Nevada red fox, provides an evaluation of how potential threats may affect the species' viability both currently and into the future, and provides the scientific basis that informs our regulatory decision regarding whether this species should be listed as an endangered or threatened species under the Act, as well as the risk analysis on which the determination is based (Service 2018, entire). The following discussion is a summary of the SSA report.

Species Information

Red foxes (*Vulpes vulpes*) are small, slender, doglike carnivores, with elongated snouts, pointed ears, and large bushy tails (Aubry 1997, p. 55; Perrine 2005, p. 1; Perrine et al. 2010, p. 5). The Sierra Nevada red fox is one of 10 North American subspecies of the red fox (Hall 1981, p. 938; Perrine *et al.* p. 5). Diagnostic features, by which red foxes can be distinguished from other small canines, include black markings on the backs of their ears, black shins, and white tips on their tails (Statham *et al.* 2012, p. 123).

Sierra Nevada red foxes average about 4.2 kilograms (kg) (9.3 pounds (lb)) for males and 3.3 kg (7.3 lb) for females, as compared to the general North American red fox average of about 5 kg (11 lb) for males and 4.3 kg (9.5 lb) for females (Perrine *et al.* 2010, p. 5).

The Sierra Nevada red fox is characterized by what appears to be specialized adaptations to cold areas (Sacks *et al.* 2010, p. 1524). These apparent adaptations include a particularly thick and deep winter coat (Grinnell *et al.* 1937, p. 377), longer hind feet (Fuhrmann 1998, p. 24), and small toe pads (4 millimeters (mm) (0.2 inch (in)) across or less) that are completely covered in winter by dense fur, which may facilitate movement over snow (Grinnell *et al.* 1937, pp. 378, 393; Fuhrmann 1998, p. 24; Sacks 2014, p. 30). The Sierra Nevada red fox's smaller size may also be an adaptation to facilitate movement over snow by lowering weight supported by each footpad (Quinn and Sacks 2014, p. 17), or it may simply result from the reduced abundance of prey at higher elevations (Perrine *et al.* 2010, p. 5).

Genetic analyses indicate that red foxes living near Sonora Pass, California, as of 2010 are descendants of the Sierra Nevada red fox population that was historically resident in the area (Statham *et al.* 2012, pp. 126–129). This is the only population known to exist in the Sierra Nevada mountain range, and is thus the last known remnant of the larger historical population that occurred along the upper elevations of the Sierra Nevada mountain range from Tulare to Sierra Counties. The only other known Sierra Nevada red fox population in California is located near Lassen Peak, in the southern Cascade mountain range, and shows clear genetic differences from the Sonora Pass population (Statham *et al.* 2012, pp. 129–130) (see also DPS discussion in our October 8, 2015, 12-month finding (80 FR 60990)).

Range and Habitat

The current range, which is significantly contracted from the historical range, runs near the Sierra crest from about Arnot Peak and California State Highway 4 south to Yosemite National Park (Cleve *et al.* 2011, entire; Sacks *et al.* 2015, pp. 10, 14; Eyes 2016, p. 2; Hiatt 2017, p. 1; Figure 1), and then jumps approximately 48 mi (77 km) southeast per two new sightings (photographs; unknown if one or more individuals) noted during summer 2018 near the intersection of Fresno/Mono/Inyo Counties (Quinn 2018a, attachments; Stermer 2018, p. 1).

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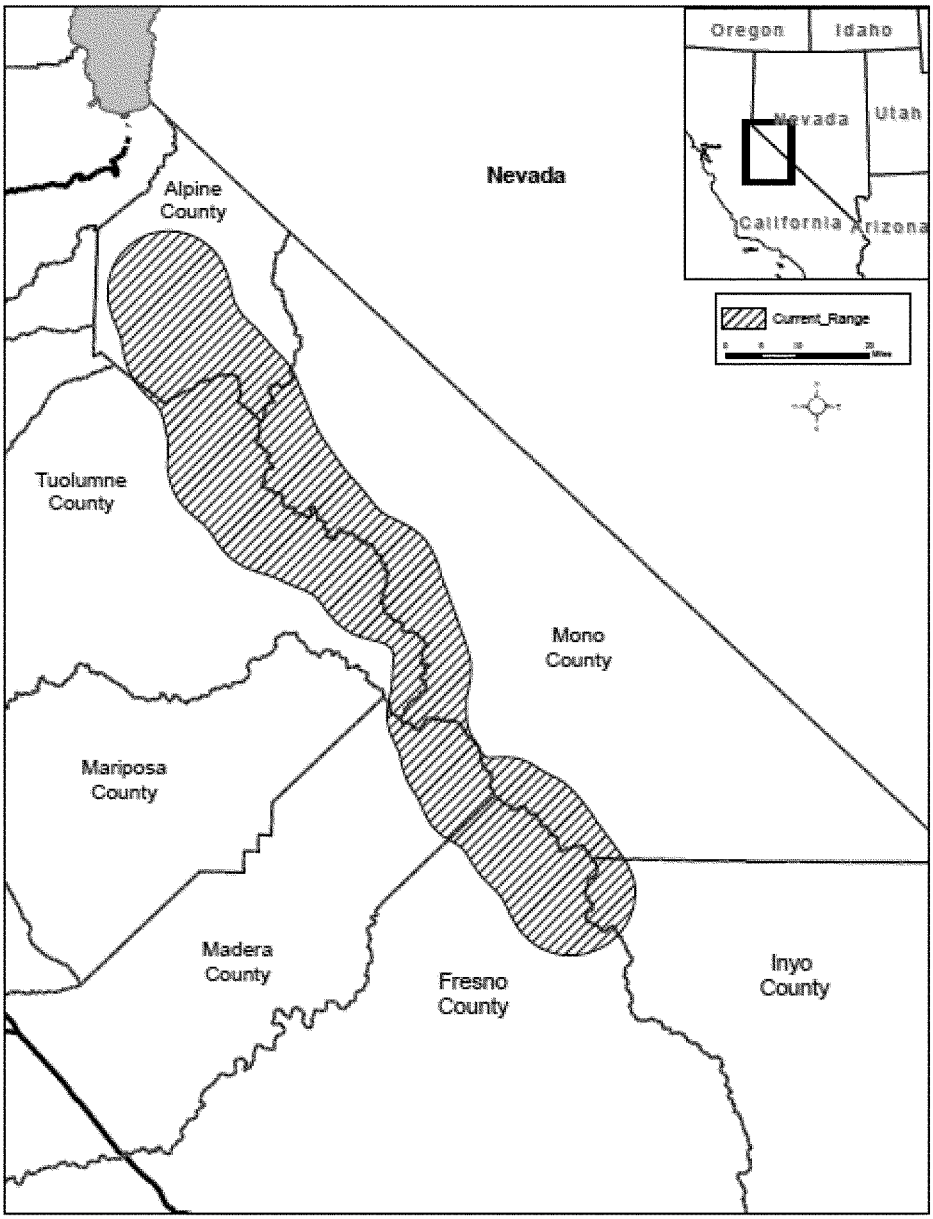

Figure 1—Approximate current range of the Sierra Nevada DPS of Sierra Nevada red fox. The range follows the Sierra Crest (the north-to-south ridgeline of the Sierra Nevada mountain range), and includes known sighting locations and nearby high-quality habitat (Cleve *et al.* 2011, entire; Eyes 2016, attachments; Hiatt 2017, attachment; Quinn 2018a, attachments; Quinn 2018a, attachments; Stermer 2018, p. 1).

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Sierra Nevada red fox sightings have consistently occurred in subalpine habitat at elevations ranging from 2,656 to 3,538 meters (m) (8,714 to 11,608 feet (ft)) (based on average elevation reported, plus or minus three standard deviations) (Sacks *et al.* 2015, pp. 3, 11). In the Sonora Pass area used by the Sierra Nevada red fox, subalpine habitat is characterized by a mosaic of high-elevation meadows, rocky areas, scrub vegetation, and woodlands (largely mountain hemlock (*Tsuga mertensiana*), whitebark pine (*Pinus albicaulus*), and lodgepole pine (*Pinus contorta*)) (Fites-Kaufman *et al.* 2007, p. 475; Sacks *et al.* 2015, p. 11; Quinn 2017, p. 3). Snow cover is typically heavy, and the growing season lasts only 7 to 9 weeks (Verner and Purcell 1988, p. 3). Forested

areas are typically relatively open and patchy (Verner and Purcell 1988, p. 1; Lowden 2015, p. 1), and trees may be stunted and bent (krumholtzed) by the wind and low temperatures (Verner and Purcell 1988, p. 3; Sacks *et al.* 2015, p. 11).

Feeding

Individuals of the Sierra Nevada red fox are opportunistic predators of small mammals such as rodents (Perrine *et al.* 2010, pp. 24, 30, 32–33; Cross 2015, p. 72). Leporids such as snowshoe hare (*Lepus americanus*) and white-tailed jackrabbit (*Lepus townsendii*) are also an important food source for the Sierra Nevada red fox, particularly in winter and early spring (Aubry 1983, p. 109; Rich 2014, p. 1; Quinn 2017, pp. 3–4; Sacks 2017, p. 3). Whitebark pine seeds may also be an important food source during some years, particularly in winter (Sacks *et al.* 2017, p. 2).

Life History

Little information exists regarding Sierra Nevada red fox reproductive biology; it is likely similar to other North American red fox subspecies (Aubry 1997, p. 57). Other subspecies are predominantly monogamous and mate over several weeks in the late winter and early spring (Aubry 1997, p. 57). The gestation period for red fox is 51 to 53 days, with birth occurring from March through May in sheltered dens (Perrine *et al.* 2010, p. 14). Members of the Sierra Nevada red fox use natural openings in rock piles at the base of cliffs and slopes as denning sites (Grinnell *et al.* 1937, p. 394). Additionally, they may dig earthen dens, similar to Cascade red foxes (*Vulpes vulpes cascadensis*), though this has not been directly documented in the Sierra Nevada red fox (Aubry 1997, p. 58; Perrine 2005, p. 153). Litter sizes of two to three pups appear to be typical (Perrine 2005, p. 152). Reproductive output is generally lower in montane foxes than in those living at lower elevations, possibly due to comparative scarcity of food (Perrine 2005, pp. 152–153; Sacks 2017, p. 2).

Demographics

The population size of the Sierra Nevada red fox is estimated between 10 to 50 adults, including some young adults forgoing potential breeding to help their parents raise their siblings (Sacks 2015, p. 1; Sacks *et al.* 2015, p. 14). This estimate includes hybrids, which recent information suggests comprise the majority of known individuals sighted within one study area of the population (Sacks *et al.* 2015, pp. 15, 17, 29–30).

The average lifespan, age-specific mortality rates, sex ratios, and demographic structure of Sierra Nevada red fox populations are not known, and are not easily extrapolated from other red fox subspecies because heavy hunting and trapping pressure on those other subspecies likely skew the results (Perrine *et al.* 2010, p. 18). However, three individuals within the Southern Cascades DPS (in the Lassen area) lived at least 5.5 years (CDFW 2015, p. 2), and an additional study within the Sierra Nevada red fox (Sonora Pass area) found the average annual adult survival rate to be 82 percent, which is relatively high for red foxes (Quinn and Sacks 2014, pp. 10, 14–15, 24).

Summary of Biological Status and Threats Affecting the DPS

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed a comprehensive analysis of the biological status of the Sierra Nevada red fox, and prepared an SSA report, which provides a thorough assessment of the potential threats that may affect the species' viability both currently and into the future. We define viability here as the ability of the species to persist over the long term and, conversely, to avoid extinction. In this section, we summarize that assessment, which can be accessed on the internet under Docket FWS–R8–ES–2019–0006 on *http://www.regulations.gov.*

To assess Sierra Nevada red fox viability, we used the three conservation biology principles of resiliency, representation, and redundancy (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand stochastic events—for example, significant variations to normal demographic or environmental conditions (*e.g.,* significant drops in population growth rate, extreme weather events, 100-year floods); representation supports the ability of the species to adapt over time to changing environmental conditions (such as measured by the breadth of genetic or environmental diversity within and among populations); and redundancy supports the ability of the species to withstand large-scale, catastrophic events (for example, multi-year droughts). In general, the more redundant and resilient a species is and the more representation and redundancy it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the subspecies' ecological requirements for survival and reproduction, and described the beneficial and risk factors influencing the DPS's viability.

Resiliency

Resiliency describes the ability of a species (or DPS) to withstand stochastic disturbance. For the Sierra Nevada red fox to maintain viability, its population(s) or some portion thereof must be resilient. Environmental stochastic disturbances that affect the overall reproductive output of the population are reasonably likely to occur infrequently, but if they do, they would likely be of a magnitude that can drastically alter the ecosystem where they happen. Classic examples of environmental stochastic events include drought, major storms (*e.g.,* hurricanes), fire, and landslides (Chapin *et al.* 2002, pp. 285–288), and examples of demographic stochastic events include variations in sex ratio, birth/death rates, etc. The best available information at this time suggests that the Sierra Nevada red fox population needs to be larger, to a currently unknown degree, to ensure its viability into the future. Given the uncertainties surrounding the adequate population size and growth rates for the Sierra Nevada red fox, the best available information indicates that the proxies for these indices of abundance appear to be diminished; therefore, we assume a diminished resiliency for the DPS.

Given the lack of information on adequate population size for subalpine red fox, an example of a resilient population size for an island fox subspecies—Santa Catalina Island fox (*Urocyon littoralis catalinae*)—is roughly 150 or more adult individuals (based on information presented by Kohlmann *et al.* (2005, p. 77), assuming habitat conditions are adequate to support a population of this size. Although this example is not a one-to-one crosswalk for considering the minimum viable population size for the Sierra Nevada red fox, it is a reference that provides related information for another fox's demographic needs. The information for this island fox subspecies suggests that this minimum population size likely allows it to survive chance deleterious events, whereas stochastic events become an increasing risk to viability as population numbers dip below 150.

Redundancy

Redundancy describes the ability of a species (or DPS) to withstand catastrophic events. Currently, there is only one small, isolated population of Sierra Nevada red fox known within the Sierra Nevada mountain range. In

general, given the low number of foxes currently known within this DPS and the limited range they inhabit, the DPS appears to have a low ability to withstand catastrophic events should they occur. Additionally, there do not appear to be any other populations within the range of this DPS to serve as a source to recover from a catastrophic loss of individuals.

Representation

Representation describes the ability of a species (or DPS) to adapt to changing environmental conditions over time. It is characterized by the breadth of genetic and environmental diversity within and among populations. The Sierra Nevada red fox historically occurred throughout the high elevations of the Sierra Nevada. The current, small population has been experiencing genetic challenges, including inbreeding depression, as well as hybridization with non-Sierra Nevada red fox individuals, which can lower survivorship or reproductive success by interfering with adaptive native genes or gene complexes (Allendorf *et al.* 2001, p. 617; Frankham *et al.* 2002, pp. 386–388). Having broad genetic and environmental diversity could help the DPS withstand environmental changes. However, at this time, the Sierra Nevada red fox does not have this broad diversity. Additionally, regarding hybridization, the best available information does not suggest that hybridization has negatively affected the DPS's ability to adapt to changing environmental conditions.

Summary of Existing Regulatory Measures and Voluntary Conservation Efforts

The U.S. Forest Service (USFS) identifies the Sierra Nevada red fox as a sensitive species and has done so since 1998. Sensitive species receive special consideration during land use planning and activity implementation to ensure species viability and to preclude population declines (USFS 2005, section 2670.22). The USFS included Sierra Nevada red fox-specific protection measures in the *Sierra Nevada Forest Plan Amendment (SNFPA) Standards and Guidelines* given the extensive overlap of suitable and in some cases occupied habitat for the Sierra Nevada red fox with Forest Service lands. These specific protection measures require the USFS to conduct and analyze potential impacts of activities within 5 mi (8 km) of a verified Sierra Nevada red fox individual sighting (USFS 2004, p. 54). The protection measures also limit the time of year that certain activities may occur to avoid adverse impacts to Sierra Nevada red fox breeding efforts, and require 2 years of evaluations following activities near sightings that are not associated with a den site (USFS 2004, p. 54).

The National Park Service prohibits hunting and trapping in Yosemite National Park and manages natural resources to ''preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities'' (NPS 2006, p. 26). The land management plan for Yosemite National Park (as well as Sequoia National Park, which is not known to currently contain Sierra Nevada red fox individuals but does occur within the DPS's historical range) does not contain specific measures to protect the Sierra Nevada red fox or the subspecies' habitat. However, areas not developed specifically for recreation and camping are managed toward natural processes and species composition, and the best available information indicates that the National Park Service would maintain the subspecies' habitat.

The Department of Defense recently completed an Integrated Natural Resources Management Plan (INRMP) for the U.S. Marine Corps Mountain Warfare Training Center (MWTC), which is a facility and training area that falls within the Sierra Nevada red fox range, including overlap with some known sightings. The INRMP includes provisions prohibiting disturbance within 330 ft (100.6 m) of Sierra Nevada red fox den sites from January 1 to June 30 (MWTC 2018, p. 3–26). Additionally, the INRMP states that the MWTC must implement ''measures to prevent habituation to human food, an education program on these measures, and avoid activities from January 1 to June 27 within 0.25 mi (0.4 km) of den sites'' (MWTC 2018, p. 3–67).

On October 2, 1980, the State of California listed the Sierra Nevada red fox as a threatened species. The designation prohibits possession, purchase, or ''take'' of threatened or endangered species without an incidental take permit, issued by the California Department of Fish and Wildlife (CDFW; formerly California Department of Fish and Game). Additionally, red foxes in general are protected by the State from hunting and trapping (14 C.C.R. 460).

A conservation effort currently is underway by the Sierra Nevada Red Fox Working Group (SNRFWG). This working group was formed in 2015 by representatives of Federal and State wildlife agencies, state universities, and nongovernmental conservation organizations (SNRFWG 2015, p. 1; SNRFWG 2016, p. 1). In addition to continued monitoring of the Sierra Nevada red fox, the SNRFWG proposes to develop a conservation strategy, which would include a genetic management plan and a feasibility assessment. This conservation strategy would assist in addressing possible translocations of Sierra Nevada red fox from area(s) within the Southern Cascades DPS to the Sierra Nevada (SNRFWG 2016, pp. 2–6). Managed Sierra Nevada red fox translocations would reduce impacts associated with inbreeding depression and counter introgression of nonnative alleles by introducing, in a controlled and monitored manner, new (*i.e.,* native) alleles into the Sierra Nevada red fox population(s). These new alleles would be more likely to code for native local adaptations than would alleles originating in other subspecies of red fox (SNRFWG 2016, p. 3). To date, these conservation goals are not significantly advanced, and are not factored into this analysis (and discussed here primarily for informational purposes). However, if carried out in the near future, these actions could address significant negative influences currently acting upon the subspecies (*i.e.,* reduced genomic integrity and inbreeding depression as a result of small population size; hybridization with nonnative red fox).

Risk Factors Affecting the Sierra Nevada DPS of Sierra Nevada Red Fox

Our SSA considered a variety of environmental and demographic characteristics important to the viability of the Sierra Nevada red fox, taking into consideration both current and potential future conditions that may impact the DPS. The environmental characteristics we considered were: (1) Extent of subalpine habitat (with low temperatures and short growing seasons), (2) deep winter snow cover, (3) rodent and leporid (rabbits and hare) populations, and (4) presence of whitebark pine. The best available information suggests that the first two characteristics are likely important because the Sierra Nevada red fox appears adapted to them. Fox develop dense, fur-covered toe pads during the winter (Grinnell *et al.* 1937, pp. 378, 393; Fuhrmann 1998, p. 24; Sacks 2014, p. 30), allowing them to better use sites with deep snow cover that coyotes cannot access, thus reducing competition for food. The remaining two characteristics are important in that rodents and leporids are known prey items of the Sierra Nevada red fox, and caches of whitebark pine seeds were

found to be an important winter food source for Rocky Mountain montane foxes in some years. The demographic characteristics we considered important to the viability of the Sierra Nevada red fox include: (1) Genomic integrity (extent of hybridization or inbreeding depression), (2) population size, and (3) number of populations.

Risk factors affecting the environmental characteristics that the subspecies relies on include changing climate conditions (*i.e.,* drought, warming temperatures that may affect snowpack levels), which promote coyote presence (and thus competition with the Sierra Nevada red fox) in high-elevation areas, and potential threats to whitebark pine such as rust disease and mountain pine beetles. Risk factors affecting the demographic characteristics include deleterious impacts associated with small population size, including inbreeding depression (as a consequence of population reduction and a lack of other populations) and reduced genomic integrity, and levels of hybridization with nonnative red foxes. Our evaluation of the best available information indicates there is no evidence of significant adverse impacts specifically associated with the Sierra Nevada red fox's habitat. We presented several potential causal connections between habitat conditions and their importance to the Sierra Nevada red fox, as well as scenarios related to possible future trajectories of the risk factors that could affect those habitat conditions. As we analyzed these potentialities, we determined that the relative importance of potential causal connections was lower than presented in some scenarios, and that the most likely scenario of future conditions would exhibit a lower overall risk to the DPS's habitat. As such, we conclude that there are not any current or future significant habitat-based threats. The best available information suggests that threats to the subspecies directly (as opposed to habitat) are of greatest concern. Below is a summary of the factors influencing the species viability, provided in detail in the SSA report (Service 2018) and available on the internet at *www.regulations.gov,* Docket No. FWS–R8–ES–2019–0006.

Subalpine Habitat Suitability, Snowpack Levels, and Coyote Presence

Over the past 100 years, average temperatures in alpine regions have increased by 0.3 to 0.6 °C (Perrine *et al.* 2010, p. 30). In the Lake Tahoe region (northern Sierra Nevada mountain range in California), the average number of days per year for which the average temperature was below-freezing has decreased from 79 in 1910 to about 51 in 2010 (Kadir *et al.* 2013, p. 102). These increased average temperatures coupled with periodic drought conditions can result in changed habitat conditions in subalpine habitat. For example, direct measurements of primary productivity in a subalpine meadow in Yosemite National Park have shown that mesic (medium wet) and hydric (wet) meadows both tend to increase productivity in response to warmer, drier conditions (Moore *et al.* 2013, p. 417). Xeric (dry) meadows tend to increase productivity due to warmth, but decrease due to drier conditions (Moore *et al.* 2013, p. 417). A comparison of tree biomass and age in subalpine forests now and about 75 years ago also points to increased productivity over time (Kadir *et al.* 2013, p. 152). Specifically, small trees with comparatively more branches increased by 62 percent, while larger trees decreased by 21 percent, resulting in younger, denser stands (Kadir *et al.* 2013, p. 152). This overall increase in biomass occurred consistently across the subalpine regions of the Sierra Nevada mountain range and across tree species. The primary cause was an increase in the length of the growing season (Kadir *et al.* 2013, p. 152).

Increasing average temperatures and periodic drier conditions during drought years may have increased the productivity of high-elevation areas, thus likely supporting higher prey abundance levels that (at least in some years) in turn could support more coyotes in spring and summer months. The best available information suggests that coyotes are present in the Sonora Pass area at the same elevations as the Sierra Nevada red fox during summer months, also outnumbering the Sierra Nevada red fox individuals in that area (Quinn and Sacks 2014, pp. 2, 11, 12, 35). Additionally, several coyotes were found to be related, suggesting they were establishing territories and raising pups (Quinn and Sacks 2014, p. 12). As a result of this information, coyote densities appear to have increased in this area relative to historical levels, thus resulting in increased coyote competition with the Sierra Nevada red fox. This increased coyote presence (and potentially density) on a given landscape can lead to decreased density of Sierra Nevada red foxes (Sargeant *et al.* 1987, p. 288; Harrison *et al.* 1989, p. 185) (see also additional discussion in section 3.1 of the SSA report (Service 2018, pp. 15–16)). Also, the increased coyote presence may in part result from increased productivity of food sources due to changing climate conditions, although snowpack levels were low during much of the monitoring period due to drought, and this increased productivity may also have affected coyote densities (Kadir *et al.* 2013, p. 152) (see below).

In the central portion of the Sierra Nevada mountain range, average current April 1 snowpack levels in Yosemite National Park (which overlaps a portion of the known Sierra Nevada red fox sightings) have been just above 23.6 in (60 cm) (Curtis *et al.* 2014, p. 9). To date, all Sierra Nevada red fox individuals sighted within the park have been in the areas of highest snowpack (Eyes 2016, p. 2).

While snowpack conditions vary by year and location, the best available information suggests that the areas where Sierra Nevada red fox occur have been maintaining high snowpack during winter and spring most years, regardless that snowpack appears to be decreasing in some areas across the mountain range (see section 4.1 of the SSA report (Service 2018, pp. 22–23)). Therefore, the current condition for deep winter snow appears adequate, noting some years have and will continue to result in drought conditions and thus lower snowpack levels.

Prey Availability

Rodent population numbers in subalpine areas have likely increased due to an increase in primary productivity (Service 2018, pp. 21, 24). Despite several factors that may limit their availability (*e.g.,* increased presence of coyotes, compaction of snow from snowmobile activity), the general landscape appears adequate for rodents.

Adequate leporid population numbers may be of concern given that both white-tailed jackrabbits and snowshoe hares are considered species of special concern across the Sierra Nevada by CDFW (CDFW 2017, p. 51), a designation meaning they are potentially vulnerable to extirpation in California (CDFW 2017, p. 10). Regardless of rangewide leporid abundance, the best available information does not suggest that leporid abundance is inadequate in the vicinity of the majority of known Sierra Nevada red fox sighting locations (*i.e.,* Sonora Pass area); leporids appear currently to be relatively common and present all year in the Sonora Pass area (Rich 2014, p. 1).

Deleterious Effects Associated With Small Populations

Within the DPS area, the Sierra Nevada red fox is currently known from

a single population extending along the Sierra Nevada crest near Sonora Pass (State Route 108), with species experts providing an overall estimate of about 10 to 50 adults residing in the center of the DPS's historical range (Sacks 2015, p. 1; Sacks *et al.* 2015, p. 14). Two new (2018) Sierra Nevada red fox sightings are now known from about 32 mi (51 km) southeast of the previously known southern sightings (*i.e.,* eastern edge of Yosemite National Park) of the population (Stermer 2018a, p. 1). It is unclear whether these 2018 sightings are of the same or different foxes (Stermer 2018b, p. 1), or whether that fox or foxes dispersed from the Sonora Pass area. Our estimate of population numbers includes an unknown number of hybrids, which in 2014 comprised 8 of 10 non-immigrant individuals sighted (Sacks *et al.* 2015, pp. 17, 29). No evidence of reproduction of pure Sierra Nevada red fox was observed at a 50-mi^2 (130-km^2) study site for the 2011 to 2014 breeding seasons (Sacks *et al.* 2015, pp. 3, 15, 30). This finding is consistent with low reproductive success due to inbreeding depression (Sacks *et al.* 2015, p. 15). Given this population information, the current condition of the Sierra Nevada red fox likely includes inbreeding depression and a population size lower than necessary to reduce risks associated with stochastic events (*i.e.,* a portrayal of low resiliency).

Genomic Integrity

Prior to spring of 2013, no reproduction between native individuals of the Sierra Nevada red fox and nonnative immigrant red fox was known to have occurred (Sacks *et al.* 2015, p. 9; Sacks 2017, p. 4). However, two nonnative male red foxes with a mixture of montane (*V.* v. *macroura*) and fur-farm ancestry arrived at the Sonora Pass area in 2012 and by 2014 had produced a total of 11 hybrid pups (Sacks *et al.* 2015, pp. 3, 10, 29–30). These constituted the only known pups produced in the Sonora Pass area (*i.e.,* the only area/population of the Sierra Nevada red fox within the DPS area) during the four breeding seasons from 2011 to 2014 (Sacks *et al.* 2015, pp. 3, 15, 30). A third nonnative male was sighted (once) in 2014, bringing the known individuals in that year to three nonnatives, eight hybrids, and two native Sierra Nevada red fox individuals (Sacks *et al.* 2015, pp. 17, 22, 29). While the hybrid pups assist in helping the Sierra Nevada red fox experience less inbreeding depression at the current point in time when the overall population is small, the best available scientific and commercial information suggests that the current condition with regard to maintaining high genomic integrity is poor, and thus, species representation is considered low. Additionally, low representation is further characterized by this DPS's single, small population, which is spread in a relatively constricted geographic arrangement and not indicative of a resilient or redundant mammalian population to withstand stochastic or catastrophic events.

Current Condition Summary

Overall, the current small population size is a direct result of decades of heavy hunting and trapping pressure across its range prior to the State of California's prohibition of ''take'' and designation of the Sierra Nevada red fox as a threatened species in 1980. Since that time, the remaining small population has experienced pressures from competition for prey resources by coyotes, deleterious impacts associated with small population size, including inbreeding depression (as a consequence of population reduction and a lack of other populations) and reduced genomic integrity, and levels of hybridization with nonnative red foxes. At this time, the best available scientific and commercial information suggest that the most significant threats to the Sierra Nevada red fox within this DPS are those Factor E stressors that directly affect the few individuals on the landscape (*i.e.,* deleterious effects associated with small population size that are resulting in low reproductive success (inbreeding depression) and genomic integrity).

Potential Future Conditions

We evaluated three future scenarios over a 50-year timeframe. This time period was chosen because it is within the range of the available hydrological and climate change model forecast information (IPCC 2014, pp. 10, 13), and coincidentally encompasses roughly 25 generations of the subspecies (Perrine *et al.* 2010, p. 15). The three scenarios included improved viability and conditions into the future, the persistence of current conditions into the future, and a decreased viability scenario where current conditions worsen into the future. The SSA report contains a full description of the projected future scenarios and potential outcomes (Service 2018, pp. 29–30).

Risks to the future viability of the Sierra Nevada red fox appear high given the small size and limited distribution of the current population and the factors that are negatively influencing the subspecies currently and into the future, which include deleterious effects associated with small population size (genomic integrity and inbreeding depression), hybridization with nonnative red fox, and possibly reduced prey availability (given observations of scarce leporid observations in some subalpine areas) and competition with coyotes for both leporid and rodent prey due to reduced snowpack levels. Redundancy is likely to remain poor into the future until such time as the current, isolated small population increases in size or an additional population provides protection against a catastrophic event eradicating the whole subspecies. Resiliency will likely remain low given continued periodic drought conditions and temperature increases that reduce snow depth and consequently may cause increased competition with coyotes. Rodent population sizes will likely increase if primary productivity of the subalpine habitat increases in the future; however, red fox access to rodents could be limited due to coyote competition. Leporid and whitebark pine populations may decrease or become less dependable.

The recent increase in pup production is encouraging (although minimizing future hybridization would be preferable); however, representation is low and likely to remain so due to the small size and genetic integrity of the population, which would likely remain susceptible to inbreeding depression if the population(s) fails to increase sufficiently. Additionally, the geographic range of the population(s) is limited (even though suitable habitat is not) especially when compared to the historical extent within the Sierra Nevada. In total, these threats (*i.e.,* deleterious impacts associated with small population size (including inbreeding depression and genomic integrity), hybridization concerns, and possibly reduced prey availability and competition with coyotes) currently leave the DPS susceptible to stochastic or catastrophic effects, both currently and in the future.

Proposed Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E)

other natural or manmade factors affecting its continued existence. The Sierra Nevada red fox faces the following threats: Deleterious impacts associated with small population size (including inbreeding depression and reduced genomic integrity) (Factor E), hybridization with nonnative red fox (Factor E), and possibly reduced prey availability and competition with coyotes (Factor E) resulting from reduced snowpack levels. Existing regulatory mechanisms and conservation efforts do not address the threats to the Sierra Nevada red fox to the extent that listing the DPS is not warranted.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Sierra Nevada DPS of the Sierra Nevada red fox. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.''

We considered whether the DPS is presently in danger of extinction and determined that proposing endangered status is appropriate. We have shown that there are negative influences on the DPS, including deleterious impacts associated with small population size, including (but not limited to) inbreeding depression. Since 2015, the best available information indicates that additional nonnative red fox hybridization has occurred, which has resulted in documented hybrid red fox pups. Although this hybridization may adversely affect the genetic integrity of the DPS, it likely has prevented further decreases in the size of the Sierra Nevada red fox population. Regardless, the DPS' size and distribution remain critically low such that resiliency, redundancy, and representation are insufficient and place the DPS in danger of extinction throughout all of its range.

Although production of pups in monitored areas appears to have increased in 2013 and 2014 due to hybridization as compared to previous years (Sacks *et al.* 2015, p. 29), and two additional sightings of individuals of the Sierra Nevada red fox have recently (December 2017) extended the known current range of the Sierra Nevada red fox in the Sierra Nevada DPS to the vicinity of Mt. Hopkins (approximately 30 mi (48 km) south of Yosemite and about 70 mi (113 km) from the southern end of the Sonora Pass area) (Stermer 2018a, p. 1), these few new individuals have not increased the population size or extent to the degree that the subspecies is not in danger of extinction, including from potential stochastic or catastrophic events.

The primary threats to the DPS, described above, are likely to become exacerbated in the future. Given current and future decreases in resiliency, the population has become more vulnerable to extirpation from stochastic events, and subsequent loss of representation and redundancy. The range of future scenarios of the DPS's environmental and demographic conditions suggest current danger of extirpation throughout the Sierra Nevada mountain range. Under the current condition analysis as well as the potential future scenarios presented in the SSA report, the best available information suggests that the Sierra Nevada red fox has such low resiliency, redundancy, and representation that it is in danger of extinction currently.

Our analysis of the DPS's current and future environmental and demographic conditions, as well as consideration of existing regulatory mechanisms and initiation of conservation efforts with partners (as discussed under ''Available Conservation Measures,'' above), show that the factors used to determine the resiliency, representation, and redundancy for the Sierra Nevada red fox will likely continue to decline. Therefore, the Sierra Nevada DPS of the Sierra Nevada red fox is likely in danger of extinction currently throughout all of its range.

Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Because we have determined that the Sierra Nevada DPS of the Sierra Nevada red fox is in danger of extinction throughout all of its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Therefore, on the basis of the best available scientific and commercial information, we propose to list the Sierra Nevada DPS of the Sierra Nevada red fox as an endangered species throughout all of its range in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery

criteria for review of when a species may be ready for reclassification (such as ''downlisting'' from endangered to threatened) or removal from the Federal Lists of Endangered and Threatened Wildlife and Plants (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If we list the Sierra Nevada red fox, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement management actions that promote the protection or recovery of the DPS. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Sierra Nevada red fox is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. The regulations at 50 CFR 424.12(a)(1) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available

The best available scientific and commercial information suggests that designating critical habitat is not

prudent because we have determined that the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the Sierra Nevada red fox. Habitat also does not appear to be a limiting factor for the species (see Proposed Determination, above); there is abundant, protected adjacent habitat for Sierra Nevada red fox populations to expand into, should their population numbers rebound. Where the Sierra Nevada red fox currently occur, none of the threats we identified (small population size, hybridization, competition with coyotes) fall in the category of present or threatened destruction, modification, or curtailments of the fox's habitat. Overall, we conclude that there are not any current or future significant habitat-based threats, and the best available information suggests that threats to the subspecies directly (*i.e.,* deleterious effects associated with small population size and genomic integrity) are of greatest concern.

In addition, for those potential habitat-based stressors we evaluated (see Current and Future Conditions sections of the SSA report for additional discussion), the best available information indicates some changes to high elevation, subalpine areas may be occurring both currently and in the future with continued changing climate conditions (*e.g.,* less snowpack in some years with potential for increased primary productivity, potential for rust disease and wildfire (see sections 4.1 and 5.1 in the SSA report)). However, those changes are not currently expected, nor in the future projected, to result in significant negative influences on the viability of the DPS.

Because we assessed that the present or threatened destruction, modification, or curtailment of the Sierra Nevada red fox's habitat is not a significant threat to the species, we have determined that designating critical habitat is not prudent at this time.

III. Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

We have determined that environmental assessments and environmental impacts statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rulemaking are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Fox, Sierra Nevada red [Sierra Nevada DPS]'' under ''MAMMALS'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* *	*	* *		* *
Fox, Sierra Nevada red [Sierra Nevada DPS].	*Vulpes vulpes necator*	U.S.A. (CA)—Sierra Nevada ...	E	[**Federal Register** citation when published as a final rule].
* *	*	* *		* *

* * * * *

Dated: November 26, 2019.

Margaret E. Everson

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–28462 Filed 1–7–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 85, No. 5

Wednesday, January 8, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Edgar Sanchez-Muro, 2065 Camargo Street, Brownsville, TX 78526; Order Denying Export Privileges

On June 19, 2019, in the U.S. District Court for the Southern District of Texas, Edgar Sanchez-Muro (''Sanchez-Muro'') was convicted of violating 18 U.S.C. 554(a). Sanchez-Muro was convicted of knowingly attempting to export and exporting approximately 980 rounds of 7.62 x 39 mm caliber ammunition from the United States to Mexico, contrary to Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (2012). Sanchez-Muro was sentenced to 12 months and one day in prison and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554(a), may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any BIS licenses or other authorizations issued under ECRA in which the person had an interest at the time of the conviction may be revoked. *Id.*

BIS has received notice of Sanchez-Muro's conviction for violating 18 U.S.C. 554(a), and has provided notice and an opportunity for Sanchez-Muro to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has not received a submission from Sanchez-Muro.

Based upon my review of the record and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Sanchez-Muro's export privileges pursuant to ECRA for a period of five (5) years from the date of Sanchez-Muro's conviction. I have also decided to revoke any BIS license issued under ECRA in which Sanchez-Muro had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*:

First, from the date of this Order until June 19, 2024, Edgar Sanchez-Muro, with a last known address of 2065 Camargo Street, Brownsville, TX 78526, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Sanchez-Muro by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Sanchez-Muro may file an appeal of this Order with the Under Secretary of Commerce for Industry and

[1] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Sanchez-Muro's conviction post-dates ECRA's enactment on August 13, 2018.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Sanchez-Muro and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until June 19, 2024.

Issued this 31st day of December 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–00044 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Resit Tavan, Tatli Su Mah. No. 72/A, Umraniye—Istanbul 34764; Order Denying Export Privileges

On August 29, 2019, in the U.S. District Court for the Eastern District of Wisconsin, Resit Tavan (''Tavan'') was convicted of violating 18 U.S.C. 371. Specifically, Tavan was convicted of knowingly and intentionally conspiring to violate U.S. sanctions by exporting specialized marine equipment from the United States to Iran, without the required U.S. Government authorization. Tavan was sentenced to 28 months in prison, with credit for time served, and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any BIS licenses or other authorizations issued under ECRA in which the person had an interest at the time of the conviction may be revoked. *Id.*

BIS has received notice of Tavan's conviction for violating 18 U.S.C. 371, and has provided notice and an opportunity for Tavan to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has received a submission from Tavan.

Based upon my review of the record, including Tavan's written submission, and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Tavan's export privileges pursuant to ECRA for a period of 10 years from the date of Tavan's conviction. I have also decided to revoke any BIS license issued under ECRA in which Tavan had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*:

First, from the date of this Order until August 29, 2029, Resit Tavan, with a last known address of Tatli Su Mah. No. 72/A, Umraniye—Istanbul 34764, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Tavan by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Tavan may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Tavan and shall be published in the **Federal Register**.

[1] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Tavan's conviction post-dates ECRA's enactment on August 13, 2018.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

Sixth, this Order is effective immediately and shall remain in effect until August 29, 2029.

Issued this 31st day of December 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–00043 Filed 1–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Voluntary Self-Disclosure of Violations of the Export Administration Regulations

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before March 9, 2020.

ADDRESSES: Direct all written comments to Mark Crace, IC Liaison, Bureau of Industry and Security, 1401 Constitution Avenue, Suite 2099B, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). 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.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is needed to detect violations of the Export Administration Regulations (EAR) and determine if an investigation or prosecution is necessary and to reach a settlement with violators. Voluntary self-disclosure of EAR violations strengthens BIS's enforcement efforts by allowing BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures. BIS evaluates the seriousness of the violation and either (1) Informs the person making the disclosure that no action is warranted; (2) issues a warning letter; (3) issues a proposed charging letter and attempts to settle the matter; (4) issues a charging letter if settlement is not reached; and/or (5) refers the matter to the U.S. Department of Justice for criminal prosecution.

II. Method of Collection

Submitted on paper.

III. Data

OMB Control Number: 0694–0058.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 488.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden Hours: 4880.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary

Legal Authority:

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,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00068 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Ruben Beltran-Ramos, a/k/a Ruben Ramos-Beltran, Inmate Number: 50076–479, Big Spring Correctional Institution, 2001 Rickabaugh Drive, Big Spring, TX 79720; Order Denying Export Privileges

On November 20, 2018, in the U.S. District Court for the Southern District of Texas, Ruben Beltran-Ramos a/k/a Ruben Ramos-Beltran (''Beltran-Ramos'') was convicted of violating 18 U.S.C. 554(a). Specifically, Beltran-Ramos was convicted of knowingly exporting and attempting to export five thousand cartridges of 7.62 x 39 mm caliber ammunition from the United States to Mexico, contrary to Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (2012). Beltran-Ramos was sentenced to 26 months in prison and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554(a), may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any BIS licenses or other authorizations issued under ECRA in which the person had an interest at the time of the conviction may be revoked. *Id.*

BIS has received notice of Beltran-Ramos's conviction for violating 18 U.S.C. 554(a), and has provided notice and an opportunity for Beltran-Ramos to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS

[1] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Beltran-Ramos's conviction post-dates ECRA's enactment on August 13, 2018.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified,

Continued

has not received a submission from Beltran-Ramos.

Based upon my review of the record and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Beltran-Ramos's export privileges pursuant to ECRA for a period of 10 years from the date of Beltran-Ramos's conviction. I have also decided to revoke any BIS license issued under ECRA in which Beltran-Ramos had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until November 20, 2028, Ruben Beltran-Ramos, a/k/a Ruben Ramos-Beltran, with a last known address of Inmate Number: 50076–470, Big Spring Correctional Institution, 2001 Rickabaugh Drive, Big Spring, TX 79720, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Beltran-Ramos by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Beltran-Ramos may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Beltran-Ramos and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 20, 2028.

Issued this 31st day of December 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–00046 Filed 1–7–20; 8:45 am]

BILLING CODE P

superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Voluntary Self-Disclosure of Antiboycott Violations

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before March 9, 2020.

ADDRESSES: Direct all written comments to Mark Crace, IC Liaison, Bureau of Industry and Security, 1401 Constitution Avenue, Suite 2099B, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). 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.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports enforcement of the Antiboycott provisions of the Export Administration Regulations

(EAR) by providing a method for industry to voluntarily self-disclose Antiboycott violations.

II. Method of Collection

Submitted on paper or electronically.

III. Data

OMB Control Number: 0694–0132.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15.

Estimated Time per Response: 10 to 600 hours.

Estimated Total Annual Burden Hours: 7,230.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Export Control Reform Act 4812(b)(7) and 4814(b)(1)(B).

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,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00069 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863]

Certain Corrosion-Resistant Steel Products From India: Notice of Court Decision Not in Harmony With Amended Final Determination in Less Than Fair Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 18, 2019, the United States Court of International Trade (CIT) sustained the Department of Commerce's (Commerce) remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of certain corrosion-resistant steel products (corrosion-resistant steel) from India. Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's amended final determination in the LTFV investigation of corrosion-resistant steel from India. Pursuant to the CIT's final judgment, Uttam Galva Steels Ltd. (Uttam Galva) is being excluded from the order.

DATES: Applicable December 28, 2019.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

The litigation in *Uttam Galva Steels Limited* v. *United States* relates to Commerce's final determination in the LTFV investigation covering corrosion-resistant steel from India.[1] In its *Amended Final Determination and Order,* Commerce reached affirmative determinations for mandatory respondents Uttam Galva,[2] as well as JSW Steel Ltd. and its wholly-owned affiliate JSW Steel Coated Products Limited (collectively, JSW).[3] Uttam Galva appealed the *Amended Final Determination and Order* to the CIT, and on April 18, 2018, the CIT remanded Commerce's *Amended Final Determination and Order.*[4] In its opinion, the CIT found that Commerce's duty drawback calculation was unreasonable and not in accordance with the law and instructed Commerce to recalculate Uttam Galva's duty drawback adjustment.[5]

On August 16, 2018, Commerce filed Remand Results with the CIT, recalculating Uttam Galva's duty drawback adjustment.[6] On March 12, 2019, the CIT remanded the Remand Results to Commerce for a second redetermination.[7] On May 29, 2019, Commerce filed its Second Remand Results with the CIT, wherein it revised its duty drawback calculation for a second time.[8] On December 18, 2019, the CIT sustained Commerce's Second Remand Results.[9]

Timken Notice

In its decision in *Timken*,[10] as clarified by *Diamond Sawblades*,[11] the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 18, 2019 final judgment sustaining Commerce's Second Remand Results constitutes a final decision of the Court that is not in harmony with Commerce's *Amended Final Determination and Order.* This notice is published in fulfillment of the publication requirements of *Timken.*

[1] Court No. 16–00162, Slip Op. 2019–168 (CIT December 18, 2019); *see Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 81 FR 35329 (June 2, 2016), and accompanying Issues and Decision Memorandum; *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Amended Final Determination and Order*); *see also Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to the Antidumping Duty Orders,* 81 FR 58475 (August 25, 2016).

[2] In the underlying investigation, we found Uttam Galva Steels Limited and its affiliated companies Uttam Value Steels Limited, Atlantis International Services Company Ltd., Uttam Galva Steels, Netherlands, B.V., and Uttam Galva Steels (BVI) Limited (collectively, Uttam Galva), to comprise a single entity. *See Final Determination,* 81 FR at 35330 n.13.

[3] *Id.*

[4] *See Uttam Galva Steels Ltd* v. *United States,* 311 F. Supp. 3d 1345 (CIT 2018).

[5] *Id.,* 311 F. Supp. at 1357.

[6] *See* ''Final Results of Redetermination Pursuant to Court Remand, Uttam Galva Steels Limited v. United States, Court No. 16–00162, Slip Op. 18–44 (CIT 2018),'' dated August 16, 2018 (Remand Results).

[7] *See Uttam Galva Steels Ltd.* v. *United States,* 374 F. Supp. 3d 1360 (CIT 2019).

[8] *See* ''Final Results of Redetermination Pursuant to Court Remand, Uttam Galva Steels Limited v. United States, Court No. 16–00162, Slip Op. 19–34 (CIT 2019),'' dated May 29, 2019 (Second Remand Results).

[9] *See Uttam Galva Steels Ltd.* v. *United States,* Court No. 16–00162, Slip Op. 2019–168 (CIT December 18, 2019).

[10] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[11] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Amended Final Determination

Because there is now a final court decision, Commerce is amending the *Final Determination* and *Amended Final Determination and Order* with respect to Uttam Galva and the all-others rate. The revised weighted-average dumping margins for Uttam Galva and all other exporters for the period April 1, 2014 through March 31, 2015, are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Uttam Galva Steels Limited; Uttam Value Steels Limited; Atlantis International Services Company Ltd.; Uttam Galva Steels, Netherlands, B.V.; Uttam Galva Steels (BVI) Limited	0.00
All Others	[12] 4.43

Partial Exclusion From Antidumping Duty Order

Pursuant to section 735(a)(4) of the Act, Commerce ''shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.'' [13] Furthermore, section 735(c)(2) of the Act states that ''the investigation shall be terminated upon publication of that negative determination'' and Commerce shall ''terminate the suspension of liquidation'' and ''release any bond or other security, and refund any cash deposit.'' [14] As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Uttam Galva, Commerce is hereby excluding merchandise produced and exported by Uttam Galva from the antidumping duty order.[15] Accordingly, Commerce will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries from Uttam Galva. This exclusion does not apply to any other companies (except those that comprise a single entity with Uttam Galva, which are listed in the table above).[16]

However, pursuant to *Timken,* the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will instruct CBP to suspend liquidation of all unliquidated entries from Uttam Galva at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption after December 28, 2019, which is ten days after the CIT's final decision, in accordance with section 516A of the Act.[17] If the CIT's ruling is not appealed, or if appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate entries produced and exported by Uttam Galva without regard to antidumping duties. As a result of the exclusion, Commerce will not initiate any new administrative reviews of Uttam Galva's entries pursuant to the antidumping duty order.[18]

At this time, Commerce remains enjoined by CIT order from liquidating entries that: (1) Were produced and exported by Uttam Galva Steels Limited, and were entered, or withdrawn from warehouse, for consumption on or after July 1, 2017, up to and including June 30, 2018; and (2) were produced and/or exported by Uttam Value Steels Limited, and were entered, or withdrawn from warehouse, for consumption on or after July 1, 2017, up to and including June 30, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e) of the Act.

Dated: December 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–00050 Filed 1–7–20; 8:45 am]

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[12] As explained in the Second Remand Results, because Uttam Galva's antidumping duty margin is now 0.00 percent, its rate is no longer factored in the calculation of the all-others rate and the rate calculated for JSW is now the all-others rate. Further, although the dumping margin calculated for JSW and published in the *Amended Final Determination and Order* continues to be 4.43 percent, the adjustment for export subsidies results in a cash deposit rate of 0.47 percent. *See* Second Remand Results at 17.

[13] Section 733(b)(3) of the Act defines *de minimis* dumping margin as ''less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.''

[14] *See* sections 735(c)(2)(A) and (B) of the Act.

[15] *See* Second Remand Results at 22.

[16] *See supra,* fn. 2.

[17] *See, e.g., Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037, 78038 (December 29, 2014); *High Pressure Steel Cylinders From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review,* 82 FR 46758, 46760 (October 6, 2017).

[18] *See Amended Final Determination and Order.* Currently there are no ongoing administrative reviews of this order.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–058]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Notice of Rescission of the Antidumping Duty Administrative Review; 2017–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the People's Republic of China (China) for the period November 22, 2017 through May 31, 2019.

DATES: Applicable January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Charles Doss, 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) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on cold-drawn mechanical tubing from China for the period November 22, 2017, through May

31, 2019.[1] On June 27, 2019, Commerce received a timely request for review from Zhangjiagang Huacheng Import & Export Co., Ltd. (Huacheng).[2] On July 1, 2019, the petitioners [3] filed a timely request for review with respect to 24 companies.[4] Additionally, on July 1, 2019, Commerce received a timely request for review from Howmet Corp Logistics Services, a unit of Arconic Inc. (Howmet) (a U.S. importer of subject merchandise) for review of merchandise produced by Wuxi P&C Machinery Co., Ltd. (Wuxi) and exported by Benteler Distribution Ltd (Benteler).[5] Based on these requests, 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 covering the period November 22, 2017 through May 31, 2019.[6]

On July 31, 2019, Howmet submitted a timely request to withdraw its request for administrative review.[7] On October 8, 2019, the petitioners submitted a timely request to withdraw their request for administrative review with respect to all entities for which they had requested a review.[8] On October 10, 2019, Huacheng submitted a timely request to withdraw its request for administrative review.[9]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 25521 (June 3, 2019).

[2] *See* Huacheng's Letter, ''Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China; Request for Administrative Review,'' dated June 27, 2019.

[3] The petitioners are ArcelorMittal Tubular Products LLC, Michigan Seamless Tube, LLC, PTC Alliance Corp., and Webco Industries, Inc.

[4] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from the People's Republic of China—Domestic Industry's Request for First Administrative Review,'' dated July 1, 2019.

[5] *See* Howmet's Letters, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Request for Administrative Review'' and ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Amendment of the Request for Administrative Review,'' both dated July 1, 2019.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 36572 (July 29, 2019).

[7] *See* Howmet's Letter, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated July 31, 2019.

[8] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from the People's—Domestic Industry's Withdrawal of Request for First Administrative Review,'' dated October 8, 2019.

[9] *See* Huacheng's Letter, ''Cold-Drawn Mechanical Tubing from the People's Republic of China: Huacheng's Withdrawal of Request for First Administrative Review,'' dated October 10, 2019.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioners, Howmet, and Huacheng fully withdrew their respective review requests by the 90-day deadline. As such, Commerce is in receipt of timely requests for withdrawal of the instant administrative review with respect to all companies listed in the *Initiation Notice.* Accordingly, we are rescinding the administrative review of the antidumping duty order on cold-drawn mechanical tubing from China for the period November 22, 2017 through May 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of cold-drawn mechanical tubing from China at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 31, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–00048 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting the administrative review of the antidumping duty order on magnesium metal from the People's Republic of China (China), covering the period April 1, 2018 through March 31, 2019. Commerce preliminarily determines that Tianjin Magnesium International, Co., Ltd. (TMI) and Tianjin Magnesium Metal, Co., Ltd. (TMM) did not have reviewable entries during the period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, 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) 482–5449.

Background

On April 1, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from China for the POR.[1] On June 13, 2019, in response to a timely request from US Magnesium LLC (the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 12207 (April 1, 2019).

petitioner),[2] and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on magnesium metal from China with respect to TMI and TMM.[3]

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from China, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy''[4] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''; [5] (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6] The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Preliminary Determination of No Shipments

We received timely submissions from TMI and TMM certifying that they did not have sales, shipments, or exports of subject merchandise to the United States during the POR.[7] On December 16, 2019, we requested the U.S. Customs and Border Protection (CBP) data file of entries of subject merchandise imported into the United States during the POR, and exported by TMM and/or TMI. This query returned no entries during the POR.[8] Additionally, we sent an inquiry to CBP requesting that any CBP officer alert Commerce if he/she had information contrary to TMM's and TMI's no-shipments claims.[9] We received no such information in response.[10]

Accordingly, and consistent with our practice, we preliminarily determine that TMI and TMM had no shipments and, therefore, no reviewable entries during the POR. In addition, we find it is not appropriate to rescind the review with respect to these companies, but rather to complete the review with respect to TMI and TMM and issue appropriate instructions to CBP based on the final results of the review, consistent with our practice in non-market economy (NME) cases.[11]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice in the **Federal Register**.[12] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the date for filing case briefs.[13] Parties who submit arguments are requested to submit with each argument: (a) A statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[14] Parties submitting briefs should do so via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[15] ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days of the date of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues parties intend to discuss. Issues raised in the hearing will be

[2] *See* Petitioner's Letter, ''Magnesium Metal from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 27587 (June 13, 2019).

[4] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[5] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[6] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 49345 (September 27, 2001); *see also Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel,* 66 FR 49349 (September 27, 2001); and *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[7] *See* TMI's Letter, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium International, Ltd.,'' dated July 12, 2019, at 1; *see also* TMM's Letter, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium Metal, Co., Ltd.,'' dated July 12, 2019, at 1.

[8] *See* Memorandum, ''2017–2018 Administrative Review of Magnesium Metal from the People's Republic of China, U.S. Customs and Border Protection Data'' dated December 26, 2019, at Attachment 1.

[9] *Id.* at Attachment 2.

[10] *Id.* at Attachment 3.

[11] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 2014–2015,* 81 FR 72567 (October 20, 2016), and the ''Assessment Rates'' section, below.

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1)–(2).

[14] *See* 19 CFR 351.309(c)(2), (d)(2).

[15] *See* 19 CFR 351.303 (for general filing requirements).

limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date of the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Unless extended, we intend to issue the final results of this administrative review, including our analysis of all issues raised in any written brief, within 120 days of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] We intend to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Pursuant to Commerce's practice in NME cases, if we continue to determine in the final results that TMI and TMM had no shipments of subject merchandise, any suspended entries of subject merchandise during the POR from these companies will be liquidated at the China-wide rate.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI in the most recently completed review of the company; (2) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (including TMM, which claimed no shipments, but has not been found to be separate from China-wide entity), the cash deposit rate will be China-wide rate of 141.49 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–00052 Filed 1–7–20; 8:45 am]

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[16] *See* 19 CFR 351.212(b)(1).

[17] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–062, C–570–063]

Cast Iron Soil Pipe Fittings From the People's Republic of China: Final Results of Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Commerce finds that Wor-Biz Industrial Product Co., Ltd. (Anhui) (Wor-Biz Industrial) is the successor-in-interest to Wor-Biz Trading Co., Ltd. (Anhui) (Wor-Biz Trading), and therefore is entitled to Wor-Biz Trading's antidumping duty (AD) and countervailing duty (CVD) cash deposit rates with respect to entries of subject merchandise.

DATES: Applicable January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Bowen at (202) 482–0768 (AD) or Dennis McClure at (202) 482–5973 (CVD), Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2018, Commerce published the AD and CVD orders on imports of cast iron soil pipe fittings from China.[1] On November 21, 2019, Commerce initiated changed circumstances reviews (CCRs) and made preliminary findings that Wor-Biz Industrial is the successor-in-interest to Wor-Biz Trading and is entitled to Wor-Biz Trading's AD and CVD cash deposit rates with respect to entries of subject merchandise.[2] We provided interested parties the opportunity to comment on the *Preliminary Results.* No interested parties submitted case briefs or written comments.

Scope of the Orders

The merchandise covered by the scope of these orders is cast iron soil pipe fittings, finished and unfinished, regardless of industry or proprietary specifications, and regardless of size. Cast iron soil pipe fittings are nonmalleable iron castings of various designs and sizes, including, but not limited to, bends, tees, wyes, traps, drains (other than drain bodies), and other common or special fittings, with or without side inlets.

Cast iron soil pipe fittings are classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe fittings are manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888. Hub and spigot pipe fittings have hubs into which the spigot (plain end) of the pipe or fitting is inserted. Cast iron soil pipe fittings are generally distinguished from other types of nonmalleable cast iron fittings by the manner in which they are connected to cast iron soil pipe and other fittings.

Excluded from the scope are all drain bodies. Drain bodies are normally classified in subheading 7326.90.86.88 of the Harmonized Tariff Schedule of the United States (HTSUS).

The cast iron soil pipe fittings subject to the scope of these orders are normally classified in subheading 7307.11.0045 of the HTSUS: Cast fittings of nonmalleable cast iron for cast iron soil

[1] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 83 FR 44570 and *Cast Iron Soil Pipe Fittings from the People's Republic of China: Countervailing Duty Order,* 83 FR 44566, both dated August 31, 2018 (collectively, the *Orders*).

[2] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Reviews,* 84 FR 64263 (November 21, 2019) (*Preliminary Results*).

pipe. They may also be entered under HTSUS 7324.29.0000 and 7307.92.3010. The HTSUS subheadings and specifications are provided for convenience and customs purposes only; the written description of the scope of these orders is dispositive.

Final Results of Changed Circumstances Reviews

Because the record contains no information or evidence that calls into question the *Preliminary Results,* for the reasons stated in the *Preliminary Results,* Commerce continues to find that Wor-Biz Industrial is the successor-in-interest to Wor-Biz Trading, and thus is entitled to Wor-Biz Trading's AD and CVD cash deposit rates with respect to entries of subject merchandise.[3]

Instructions to U.S. Customs and Border Protection

Based on these final results, we will instruct U.S. Customs and Border Protection to collect estimated AD and CVD duties for all shipments of subject merchandise exported by Wor-Biz Industrial and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, at the current AD and CVD cash deposit rates for Wor-Biz Trading (*i.e.,* 33.44% [4] and 7.37%, respectively). These cash deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 sanctionable violation.

We are issuing and publishing these final results notice in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: December 31, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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[3] *See* the *Orders.*

[4] We intend to update the name of the exporter listed for this combination cash deposit rate to reflect these final results.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878; C–580–879]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Correction to Affirmative Final Determinations of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the final determinations of anti-circumvention inquiries on the antidumping and countervailing duty orders on certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea).

DATES: Applicable January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, 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) 482–5484.

SUPPLEMENTARY INFORMATION: On December 26, 2019, Commerce published in the **Federal Register** the affirmative final determinations of anti-circumvention inquiries [1] related to the antidumping duty and countervailing duty orders on CORE from Korea.[2] The published **Federal Register** notice and accompanying Issues and Decision Memorandum (IDM) at page eight erroneously stated that the following five companies were not eligible for the certification process with regard to hot-rolled steel (HRS) and cold-rolled steel (CRS) from Korea: [3] (1) Dai Thien Loc Corporation; (2) Formosa Ha Tinh Corporation; (3) Hoa Sen Group; (4) Ton Dong A Corp.; and (5) Vina One Steel Manufacturing. However, as noted in the IDM at page seventeen, Commerce has determined that these five companies are in fact eligible for the certification process. Therefore, we are hereby correcting the **Federal Register** notice and page eight of the accompanying IDM to make clear that these five companies are eligible to participate in the certification process. Consistent with this correction, we intend to send instructions to the U.S. Customs and Border Protection without listing these companies as ineligible to participate in the certification process. No other changes have been made to the affirmative final determinations.

Dated: December 31, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–00051 Filed 1–7–20; 8:45 am]

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[1] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Final Determinations of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 84 FR 70948 (December 26, 2019) and accompanying Issues and Decision Memorandum (IDM).

[2] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016); *see also Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order,* 81 FR 48387 (July 25, 2016).

[3] Importers and exporters of CORE produced in the Socialist Republic of Vietnam (Vietnam) using: (1) HRS manufactured in Vietnam or third countries; (2) CRS manufactured in Vietnam using HRS produced in Vietnam or third countries; and/or (3) CRS manufactured in third countries—if they qualify to participate in the certification process—must certify that the HRS or CRS processed into CORE in Vietnam did not originate in Korea, as provided in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Final Determinations of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 84 FR at 70950–51 (appendices II–IV). Importers and exporters of CORE produced in Vietnam may also be subject to the certification processes provided in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders,* 83 FR 23895 (May 23, 2018) and *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order,* 84 FR 70937 (December 26, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–112]

Certain Collated Steel Staples From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain collated steel staples (collated staples) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The

period of investigation (POI) is October 1, 2018 through March 31, 2019.

DATES: Applicable January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478, or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on July 3, 2019.[1] On October 29, 2019, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now January 2, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is collated staples from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*[6] Based on our preliminary analysis of these comments, we have not made any changes to the scope of the investigation. For a summary of the product coverage comments and responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act. In addition, pursuant to section 776(a) and (b) of the Act, Commerce preliminarily has relied on facts otherwise available, with adverse inferences, for Tianjin Jinxinshenglong Metal Products Co., Ltd. (Tianjin JXSL) and the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[8] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[9]

Preliminary Affirmative Determination of Critical Circumstances

In the *Preliminary Critical Circumstances Determination,* Commerce determined that critical circumstances exist with respect to imports of collated staples from China for Tianjin Hweschun Fasteners Manufacturing Co., Ltd. (Tianjin Hweschun) and all other producers/exporters except for Tianjin JXSL.[10] We are revising our preliminary critical circumstances finding and now find that critical circumstances also exist with respect to imports by Tianjin JSXL and all other producers/exporters of collated staples from China.[11] For a full description of the methodology and results of Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

In this proceeding, Commerce calculated an above-*de minimis* rate that is not based entirely on facts available for Tianjin Hweschun, and thus, consistent with our practice, we assigned the rate calculated for Tianjin Hweschun as the rate for non-individually examined companies that have preliminarily qualified for a separate rate. *See* the Preliminary Decision Memorandum. Commerce preliminarily determines that the

[1] *See Certain Collated Steel Staples from the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 12587 (July 3, 2019) (*Initiation Notice*).

[2] *See Certain Collated Steel Staples from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 84 FR 57845 (October 29, 2019).

[3] *See* Memorandum, ''Certain Collated Steel Staples from the People's Republic of China: Decision Memorandum for Preliminary Affirmative Determination of Sales at Less Than Fair Value,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Peace Industries Ltd.'s Letter, ''Certain Collated Steel Staples from Korea, the People's Republic of China, and Taiwan: Scope Comments,'' dated July 16, 2019; *see also* BeA Fasteners USA, Inc.'s (BeA) Letter, ''Antidumping and Countervailing Duty Investigations on Certain Collated Steel Staples from the People's Republic of China, the Republic of Korea, and Taiwan: Scope Comments,'' dated July 16, 2019; Petitioner's Letter, ''Certain Collated Steel Staples from the People's Republic of China: Response to Scope Comments,'' dated August 2, 2019; BeA's Letter, ''Antidumping and Countervailing Duty Investigations on Certain Collated Steel Staples From the People's Republic of China, the Republic of Korea, and Taiwan: Supplemental Scope Comments,'' dated October 11, 2019; and Petitioner's Letter, ''Certain Collated Steel Staples from the People's Republic of China: Response to BeA's Supplemental Scope Comments,'' dated October 17, 2019.

[7] *See* Memorandum, ''Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Collated Steel Staples from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated November 7, 2019 (Preliminary Scope Memorandum).

[8] *See Initiation Notice,* 84 FR at 12590–91.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005 (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[10] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in the Antidumping and Countervailing Duty Investigations,* 84 FR 59353 (November 4, 2019) (*Preliminary Critical Circumstances Determination) see also* Memorandum, ''Certain Collated Steel Staples from the People's Republic of China: Preliminary Massive Imports Analysis,'' dated October 31, 2019.

[11] *See, e.g., Non-Oriented Electrical Steel from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances,* 79 FR 29421 (December 6, 2013), and accompanying Preliminary Decision Memorandum at ''Critical Circumstances'', unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part,* 79 FR 61609 (October 14, 2014).

following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Tianjin Hweschun Fasteners Manufacturing Co., Ltd	Tianjin Hweschun Fasteners Manufacturing Co., Ltd	301.64	291.1
Tianjin Jin Xin Sheng Long Metal Products Co., Ltd	Tianjin Jin Xin Sheng Long Metal Products Co., Ltd	301.64	291.1
China Staple (Tianjin) Co., Ltd	China Staple (Tianjin) Co., Ltd	301.64	291.1
Shanghai Yueda Nails Co., Ltd	Shanghai Yueda Nails Co., Ltd	301.64	291.1
Shijiazhuang Shuangming Trade Co., Ltd	Shijiazhuang Shuangming Trade Co., Ltd	301.64	291.1
Tianjin Jinyifeng Hardware Co., Ltd	Tianjin Jinyifeng Hardware Co., Ltd	301.64	291.1
Unicorn Fasteners Co., Ltd	Unicorn Fasteners Co., Ltd	301.64	291.1
Zhejiang Best Nails Industrial Co., Ltd	Zhejiang Best Nails Industrial Co., Ltd	301.64	291.1
China-Wide Entity		301.64	[12] 291.1

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in Appendix I that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average amount by which NV exceeds U.S. price, as indicated in the chart above, as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which the notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for all imports of subject merchandise from China. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries from all exporters and producers of the subject merchandise from China that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, Commerce has made a preliminary affirmative determination for an export subsidy adjustment. However, Commerce has not made a preliminary affirmative determination for a domestic subsidy pass-through adjustment in this investigation.[13] Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the chart of estimated weighted-average dumping margins in the ''Preliminary Determination'' section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs, or other written comments not pertaining to scope issues, may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after

[12] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 61021 (November 12, 2019) and accompanying Preliminary Decision Memorandum.

[13] *See* sections, ''Adjustment Under Section 777A(F) of the Act'' and ''Adjustment to Cash Deposit Rate for Export Subsidies'' in the Preliminary Decision Memorandum.

the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Additionally, case briefs regarding scope issues may be submitted within ten days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs regarding scope issues, limited to those issues in the scope case briefs, may be submitted no later than five days after the deadline for scope case briefs. All scope case and rebuttal briefs must be filed identically on the records of this investigation and the concurrent CVD investigation of collated staples.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Pursuant to 19 CFR 351.210(e), Tianjin JXSL, Kyocera Senco Industrial Tools, Inc. (the petitioner), and Tianjin Hweschun requested that Commerce postpone the final determination. Additionally, Tianjin JXSL and Tianjin Hweschun requested that provisional measures be extended to a period not to exceed six months.[15] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will be issued no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: January 2, 2020.

Jeffrey I. Kessler,

Assistant Secretar for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the scope of this investigation is certain collated steel staples. Certain collated steel staples subject to this investigation are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel, and are included in the scope of this investigation regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion.

Certain collated steel staples may be collated using any material or combination of materials, including but not limited to adhesive, glue, and adhesive film or adhesive or paper tape.

Certain collated steel staples are generally made to American Society for Testing and Materials (ASTM) specification ASTM F1667–18a, but can also be made to other specifications.

Excluded from the scope of this investigation are any carton-closing staples covered by the scope of the existing antidumping duty order on Carton-Closing Staples from the People's Republic of China. *See Carton-Closing Staples from the People's Republic of China: Antidumping Duty Order,* 83 FR 20792 (May 8, 2018). Certain collated steel staples subject to this investigation are currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Scope of the Investigation
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Adjustment Under Section 777(A)(f) of the Act
X. Critical Circumstances
XI. Adjustment for Countervailable Export Subsidies
XII. Conclusion

[FR Doc. 2020–00103 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[15] *See* Tianjin JXSL's Letter, ''Collated Steel Staples from the People's Republic of China: Conditional Request for Extension of Final Determination,'' dated December 6, 2019; *see also* Petitioner's Letter, ''*Certain Collated Steel Staples from the People's Republic of China:* Request for Postponement of the Final Determination,'' dated December 10, 2019; and Tianjin Hweschun's Letter, ''Certain Collated Steel Staples from China: Request to Fully Extend the Final Determination,'' dated December 12, 2019.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID XA005]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet January 27, 2020 to February 2, 2020.

DATES: The Council will begin its plenary session at 8 a.m. in the South Room on Wednesday, January 29 continuing through Sunday, February 2, 2020. The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the East Room on Monday, January 27 and continue through Wednesday, January 29, 2020. The Council's Advisory Panel (AP) will begin at 8 a.m. in the North/West Room on Tuesday, January 28 and continue through Friday, January 31, 2020. The Ecosystem Committee will meet on Tuesday, January 28, 2020, from 8 a.m. to 5 p.m. (room TBD). The Partial Coverage Fishery Monitoring Advisory Committee will meet Tuesday, January 28, 2020, from 1 p.m. to 5 p.m. (room TBD).

ADDRESSES: The meeting will be held at the Renaissance Hotel, 515 Madison St., Seattle, WA 98104.

Council address: North Pacific Fishery Management Council, 1007 West 3rd, Suite 400; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, January 27, 2020 Through Sunday, February 2, 2020

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) Executive Director's Report
(2) NMFS Management Report
(3) NOAA General Counsel Report
(4) Alaska Fisheries Science Center Report
(5) ADF&G Report
(6) USCG Report
(7) USFWS Report
(8) Charter Halibut Annual Management Measures for Area 3A
(9) Norton Sound Red King Crab—Specifications, BSAI Crab Plan Team Report
(10) Central GOA Rockfish Reauthorization
(11) Economic Data Report regulatory changes
(12) Sculpin/Squid Product Types
(13) Partial Coverage Cost Efficiencies
(14) Standardized Bycatch Reporting Methodology in FMPs
(15) Bering Sea Fishery Ecosystem Plan Action Modules
(16) BSAI Halibut ABM
(17) Crab e-logbooks Cost Analysis
(18) Social Science Planning Team
(19) Staff Tasking

The Advisory Panel will address the same agenda issues as the Council with the exception of the B reports (issues 1–7).

The SSC's agenda will include:

(1) Sculpin/Squid Product Types
(2) Alaska Fisheries Science Center Report
(3) Norton Sound Red King Crab—Specifications, BSAI Crab Plan Team Report
(4) Bering Sea Fishery Ecosystem Plan Action Modules
(5) Social Science Planning Team
(6) Economic Data Report regulatory changes
(7) Economic SAFE report—Review
(8) Multi Regional Social Accounting Matrix tool—Review
(9) Marine Mammal Conservation Status—Annual Update

Additionally, the SSC will be holding a Research Priorities Planning Workshop at 1 p.m. on Wednesday, January 29, 2020 in the East Room. In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The agenda for the Partial Coverage Fishery Monitoring Advisory Committee includes the opportunity to review, give staff feedback, and make recommendations to the Council on a draft workplan that establishes different elements and options for a cost efficient monitoring program that can be supported by industry fees. The agenda for the Ecosystem Committee includes fur seal updates from NOAA and St. Paul, skate nursery research update, deep sea coral research update, and FEP action module updates.

The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1243.*

Public Comment

Public comment letters will be accepted and should be submitted either electronically at*: https://meetings.npfmc.org/Meeting/Details/1243* or through the mail: North Pacific Fishery Management Council, 1007 West 3rd Ave., Suite 400, Anchorage, AK 99501. Deadline for comments is January 24, 2020 at 12 p.m.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: January 3, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–00099 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA004]

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 Groundfish 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 Thursday, January 23, 2020 at 9 a.m.

ADDRESSES: The meeting will be held at the Four Points Sheraton, One Audubon Road, Wakefield, MA 01880; Phone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will meet to discuss recreational measures for fishing year 2020 and provide recommendations to the Groundfish Committee on

recreational measures for Gulf of Maine cod and Gulf of Maine haddock. They will also discuss Amendment 23: Groundfish Monitoring to review the draft Environmental Impact Statement (DEIS) and recommend preliminary preferred alternatives to the Groundfish Committee. The committee will receive an overview of the Council's 2020 priorities. Other business will 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: January 3, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–00096 Filed 1–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States (U.S.) Department of Energy (DOE), announces the availability of a *Final Supplement Analysis (SA) of the Complex Transformation Supplemental Programmatic Environmental Impact Statement* (SPEIS) (DOE/EIS–0236–SA–02). NNSA prepared the Final SA to determine whether, prior to implementing a Modified Distributed Center of Excellence (DCE) Alternative for plutonium operations to enable producing plutonium pits at a rate of no fewer than 80 pits per year by 2030, the existing Complex Transformation SPEIS should be supplemented, a new environmental impact statement be prepared, or that no further National Environmental Policy Act (NEPA) analysis is required. NNSA published the *Draft Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement* on June 28, 2019, and announced a 45-day comment period. After considering all comments received, NNSA prepared the Final SA and concluded that no further NEPA documentation at a programmatic level is required.

DATES: This notice will be published on January 8, 2020.

ADDRESSES: The Final SA, which includes an Appendix which contains NNSA's responses to comments received on the Draft SA, is available on the internet at *https://www.energy.gov/nnsa/nnsa-nepa-reading-room* and *https://www.energy.gov/nepa/listings/supplement-analyses-sa*.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, please contact Mr. James R. Sanderson, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0119; phone: 202–586–1402; email to: *NEPA-SRS@srs.gov*.

SUPPLEMENTARY INFORMATION: NNSA prepared the Final SA to determine whether, prior to implementing a Modified Distributed Center of Excellence (DCE) Alternative for plutonium operations to enable producing plutonium pits at a rate of no fewer than 80 pits per year by 2030, the existing Complex Transformation SPEIS should be supplemented, a new environmental impact statement be prepared, or that no further National Environmental Policy Act (NEPA) analysis is required. Implementing a Modified DCE Alternative would enable NNSA to meet federal law and national policy by producing a minimum of 50 pits per year at a repurposed Mixed-Oxide Fuel Fabrication Facility (MFFF) at the Savannah River Site (SRS) and a minimum of 30 pits per year at the Los Alamos National Laboratory (LANL). An additional surge capacity would be available at each site, if needed, to meet the requirements of producing pits at a rate of no fewer than 80 pits per year by 2030 for the nuclear weapons stockpile. The Final SA includes NNSA's determination that no further NEPA documentation at a programmatic level is required. The SA of the Complex Transformation SPEIS is an important element of the overall NEPA strategy related to fulfilling national requirements for pit production. DOE announced this NEPA strategy on June 10, 2019 (84 FR 26849).

National security policies require DOE, through NNSA, to maintain the United States' nuclear weapons stockpile, as well as the nation's core competencies in nuclear weapons. NNSA has the mission to maintain and enhance the safety, security, and effectiveness of the nuclear weapons stockpile. Plutonium pits are critical components of every nuclear weapon, with nearly all current stockpile pits having been produced from 1978–1989. Today, the United States' capability to produce plutonium pits is limited.

Since 2008, the United States has emphasized the need to eventually produce 80 pits per year. Since 2014, federal law has required the Secretary of Energy to produce no less than 30 war reserve plutonium pits by 2026 and thereafter demonstrate the capability to produce war reserve plutonium pits at a rate sufficient to produce 80 pits per year (50 U.S.C. 2538a). On January 27, 2017, the President directed the Department of Defense (DoD) to conduct an updated Nuclear Posture Review (NPR) to ensure a safe, secure, and effective nuclear deterrent that protects the homeland, assures allies, and above all, deters adversaries. The 2018 NPR echoed the need for pit production and confirmed that the United States will pursue initiatives to ensure the necessary capability, capacity, and responsiveness of the nuclear weapons infrastructure and the needed skill of the workforce, including providing the enduring capability and capacity to produce plutonium pits at a rate of no fewer than 80 pits per year by 2030. In 2018, Congress enacted as formal policy of the United States that LANL will produce a minimum of 30 pits per year for the national production mission and will implement surge efforts to exceed 30 pits per year to meet NPR and national policy (Pub. L. 115–232, Section 3120).

To these ends, the DoD Under Secretary of Defense for Acquisition and Sustainment and the NNSA Administrator issued a Joint Statement on May 10, 2018, identifying their recommended alternative to meet the pit production requirement based on the

completion of an Analysis of Alternatives, an Engineering Assessment, and a Workforce Analysis. Implementing a Modified DCE Alternative would enable NNSA to continue to transform the nuclear weapons complex (Complex) in a manner that meets federal law and national policy. Under the Modified DCE Alternative, NNSA would repurpose the MFFF at SRS in South Carolina to produce plutonium pits while also maximizing pit production activities at LANL. This two-prong approach—with no fewer than 50 pits per year produced at SRS and no fewer than 30 pits per year at LANL—is the best way to manage the cost, schedule, and risk of such a vital undertaking. In addition to improving the resiliency, flexibility, and redundancy of our Nuclear Security Enterprise by reducing reliance on a single production site, this approach enables the capability to allow for enhanced warhead safety and security to meet DoD and NNSA requirements; deliberate, methodical replacement of older existing plutonium pits with newly manufactured pits as risk mitigation against plutonium aging; and response to changes in deterrent requirements driven by renewed great power competition.

On June 10, 2019, DOE announced the overall NEPA strategy related to fulfilling national requirements for pit production (84 FR 26849). DOE announced that it would prepare at least three documents including this Final SA, a site-specific EIS for the proposal to produce pits at SRS (also announced in that notice), and site-specific documentation for the proposal to authorize expanding pit production beyond 20 pits per year at LANL.

In 2008, NNSA prepared the Complex Transformation SPEIS, which evaluated, among other things, alternatives for producing 10–200 plutonium pits per year at different sites including LANL and SRS. In the Complex Transformation SPEIS ROD, NNSA did not make any new decisions related to pit production capacity and did not foresee an imminent need to produce more than 20 pits per year to meet national security requirements. NNSA now foresees an imminent need to provide the enduring capability and capacity to produce plutonium pits at a rate of no fewer than 80 pits per year by 2030 for the nuclear weapons stockpile. NNSA's preferred alternative is now to implement a Modified DCE Alternative. NNSA has prepared the SA to determine whether, prior to implementing a Modified DCE Alternative, the existing Complex Transformation SPEIS should be supplemented, a new EIS be prepared, or no further NEPA analysis be required.

Although pertinent regulations do not require public review and comment on an SA, NNSA decided, in its discretion, that public comment in this instance would be helpful. NNSA issued the *Draft Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement* on June 28, 2019 for a 45-day public review (84 FR 31055). The comments received on the Draft SA generally centered on the following topic areas: (1) Validity of the Draft SA determination; (2) the purpose and need for NNSA's proposal; (3) requests for an extension to the comment period; (4) the two-prong approach to pit production; (5) new information or changed circumstances related to NNSA operations and/or environmental conditions; (6) questions about the technical aspects of the impact analyses; (7) general opposition to, or support for the proposal; and (8) comments about nuclear weapon policies or new weapon designs. NNSA considered all comments during the preparation of the Final SA and determination and has modified the SA as appropriate. NNSA's responses to the comments received on the Draft SA are included in Appendix A to the Final SA.

Signed in Washington, DC, this 19th day of December 2019, for the United States Department of Energy.

Lisa E. Gordon-Hagerty,

Under Secretary for Nuclear Security, Administrator, NNSA.

[FR Doc. 2020–00102 Filed 1–7–20; 8:45 am]

BILLING CODE 6450–01–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:

Docket Numbers: RP20–380–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Amendment to Negotiated Rate Service Agreement to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5088.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–381–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Diversified Negotiated Rate Amendments to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5046.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–382–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: CCRM 2020 to be effective 2/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5049.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–383–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—January 1 2020 Continental 1011192 to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5053.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–384–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Amended Negotiated Rates—Total eff 1–1–20 to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5054.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–385–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: 2019–12–31 Negotiated Rate Agreements to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5056.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–386–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Company Name Change Filing to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5058.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–387–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: Neg Rate 2020–01–01 Castleton, Koch to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5065.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–388–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Amended Negotiated Rate—EAP contract 911572 eff 1–1–20 to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5081.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–389–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Columbia releases 860005 eff 1–1–2020 to be effective 1/1/2020.

Filed Date: 12/31/19.

Accession Number: 20191231–5087.

Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–390–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Keyspan release to Agera Energy 801131 to be effective 1/1/2020.

Filed Date: 12/31/19.

Accession Number: 20191231–5096.

Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–391–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20191231 Negotiated Rates to be effective 1/1/2020.

Filed Date: 12/31/19.

Accession Number: 20191231–5105.

Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–392–000.

Applicants: Dominion Energy Transmission, Inc.

Description: § 4(d) Rate Filing: DETI—December 31, 2019 Negotiated Rate Agreement to be effective 2/1/2020.

Filed Date: 12/31/19.

Accession Number: 20191231–5176.

Comments Due: 5 p.m. ET 1/13/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00085 Filed 1–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–721–000]

Willow Creek Wind Power 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 Willow Creek Wind Power 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 January 22, 2020.

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: January 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00087 Filed 1–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–100–000.

Applicants: Tucson Electric Power Company.

Description: Informational Filing [copy of executed confirmations and unaffiliated third party] of Tucson Electric Power Company.

Filed Date: 12/23/19.

Accession Number: 20191223–5333.

Comments Due: 5 p.m. ET 1/13/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2822–017; ER16–1250–009; ER10–2828–006; ER10–2285–007; ER17–1241–001; ER16–2285–004; ER10–2423–009; ER10–2404–009; ER10–2812–015; ER10–1291–022; ER10–2843–014; ER12–2649–005; ER10–1725–005; ER10–3001–006; ER10–3002–006; ER10–3004–007; ER12–422–007; ER10–2301–005; ER19–2361–001; ER10–3010–006; ER10–2306–005; ER12–96–009; ER10–3031–006; ER10–3160–004; ER16–1637–003.

Applicants: Atlantic Renewable Projects II LLC, Avangrid Renewables, LLC, Casselman Windpower LLC, Central Maine Power Company, Deerfield Wind, LLC, Desert Wind Farm LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, GenConn Devon LLC, GenConn Energy LLC, GenConn Middletown LLC, Groton Wind, LLC, Hardscrabble Wind Power LLC, Lempster Wind, LLC, Locust Ridge Wind Farm, LLC, Locust Ridge II, LLC, New England Wind, LLC, New York State Electric & Gas Corporation, Otter Creek Wind Farm LLC, Providence Heights Wind, LLC, Rochester Gas and Electric Corporation, South Chestnut LLC, Streator-Cayuga Ridge Wind Power LLC, The United Illuminating Company, UIL Distributed Resources, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Avangrid Northeast MBR Sellers, et al.
Filed Date: 12/30/19.
Accession Number: 20191230–5276.
Comments Due: 5 p.m. ET 2/28/20.

Docket Numbers: ER10–3297–015.
Applicants: Powerex Corp.
Description: Updated Market Power Analysis for the Northwest Region of Powerex Corp.
Filed Date: 12/30/19.
Accession Number: 20191230–5274.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER17–2059–004; ER10–3097–009.
Applicants: Puget Sound Energy, Inc., Bruce Power Inc.
Description: Supplement to July 1, 2019 Updated Market Power Analysis in the Northwest Region for Puget Sound Energy, Inc., et al.
Filed Date: 12/19/19.
Accession Number: 20191219–5142.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER19–708–002.
Applicants: GSG, LLC.
Description: Compliance filing: Compliance Filing Under Docket ER19–708–002 to be effective 2/26/2019.
Filed Date: 12/31/19.
Accession Number: 20191231–5104.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER19–2901–001; ER15–2582–006; ER10–1851–011; ER10–1852–032; ER10–1930–011; ER10–1931–012; ER15–2101–007; ER19–2389–001; ER12–2226–010; ER12–2225–010; ER14–2138–007; ER10–1966–011; ER10–1976–011; ER19–11–003; ER10–1985–011; ER17–838–013; ER10–1951–017; ER11–4462–038; ER18–2091–003.
Applicants: Bronco Plains Wind, LLC, Carousel Wind Farm, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Stateline II, Inc., FPL Energy Vansycle, L.L.C, Golden West Power Partners, LLC, Grazing Yak Solar, LLC, Limon Wind, LLC, Limon Wind II, LLC, Limon Wind III, LLC, Logan Wind Energy LLC, Northern Colorado Wind Energy, LLC, Peetz Logan Interconnect, LLC, Peetz Table Wind Energy, LLC, NextEra Energy Marketing, LLC, NextEra Energy Services Massachusetts, LLC, NEPM II, LLC, Titan Solar, LLC.
Description: Updated Market Power Analysis for the Northwest Region of NextEra Companies, et al.
Filed Date: 12/30/19.
Accession Number: 20191230–5270*I.*
Comments Due: 5 p.m. ET 2/28/20.

Docket Numbers: ER20–391–001.
Applicants: J. Aron & Company LLC.
Description: Notice of Non-Material Change in Status of J. Aron & Company LLC.
Filed Date: 12/30/19.
Accession Number: 20191230–5275.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–720–000.
Applicants: Plum Creek Wind, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority to be effective 3/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5090.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–721–000.
Applicants: Willow Creek Wind Power LLC.
Description: Baseline eTariff Filing: Application for MBR Authority to be effective 3/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5093.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–722–000.
Applicants: Baconton Power LLC.
Description: § 205(d) Rate Filing: Baconton Power LLC Revised MBR Tariff to be effective 12/21/2019.
Filed Date: 12/31/19.
Accession Number: 20191231–5106.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–723–000.
Applicants: The Narragansett Electric Company.
Description: § 205(d) Rate Filing: Narragansett Borderline Tariff Amendment filing to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5111.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–724–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–EDIT Wholesale PPA (RS 315, RS 316, RS 317, RS 335) to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5115.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–725–000.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2019–12–31 Petition for Limited Tariff Waiver—Additional PDR EFC Waiver to be effective N/A.
Filed Date: 12/31/19.
Accession Number: 20191231–5179.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–726–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Cancellation of Service Agreement No. 301 to be effective 3/23/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5228.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–727–000.
Applicants: Portland General Electric Company.
Description: § 205(d) Rate Filing: Amended NTTG Funding Agreement to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5242.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–728–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Cancellation of Service Agreement Nos. 102 and 206 to be effective 3/23/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5245.
Comments Due: 5 p.m. ET 1/21/20.

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: January 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00088 Filed 1–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–720–000]

Plum Creek Wind, 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 Plum Creek Wind, 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 January 22, 2020.

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: January 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00084 Filed 1–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–703–000]

41MB 8me 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 41MB 8me 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 January 22, 2020.

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: January 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00083 Filed 1–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1789–008; ER10–1768–007; ER10–1770–007; ER10–1771–007; ER10–1793–007; ER12–1250–007; ER16–1924–005; ER16–1925–005; ER16–1926–005; ER16–2725–005; ER17–2426–003; ER19–1738–003.

Applicants: PSEG Energy Resources & Trade LLC, Public Service Electric and Gas Company, PSEG Fossil LLC, PSEG Nuclear LLC, PSEG Power Connecticut LLC, PSEG New Haven LLC, Bison Solar LLC, Pavant Solar II LLC, San Isabel Solar LLC, PSEG Energy Solutions LLC, PSEG Keys Energy Center LLC, PSEG Fossil Sewaren Urban Renewal LLC.

Description: Triennial Updated Market Power Analysis of the PSEG Applicants, et al.

Filed Date: 12/30/19.

Accession Number: 20191230–5279.

Comments Due: 5 p.m. ET 2/28/20.

Docket Numbers: ER10–2042–032; ER10–1942–024; ER17–696–012; ER10–1938–027; ER10–1934–026; ER10–1893–026; ER10–3051–031; ER10–2985–030; ER10–3049–031; ER10–1877–006; ER11–4369–011; ER16–2218–011; ER10–1862–026.

Applicants: Calpine Energy Services, L.P., Calpine Construction Finance Company, LP, Calpine Energy Solutions, LLC, Calpine PowerAmerica—CA, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, Champion Energy, LLC, Champion Energy Marketing LLC, Champion Energy Services, LLC, Hermiston Power, LLC, North American Power and Gas, LLC, North American Power Business, LLC, Power Contract Financing, L.L.C.

Description: Updated Market Power Analysis of the Calpine Northwest MBR Sellers, et al.

Filed Date: 12/31/19.

Accession Number: 20191231–5332.

Comments Due: 5 p.m. ET 3/2/20.

Docket Numbers: ER10–2997–006; ER10–2172–029; ER10–2179–034;

ER10–1048–026; ER10–2192–035; ER11–2056–022; ER10–2178–035; ER14–1524–009; ER16–2194–003; ER10–3018–006; ER17–2201–004; ER10–1020–024; ER13–1536–019; ER10–1078–024; ER10–1080–024; ER16–2708–003; ER10–1081–025; ER15–2293–003; ER14–2145–008; ER10–2180–028; ER10–2181–036; ER10–1143–025; ER10–3030–006; ER10–2182–035.

Applicants: Atlantic City Electric Company, Baltimore Gas and Electric Company, Calvert Cliffs Nuclear Power Plant, LLC, Commonwealth Edison Company, Constellation Energy Commodities Group Maine, LLC, Constellation Mystic Power, LLC, Constellation NewEnergy, Inc., Constellation Power Source Generation, LLC, Clinton Battery Utility, LLC, Criterion Power Partners, LLC, Delmarva Power & Light Company, Exelon FitzPatrick, LLC, Exelon Framingham, LLC, Exelon Generation Company, LLC, Exelon New Boston, LLC, Exelon West Medway, LLC, Exelon West Medway II, LLC, Exelon Wyman, LLC, Fair Wind Power Partners, LLC, Fourmile Wind Energy, LLC, Handsome Lake Energy, LLC, Nine Mile Point Nuclear Station, LLC, PECO Energy Company, Potomac Electric Power Company, R.E. Ginna Nuclear Power Plant, LLC.

Description: Updated Market Power Analysis for the Northeast Region of the Exelon NE Entities, et al.

Filed Date: 12/30/19.

Accession Number: 20191230–5272.

Comments Due: 5 p.m. ET 2/28/20.

Docket Numbers: ER11–3980–005; ER10–2294–006; ER11–3808–005; ER13–534–005; ER13–2103–003; ER13–2414–002; ER15–2330–002; ER16–131–002; ER17–2472–003; ER17–2471–003; ER18–301–002; ER18–664–002; ER13–413–006; ER18–2435–002.

Applicants: ORNI 14 LLC, ORNI 18 LLC, ORNI 39 LLC, Mammoth One LLC, ORNI 47 LLC, Mammoth Three LLC, ORNI 37 LLC, Heber Geothermal Company LLC, ONGP LLC, ORNI 43 LLC, Ormesa LLC, Steamboat Hills LLC, USG Oregon LLC, ORNI 41 LLC.

Description: Updated Market Power Analysis for the Northwest Region of ORNI 14 LLC, et al.

Filed Date: 12/31/19.

Accession Number: 20191231–5324.

Comments Due: 5 p.m. ET 3/2/20.

Docket Numbers: ER15–1952–007; ER16–853–004; ER16–855–004; ER16–856–004; ER16–857–004; ER16–858–004; ER16–860–004; ER16–861–004.

Applicants: Pavant Solar, LLC, Enterprise Solar, LLC, Escalante Solar I, LLC, Escalante Solar II, LLC, Escalante Solar III, LLC, Granite Mountain Solar East, LLC, Granite Mountain Solar West, LLC, Iron Springs Solar, LLC.

Description: Triennial Market Power Analysis for the Northwest Region of Pavant Solar, LLC, et al.

Filed Date: 12/30/19.

Accession Number: 20191230–5283.

Comments Due: 5 p.m. ET 2/28/20.

Docket Numbers: ER17–1519–003.

Applicants: PECO Energy Company, PJM Interconnection, L.L.C.

Description: Compliance filing: PECO submits filing in compliance with the Commission's 12/5/2019 Order to be effective 12/5/2019.

Filed Date: 1/2/20.

Accession Number: 20200102–5136.

Comments Due: 5 p.m. ET 1/23/20.

Docket Numbers: ER19–708–002.

Applicants: GSG, LLC.

Description: Compliance filing: Compliance Filing Under Docket ER19–708–002 to be effective 2/26/2019.

Filed Date: 12/31/19.

Accession Number: 20191231–5104.

Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER19–2684–001.

Applicants: Palmer Solar, LLC.

Description: Notice of Non-Material Change in Status of Palmer Solar, LLC.

Filed Date: 12/31/19.

Accession Number: 20191231–5319.

Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–729–000.

Applicants: The Connecticut Light and Power Company.

Description: Tariff Cancellation: Cancellation of Clear River Energy LLC Related Facilities Agreement to be effective 11/25/2019.

Filed Date: 1/2/20.

Accession Number: 20200102–5112.

Comments Due: 5 p.m. ET 1/23/20.

Docket Numbers: ER20–730–000.

Applicants: NSTAR Electric Company.

Description: Tariff Cancellation: Cancellation of Clear River Energy LLC Related Facilities Agreement to be effective 11/25/2019.

Filed Date: 1/2/20.

Accession Number: 20200102–5113.

Comments Due: 5 p.m. ET 1/23/20.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–6–000.

Applicants: Brookfield Asset Management Inc.

Description: Brookfield Asset Management Inc. submits FERC 65–B Updated Waiver Notification.

Filed Date: 12/31/19.

Accession Number: 20191231–5321.

Comments Due: 5 p.m. ET 1/21/20.

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: January 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00086 Filed 1–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–711–000]

Cambria Wind, 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 Cambria Wind, 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 January 22, 2020.

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: January 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00082 Filed 1–7–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0584; FRL–10003–34–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Plans (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Spill Prevention, Control, and Countermeasure (SPCC) Plans (EPA ICR Number 0328.18, OMB Control Number 2050–0021) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. Public comments were previously requested via the **Federal Register** on September 11, 2019, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 7, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPA–2007–0584, to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Wendy Hoffman, Regulations Implementation Division, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8794; fax number: 202–564–2620; email address: *hoffman.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The authority for EPA's oil pollution prevention requirements is derived from section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR part 112. An SPCC Plan will help an owner or operator identify the necessary procedures, equipment, and resources to prevent an oil spill and to respond to an oil spill in a timely manner. If implemented effectively, the SPCC Plan is expected to prevent and reduce the impact and severity, of oil spills. Although the owner or operator is the primary data user, EPA may also require the owner or operator to submit data to the Agency in certain situations to ensure facilities comply with the SPCC regulation and to help allocate response resources. The data, which are not generally available elsewhere, can assist State and local governments in several ways, including when information on certain oil discharges must be sent to relevant State and local agencies (section 112.4(a)), and with local emergency preparedness planning efforts. EPA does not require an owner or operator to submit their SPCC Plan but may request the SPCC Plan during a facility inspection or an oil spill incident for review. The SPCC regulation requires the owner or operator to maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day or at the nearest field office if the facility is not so attended. The rule also requires that the Plan be available to the Regional Administrator for on-site review during normal working hours (40 CFR 112.3(e)).

Form Numbers: None.

Respondents/affected entities: Owners or operators of facilities that are required to have a SPCC Plan under the Oil Pollution Prevention regulation (40 CFR part 112).

Respondent's obligation to respond: Mandatory, pursuant to 40 CFR 112.3(e).

Estimated number of respondents: 549,785 (total).

Frequency of response: Facilities must prepare and implement an SPCC Plan before beginning operations, and review, evaluate and update the SPCC Plan every five years.

Total estimated burden: 6,309,523 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $857,835,543 (per year), includes $201,002,128 annualized capital or operation & maintenance costs.

Changes in Estimates: The burden hour estimate presented in this ICR renewal has increased by approximately 130,000 hours from the ICR currently approved by OMB. This increase is attributable to the net change in the universe of regulated facilities after accounting for changes in the numbers of existing and newly regulated facilities in the ICR renewal period.

Annual O&M costs are estimated to increase by approximately $17,841,833 compared to the costs currently approved by OMB. These increases are due to the combination of the higher

number of regulated facilities projected between 2019 through 2021 compared to the number of facilities between 2016 through 2018 estimated from the ICR currently approved by OMB, as well as higher capital and O&M unit costs due to inflation.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–00079 Filed 1–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0494; FRL–1002–22–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Tips and Complaints Regarding Environmental Violations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Tips and Complaints Regarding Environmental Violations (EPA ICR Number 2219.03, OMB Control Number 2020–0032) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 21, 2020. Public comments were previously requested via the **Federal Register** on August 22, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 7, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2009–0494 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michael Le Desma; Legal Counsel Division; Office of Criminal Enforcement, Forensics, and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462–9453; fax number: (303) 462–9075; email address: *ledesma.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA tips and complaints web form is intended to provide an easy and convenient means by which members of the public can supply information to EPA regarding suspected violations of environmental law. The decision to provide a tip or complaint is entirely voluntary and use of the webform when supplying a tip or complaint is also entirely voluntary. Tippers need not supply contact information or other personal identifiers. Those who do supply such information, however, should know that this information may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint.

Form Numbers: None.

Respondents/affected entities: Anyone wishing to file a tip or complaint.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 17,172 (total).

Frequency of response: Once.

Total estimated burden: 8,586 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $400,347 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 3,443 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects the fact that tips and complaints are being filed at a higher rate than originally anticipated, a strong indication of the success of this program. There has been no change in the information being reported or the estimated burden per respondent.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–00078 Filed 1–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0310; FRL–10004–02–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Sewage Sludge Treatment Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Sewage Sludge Treatment Plants (EPA ICR Number 1063.14, OMB Control Number 2060–0035), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2020. Public comments were previously requested, via the **Federal Register**, on May 6, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 7, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0310, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via

email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Sewage Sludge Treatment Plants (40 CFR part 60, subpart O) were proposed on August 17, 1971, promulgated on December 23, 1971, and amended on: October 6, 1975; November 10, 1977; October 6, 1988; October 17, 2000; and February 27, 2014. These regulations apply to each incinerator which either combusts wastes that contain more than 10 percent sewage sludge (dry basis) produced by municipal sewage treatment plants or each incinerator which charges more than 1,000 kg (2,205 lb) per day municipal sewage sludge (dry basis). New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. These standards set emission limitation for particulate matter (PM). This information is being collected to assure compliance with 40 CFR part 60, subpart O.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Owners or operators of sewage sludge treatment plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart O).

Estimated number of respondents: 86 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 9,690 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,170,000 (per year), which includes $3,050,000 in either annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–00077 Filed 1–7–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0029; –0030; –0070; –0104; –0204)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below. On October 29, 2019, the FDIC requested comment for 60 days on a proposal to renew these information collections. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these information collections, and again invites comment on their renewal.

DATES: Comments must be submitted on or before February 7, 2020.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Number: 6120/06.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (minutes)	Estimated annual burden (hours)
Notification of Performance of Bank Services (FDIC Form 6120/06)	Reporting	Mandatory	650	On Occasion	30	325
Total Estimated Annual Burden						325

General Description of Collection: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Company Act (12 U.S.C. 1867), of the relationship with a bank service company. The Form FDIC 6120/06, Notification of Performance of Bank Services, may be used by banks to satisfy the notification requirement.

There is no change in the method or substance of the collection. The estimated number of respondents is estimated to increase based on the response rate observed over the last three years. The estimated time per response and the frequency of responses is expected to remain the same.

2. *Title:* Securities of Insured Nonmember Bank Services.

OMB Number: 3064–0030.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of responses	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Form 3—*Initial Statement of Beneficial Ownership*	Reporting	Mandatory	58	1	1	58
Form 4—*Statement of Changes in Beneficial Ownership*	Reporting	Mandatory	297	4	0.5	594
Form 5—*Annual Statement of Beneficial Ownership*	Reporting	Mandatory	69	1	1	69
Form 8–A	Reporting	Mandatory	2	2	3	12
Form 8–C	Reporting	Mandatory	2	1	2	4
Form 8–K	Reporting	Mandatory	21	4	2	168
Form 10	Reporting	Mandatory	2	1	215	430
Form 10–C	Reporting	Mandatory	1	1	1	1
Form10–K	Reporting	Mandatory	21	1	140	2,940
Form 10–Q	Reporting	Mandatory	21	3	100	6,300
Form 12b–25	Reporting	Mandatory	6	1	3	18
Form 15	Reporting	Mandatory	2	1	1	2
Form 25	Reporting	Mandatory	2	1	1	2
Schedule 13D	Reporting	Mandatory	2	1	3	6
Schedule 13E–3	Reporting	Mandatory	2	1	3	6
Schedule 13G	Reporting	Mandatory	2	1	3	6
Schedule 14A	Reporting	Mandatory	21	1	40	840
Schedule 14C	Reporting	Mandatory	2	1	40	80
Schedule 14D–1 (Schedule TO)	Reporting	Mandatory	2	1	5	10
Total Estimated Annual Burden						11,546

General Description of Collection: Section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) grants authority to the Federal banking agencies to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002. Pursuant to section 12(i), the FDIC has the authority, including rulemaking authority, to administer and enforce these enumerated provisions as may be necessary with respect to state nonmember banks and state savings associations over which it has been designated the appropriate Federal banking agency. Section 12(i) generally requires the FDIC to issue regulations substantially similar to those issued by the Securities and Exchange Commission (SEC) regulations to carry out these responsibilities. Thus, part 335 of the FDIC regulations incorporates by cross-reference the SEC rules and regulations regarding the disclosure and filing requirements of registered securities of state nonmember banks and state savings associations.

This information collection includes the following:

Beneficial Ownership Forms: FDIC Forms 3, 4, and 5 (FDIC Form Numbers 6800/03, 6800/04, and 6800/05). Pursuant to section 16 of the Exchange Act, every director, officer, and owner of more than ten percent of a class of equity securities registered with the FDIC under section 12 of the Exchange Act must file with the FDIC a statement of ownership regarding such securities. The initial filing is on Form 3 and changes are reported on Form 4. The Annual Statement of beneficial ownership of securities is on Form 5. The forms contain information on the reporting person's relationship to the company and on purchases and sales of such equity securities. 12 CFR 335.601 through 336.613 of the FDIC's regulations, which cross-reference 17 CFR 240.16a of the SEC's regulations, provide the FDIC form requirements for FDIC Forms 3, 4, and 5 in lieu of SEC Forms 3, 4, and 5, which are described at 17 CFR 249.103 (Form 3), 249.104 (Form 4), and 249.105 (Form 5).

Forms 8–A and 8–C for Registration of Certain Classes of Securities. Form 8–A is used for registration pursuant to section 12(b) or (g) of the Exchange Act of any class of securities of any issuer which is required to file reports pursuant to section 13 or 15(d) of that Act or pursuant to an order exempting the exchange on which the issuer has securities listed from registration as a national securities exchange. Form 8–C has been replaced by Form 8–A. Form 8–A is described at 17 CFR 249.208a. There is no actual ''Form 8–A'' as filers must produce a customized narrative

document in compliance with the requirements in accordance with the filer's particular circumstances.

Form 8–K: Current Report. This is the current report that is used to report the occurrence of any material events or corporate changes that are of importance to investors or security holders and have not been reported previously by the registrant. It provides more current information on certain specified events than would Forms 10–Q and 10–K. The form description is at 17 CFR 249.308. There is no actual ''Form 8–K'' as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Forms 10 and 10–C: Forms for Registration of Securities. Form 10 is the general reporting form for registration of securities pursuant to section 12(b) or (g) of the Exchange Act of classes of securities of issuers for which no other reporting form is prescribed. It requires certain business and financial information about the issuer. Form 10–C has been replaced by Form 10. Form 10 is described at 17 CFR 249.210. There is no actual ''Form 10'' as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Form 10–K: Annual Report. This annual report is used by issuers registered under the Exchange Act to provide information described in Regulation S–K, 17 CFR 229. The form is described at 17 CFR 249.310. There is no actual ''Form 10–K'' as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Form 10–Q: Quarterly Reports. The Form 10–Q is a report filed quarterly by most reporting companies. It includes unaudited financial statements and provides a continuing overview of major changes in the company's financial position during the year, as compared to the prior corresponding period. The report must be filed for each of the first three fiscal quarters of the company's fiscal year and is due within 40 or 45 days of the close of the quarter, depending on the size of the reporting company. The description of Form 10–Q is at 17 CFR 249.308a. There is no actual ''Form 10–Q'' as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Form 12b–25: Notification of Late Filing. This notification extends the reporting deadlines for filing quarterly and annual reports for qualifying companies. There is no FDIC Form 12b–25. The form is described at 17 CFR 249.322.

Form 15: Certification and Notice of Termination of Registration. This form is filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the Exchange Act is reduced to a specified level in order to terminate the registration of the class of security. For a bank, the number of holders of record of a class of registered security must be reduced to less than 1,200 persons. For a savings association, the number of record holders of a class of registered security must be reduced to (1) less than 300 persons or (2) less than 500 persons and the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years. In general, registration terminates 90 days after the filing of the certification. There is no FDIC Form 15. This form is described at 17 CFR 249.323.

Schedule 13D: Certain Beneficial Ownership Changes. This Schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition together with certain other information within ten days after such acquisition. Moreover, any material changes in the facts set forth in the Schedule generally precipitates a duty to promptly file an amendment on Schedule 13D. The SEC's rules define the term beneficial owner to be any person who directly or indirectly shares voting power or investment power (the power to sell the security). There is no FDIC form for Schedule 13D. This schedule is described at 17 CFR 240.13d–101.

Schedule 13E–3: Going Private Transactions by Certain Issuers or Their Affiliates. This schedule must be filed if an issuer engages in a solicitation subject to Regulation 14A or a distribution subject to Regulation 14C, in connection with a going private merger with its affiliate. An affiliate and an issuer may be required to complete, file, and disseminate a Schedule 13E–3, which directs that each person filing the schedule state whether it reasonably believes that the Rule 13e–3 transaction is fair or unfair to unaffiliated security holders. There is no FDIC form for Schedule 13E–3. This schedule is described at 17 CFR 240.13e–100.

Schedule 13G: Certain Acquisitions of Stock. Certain acquisitions of stock that are over than 5 percent of an issuer must be reported to the public. Schedule 13G is a much abbreviated version of Schedule 13D that is only available for use by a limited category of persons (such as banks, broker/dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer. There is no FDIC form for Schedule 13G. This schedule is described at 17 CFR 240.13d–102.

Schedule 14A: Proxy Statements. State law governs the circumstances under which shareholders are entitled to vote. When a shareholder vote is required and any person solicits proxies with respect to securities registered under section 12 of the Exchange Act, that person generally is required to furnish a proxy statement containing the information specified by Schedule 14A. The proxy statement is intended to provide shareholders with the proxy information necessary to enable them to vote in an informed manner on matters intended to be acted upon at shareholders' meetings, whether the traditional annual meeting or a special meeting. Typically, a shareholder is also provided with a proxy card to authorize designated persons to vote his or her securities on the shareholder's behalf in the event the holder does not vote in person at the meeting. Copies of preliminary and definitive (final) proxy statements and proxy cards are filed with the FDIC. There is no FDIC form for Schedule 14A. The description of this schedule is at 17 CFR 240.14a–101.

Schedule 14C: Information Required in Information Statements. An information statement prepared in accordance with the requirements of the SEC's Regulation 14C is required whenever matters are submitted for shareholder action at an annual or special meeting when there is no proxy solicitation under the SEC's Regulation 14A. There is no FDIC form for Schedule 14C. This schedule is described at 17 CFR 240.14c–101.

Schedule 14D–1: Tender Offer. This schedule is also known as Schedule TO. Any person, other than the issuer itself, making a tender offer for certain equity securities registered pursuant to section 12 of the Exchange Act is required to file this schedule if acceptance of the offer would cause that person to own over 5 percent of that class of the securities. This schedule must be filed and sent to various parties, such as the issuer and any competing bidders. In addition, the SEC's Regulation 14D sets forth certain requirements that must be complied with in connection with a tender offer. This schedule is described

at 17 CFR 240.14d–100. There is no actual form for Schedule 14D–1 as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

There is no change in the method or substance of the collection. The estimated number of respondents, as well as the estimated time per response and the frequency of response, is expected to remain the same.

3. *Title:* Application for a Bank to Establish a Branch or Move its Main Office or a Branch.

OMB Number: 3064–0070.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Application to Establish a Branch, Move Main Office or Move Branch.	Reporting	Mandatory	718	On Occasion	5	3,590
Total Estimated Annual Burden						3,590

General Description of Collection: Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d) (FDI Act) provides that no FDIC insured state nonmember bank or state savings association shall establish and operate any new domestic branch or move its main office or any such branch from one location to another without the prior written consent of the FDIC. In granting or withholding consent to the applicant, FDIC considers: (a) The financial history and condition of the depository institution; (b) the adequacy of its capital structure; (c) its future earnings prospects; (d) the general character and fitness of its management; (e) the risk presented by the depository institution to the Deposit Insurance Fund; (f) the convenience and needs of the community to be served; and (g) whether its corporate powers are consistent with the purposes of the FDI Act. FDIC regulations found at 12 CFR 303, subpart C, specify the steps that respondents must take to comply with the statutory mandate.

There is no change in the method or substance of the collection. The estimated number of respondents has been revised based on the number of responses recorded over the last three years. The estimated time per response and the frequency of responses is expected to remain the same.

4. *Title:* Activities and Investments of Savings Associations.

OMB Number: 3064–0104.

Affected Public: Insured state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Application for Exemption—§ 28 and Subsidiary Notice—§ 18(m).	Reporting	Mandatory	18	On Occasion	12	216
Total Estimated Annual Burden						216

General Description of Collection: Section 28 of the FDI Act limits the powers of state savings associations to acquire or retain equity investments of a type or amount not permitted for a federal savings association. Section 28 also prohibits insured state savings associations and their subsidiaries from engaging as principal in any activity of a type or in an amount that is not permitted for a federal savings association or its subsidiaries. Section 28 charges the FDIC with the responsibility of enforcing the restrictions and filing requirements, and permits the FDIC to grant exceptions under certain circumstances.

12 CFR part 362 details the activities that state savings associations and/or their subsidiaries may engage in, under certain criteria and conditions, and identifies the information that banks must furnish to the FDIC in order to obtain the FDIC's approval or non-objection.

There is no change in the method or substance of the collection. The estimated number of respondents has been revised upward based on the number of responses recorded over the last three years. The estimated time per response and the frequency of responses is expected to remain the same.

5. *Title:* Margin and Capital Requirements for Covered Swap Entities.

OMB Number: 3064–0204.

Affected Public: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
§ 349.1(d)(1), (d)(2) Meeting criteria for exemption	Reporting	Mandatory	1	1	1,000	1,000
§ 349.1(h)	Disclosure	Mandatory	1	1	10	10
§ 349.2 Definition of ''Eligible Master Netting Agreement,'' paragraphs (4)(i) and (ii).	Recordkeeping	Mandatory	1	1	5	5
§ 349.8(g) Documentation.						
§ 349.10 Documentation of Margin Matters.						
349.5(c)(2)(i) Required Margin	Recordkeeping	Mandatory	1	1	4	4
§ 349.7(c) Custody Agreement	Recordkeeping	Mandatory	1	1	100	100
§ 349.8(c) and (d) Initial Margin Model	Reporting	Mandatory	1	1	240	240
§ 349.8(e) Periodic Review	Recordkeeping	Mandatory	1	1	40	40
§ 349.8(f) Control, Oversight, and Validation Mechanisms.						
§ 349.8(f)(3) Initial Margin Modeling Report	Reporting	Mandatory	1	1	50	50
§ 349.8(h) Escalation Procedures	Recordkeeping	Mandatory	1	1	20	20
§ 349.9(e) Requests for Determinations	Reporting	Mandatory	1	3	10	30
§ 349.11(b)(1) Posting Initial Margin	Recordkeeping	Mandatory	1	250	1	250
Total Estimated Annual Burden						1,749

General Description of Collection: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the FDIC, the Farm Credit Administration, and Federal Home Finance Agency (each, an agency, and collectively, the agencies) to jointly adopt rules that establish capital and margin requirements for swap entities that are prudentially regulated by one of the agencies (covered swap entities).[1] These capital and margin requirements apply to swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency (non-cleared swaps).[2] The agencies published regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule or Rule). First issued in 2015, the Swap Margin Rule includes a phased compliance schedule from 2016 to 2020 and generally applies only to a non-cleared swap entered into on or after the applicable compliance date. A non-cleared swap entered into prior to an entity's applicable compliance date is ''grandfathered'' by this regulatory provision and is generally not subject to the margin requirements in the Swap Margin Rule (legacy swap) unless it is amended or novated on or after the applicable compliance date. The FDIC's Swap Margin Rule and its reporting, recordkeeping and disclosure requirements under the PRA can be found at 12 CFR part 349.

Section 349.1(d) refers to statutory provisions that set forth conditions for an exemption from clearing. Section 349.1(d)(1) provides an exemption for non-cleared swaps if one of the counterparties to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the CFTC of how it generally meets its financial obligations associated with entering into non-cleared swaps. Section 349.1(d)(2) provides an exemption for security-based swaps if the counterparty notifies the SEC of how it generally meets its financial obligations associated with entering into non-cleared security-based swaps. Section 349.1(h) contains the disclosure requirements for transfers of legacy swaps initiated by a covered swap entity's counterparty that fall outside the scope of the Swap Margin Rule.

Section 349.2 defines terms used in part 349, including the definition of ''eligible master netting agreement,'' which provides that a covered swap entity that relies on the agreement for purpose of calculating the required margin must: (1) Conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets specified criteria; and (2) establish and maintain written procedures for monitoring relevant changes in law and to ensure that the agreement continues to satisfy the requirements of this section. The term ''eligible master netting agreement'' is used elsewhere in part 349 to specify instances in which a covered swap entity may: (1) Calculate variation margin on an aggregate basis across multiple non-cleared swaps and security-based swaps and (2) calculate initial margin requirements under an initial margin model for one or more swaps and security-based swaps.

Section 349.5(c)(2)(i) specifies that a covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty if the covered swap entity has made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the agency that it has made appropriate efforts to collect or post the required margin.

Section 349.7 generally requires a covered swap entity to ensure that any initial margin collateral that it collects or posts is held at a third-party custodian. Section 349.7(c) requires the custodian to act pursuant to a custody agreement that: (1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Sections 731 and 764 of the Dodd-Frank Act added a new section 4s to the Commodity Exchange Act of 1936, as amended, and a new section 15F to the Exchange Act, as amended, respectively, which require registration with the Commodity Futures Trading Commission (CFTC) of swap dealers and major swap participants and the SEC of security-based swap dealers and major security-based swap participants (each a swap entity and, collectively, swap entities). Section 1a (39) of the Commodity Exchange Act of 1936, as amended, defines the term ''prudential regulator'' for purposes of the margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. *See* 7 U.S.C. 1a(39).

[2] A ''swap'' is defined in section 721 of the Dodd-Frank Act to include, among other things, an interest rate swap, commodity swap, equity swap, and credit default swap, and a security-based swap is defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index. *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset held in compliance with § 349.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin and (2) is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding. A custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian under certain conditions.

With respect to collateral collected by a covered swap entity pursuant to § 349.3(a) or posted by a covered swap entity pursuant to § 349.3(b), the agreement must require the posting party to substitute only funds or other property that would qualify as eligible collateral under § 349.6 and for which the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § 349.3 and direct reinvestment of funds only in assets that would qualify as eligible collateral under § 349.6.

Section 349.8 establishes standards for the use of initial margin models. These standards include: (1) A requirement that the covered swap entity receive prior approval from the relevant Agency based on demonstration that the initial margin model meets specific requirements (§§ 349.8(c)(1) and 349.8(c)(2)); (2) a requirement that a covered swap entity notify the relevant Agency in writing 60 days before extending use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (§ 349.8(c)(3)); and (3) a variety of quantitative requirements, including requirements that the covered swap entity validate and demonstrate the reasonableness of its process for modeling and measuring hedging benefits, demonstrate to the satisfaction of the relevant Agency that the omission of any risk factor from the calculation of its initial margin is appropriate, demonstrate to the satisfaction of the relevant Agency that incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or noncleared security-based swaps is appropriate, periodically review and, as necessary, revise the data used to calibrate the initial margin model to ensure that the data incorporate an appropriate period of significant financial stress (§§ 349.8(d)(5), 349.8(d)(10), 349.8(d)(11), 349.8(d)(12), and 349.8(d)(13)). Also, if the validation process reveals any material problems with the initial margin model, the covered swap entity must promptly notify the Agency of the problems, describe to the Agency any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated (§ 349.8(f)(3)). Section 349.8 also establishes requirements for the ongoing review and documentation of initial margin models. These standards include: (1) A requirement that a covered swap entity review its initial margin model annually (§ 349.8(e)); (2) a requirement that the covered swap entity validate its initial margin model at the outset and on an ongoing basis, describe to the relevant Agency any remedial actions being taken, and report internal audit findings regarding the effectiveness of the initial margin model to the covered swap entity's board of directors or a committee thereof (§§ 349.8(f)(2), 349.8(f)(3), and 349.8(f)(4)); (3) a requirement that the covered swap entity adequately document all material aspects of its initial margin model (§ 349.8(g)); and (4) that the covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval (§ 349.8(h)).

Section 349.9 addresses the treatment of cross-border transactions and, in certain limited situations, will permit a covered swap entity to comply with a foreign regulatory framework for noncleared swaps (as a substitute for compliance with the prudential regulators' rule) if the prudential regulators jointly determine that the foreign regulatory framework is comparable to the requirements in the prudential regulators' rule. Section 349.9(e) allows a covered swap entity to request that the prudential regulators make a substituted compliance determination and must provide the reasons therefore and other required supporting documentation. A request for a substituted compliance determination must include: (1) A description of the scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps; (2) the specific provisions of the foreign regulatory framework for non-cleared swaps and security-based swaps (scope of transactions covered; determination of the amount of initial and variation margin required; timing of margin requirements; documentation requirements; forms of eligible collateral; segregation and rehypothecation requirements; and approval process and standards for models); (3) the supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap and security-based swap regulatory framework; and (4) any other descriptions and documentation that the prudential regulators determine are appropriate. A covered swap entity may make a request under this section only if directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

Section 349.10 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that: (1) Provides the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required and (2) specifies the methods, procedures, rules, and inputs for determining the value of each non-cleared swap or noncleared security-based swap for purposes of calculating variation margin requirements and the procedures for resolving any disputes concerning valuation.

Section 349.11(b)(1) provides that the requirement for a covered swap entity to post initial margin under § 349.3(b) does not apply with respect to any noncleared swap or non-cleared security based swap with a counterparty that is an affiliate. A covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to § 349.3(b) and provide documentation of such amount to each affiliate on a daily basis.

There is no change in the method or substance of the collection. The FDIC currently does not supervise any institutions that are subject to this information collection but is reporting one respondent as a placeholder to

preserve the burden estimates. For clarity, the burden presentation has been changed to correspond to the burden presentation made by the other agencies in their respective information collections. There is no change in the total estimated annual burden.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 2, 2020.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2020–00058 Filed 1–7–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201329.

Agreement Name: PDL/PFLG Slot Charter Agreement.

Parties: PDL International Pte. Ltd. and Pacific Forum Line (Group) Limited.

Filing Party: David Monroe; GKG Law, P.C.

Synopsis: The purpose of this agreement is to allow PDL International Pte. Ltd. to charter space to Pacific Forum Line (Group) Limited in the South Pacific trades.

Proposed Effective Date: 12/31/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/26453.

Dated: January 3, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–00114 Filed 1–7–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 7, 2020.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *OFB Bancshares, Inc., Orlando, Florida*; to become a bank holding company by acquiring One Florida Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, January 3, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–00095 Filed 1–7–20; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
OCTOBER 1, 2019 THRU OCTOBER 31, 2019

10/01/2019

20191999	G	Aimbridge Group Holdings, LP; KIHR Holdings I, LLC; Aimbridge Group Holdings, LP.
20192044	G	Alamo Group Inc.; Stellex Capital Partners LP; Alamo Group Inc.
20192051	G	ANSYS, Inc.; John O. Hallquist; ANSYS, Inc.
20192054	G	John O. Hallquist; ANSYS, Inc.; John O. Hallquist.

EARLY TERMINATIONS GRANTED—Continued
OCTOBER 1, 2019 THRU OCTOBER 31, 2019

10/03/2019		
20192018	G	Vertex Pharmaceuticals Incorporated; Semma Therapeutics, Inc.; Vertex Pharmaceuticals Incorporated.
20192030	G	ICG Strategic Equity Fund III (Offshore) LP; ACON Equity Partners III, L.P.; ICG Strategic Equity Fund III (Offshore) LP.
10/04/2019		
20191210	S	Blackstone Capital Partners VII L.P.; Freeman Decorating Co.; Blackstone Capital Partners VII L.P.
20191991	G	World Fuel Services Corporation; C. Gregory Evans, II; World Fuel Services Corporation.
20192011	G	New Jersey Resources Corporation; Macquarie Infrastructure Partners II International L.P.; New Jersey Resources Corporation.
20192026	G	PSP Public Credit I Inc.; Postmates Inc.; PSP Public Credit I Inc.
20192027	G	PAR Investment Partners, L.P.; Groupon, Inc.; PAR Investment Partners, L.P.
20192047	G	Aves IA Infrastructure Limited Partnership; Oilfield Water Logistics, LLC; Aves IA Infrastructure Limited Partnership.
20192053	G	LTRI Holdings, LP; White Deer Energy L.P. II; LTRI Holdings, LP.
20192058	G	By Light InvestCo LP; Cole Engineering Services, Inc.; By Light InvestCo LP.
20192059	G	Axium Infrastructure NA IV LP; Iberdrola, S.A.; Axium Infrastructure NA IV LP.
20192062	G	HKW Capital Partners V, L.P.; John M. Floyd; HKW Capital Partners V, L.P.
20192066	G	Gamut Investment Fund I, L.P.; American Axle & Manufacturing Holdings, Inc.; Gamut Investment Fund I, L.P.
20192071	G	Spot Light Investments, LLC; HF Foods Group Inc.; Spot Light Investments, LLC.
20192072	G	Las Tejoneras, S.L.; Canal Street Brewing Co., L.L.C.; Las Tejoneras, S.L.
20192074	G	Blackstone Capital Partners VII NQ L.P.; Eugene Ludwig; Blackstone Capital Partners VII NQ L.P.
20192076	G	One Equity Partners VII, L.P.; Sycamore Partners II, L.P.; One Equity Partners VII, L.P.
20192079	G	OHCP Crimson Holdings, L.P.; Genstar Capital Partners VI, L.P.; OHCP Crimson Holdings, L.P.
20192080	G	The Carlyle Group L.P.; Carlyle Holdings III L.P.; The Carlyle Group L.P.
20192081	G	The Carlyle Group L.P.; Carlyle Holdings I L.P.; The Carlyle Group L.P.
20192084	G	Arthur J. Gallagher & Co.; Jay Schreibman; Arthur J. Gallagher & Co.
20192089	G	GTCR Fund XII/B LP; Golden Gate Capital Opportunity Fund, L.P.; GTCR Fund XII/B LP.
20192090	G	Mosaic Acquisition Corp.; Blackstone Capital Partners VI L.P.; Mosaic Acquisition Corp.
20192098	G	Ranger JV Co., LLC; Caesars Entertainment Corporation; Ranger JV Co., LLC.
10/08/2019		
20191992	G	Elliott Associates, L.P.; AT&T Inc.; Elliott Associates, L.P.
20191994	G	Elliott International Limited; AT&T Inc.; Elliott International Limited.
20192097	G	Graham Partners V, L.P.; HKW Capital Partners IV, L.P.; Graham Partners V, L.P.
10/09/2019		
20192007	G	Hasbro, Inc.; Entertainment One Ltd.; Hasbro, Inc.
20192073	G	Vista Equity Partners Fund VII–A, L.P.; Acquia Inc.; Vista Equity Partners Fund VII–A, L.P.
10/10/2019		
20192060	G	Michael W. Rice; Conagra Brands, Inc.; Michael W. Rice.
20200001	G	Hoerbiger-Stiftung; Donald L. Deubler; Hoerbiger-Stiftung.
10/11/2019		
20192100	G	Primus Capital Fund VIII, L.P.; Trilliant Health Holdings, Inc.; Primus Capital Fund VIII, L.P.
20200002	G	SK Holdings Co., Ltd.; DuPont de Nemours, Inc.; SK Holdings Co., Ltd.
20200003	G	CopperPoint Mutual Insurance Holding Company; George S. Suddock; CopperPoint Mutual Insurance Holding Company.
20200004	G	Parthenon Investors V, L.P.; MRO Holdings CR LP; Parthenon Investors V, L.P.
20200006	G	Trimble Inc.; Azteca Systems Enterprises, Inc.; Trimble Inc.
20200007	G	Simon Property Group, Inc.; Michael G. Rubin; Simon Property Group, Inc.
20200009	G	Temasek Holdings (Private) Limited; 2nd Watch, Inc.; Temasek Holdings (Private) Limited.
20200011	G	CoStar Group, Inc.; Randell Allen Smith; CoStar Group, Inc.
20200025	G	Parthenon Investors V, L.P.; Payroc LLC; Parthenon Investors V, L.P.
20200030	G	HEARTS Holdings L.P.; NSM Top Holdings Corp.; HEARTS Holdings L.P.
10/15/2019		
20200014	G	White Deer Energy LP III; Intervale Capital Fund III, L.P.; White Deer Energy LP III.
20200019	G	Apax IX USD L.P.; Trinity Hunt Partners IV, L.P.; Apax IX USD L.P.
10/16/2019		
20200012	G	Energy Transfer LP; SemGroup Corporation; Energy Transfer LP.
20200018	G	EMCOR Group, Inc.; DB 2006 Family Trust; EMCOR Group, Inc.
20200023	G	Gavin de Becker; TPG Growth II DE AIV II, L.P.; Gavin de Becker.
10/17/2019		
20200010	G	EQT Infrastructure IV (No. 1) EUR SCSp; ANRP II (AIV P), L.P.; EQT Infrastructure IV (No. 1) EUR SCSp.

EARLY TERMINATIONS GRANTED—Continued
OCTOBER 1, 2019 THRU OCTOBER 31, 2019

20200013	G	EQT Infrastructure IV (No. 1) EUR SCSp; EQT Infrastructure III (No. 1) SCSp; EQT Infrastructure IV (No. 1) EUR SCSp.
20200021	G	Citizen Energy Holdings, LLC; Roan Resources, Inc.; Citizen Energy Holdings, LLC.
20200024	G	Tokyo Century Corporation; Pacific Mutual Holding Company; Tokyo Century Corporation.
10/21/2019		
20200026	G	Q2 Holdings, Inc.; Lender Performance Group, LLC; Q2 Holdings, Inc.
20200036	G	Industrial Growth Partners V, L.P.; Bunker Hill Capital II (QP), L.P.; Industrial Growth Partners V, L.P.
20200037	G	Laurens Last; Scholle Holding Co., LLC; Laurens Last.
20200038	G	Kenneth D. Tuchman; Matthew Achak; Kenneth D. Tuchman.
20200039	G	Kenneth D. Tuchman; John Stadter; Kenneth D. Tuchman.
20200044	G	Logitech International S.A.; General Workings, Inc.; Logitech International S.A.
20200060	G	Sutter Hill Ventures, a California Limited Partnership; Clumio, Inc.; Sutter Hill Ventures, a California Limited Partnership.
20200061	G	OHCP Silver Surfer Holdings Corp.; Thomas H. Lee Equity continuation Fund VI (2019), L.P.; OHCP Silver Surfer Holdings Corp.
20200062	G	Fortive Corporation; Riverside Micro-Cap Fund III, L.P.; Fortive Corporation.
20200065	G	Roku, Inc.; DataXu, Inc.; Roku, Inc.
10/22/2019		
20200042	G	Tailwind Capital Partners III, L.P.; High Road Capital Partners Fund II, L.P.; Tailwind Capital Partners III, L.P.
10/23/2019		
20200022	G	NGL Energy Partners LP; Golden Gate Capital Opportunity Fund, L.P.; NGL Energy Partners LP.
20200041	G	BREP 9 Neptune Holdco LLC; CCP III AIV I, L.P.; BREP 9 Neptune Holdco LLC.
20200053	G	Siemens Aktiengesellschaft; Gryphon Partners 3.5, L.P.; Siemens Aktiengesellschaft.
20200063	G	Newco, a-to-be-formed limited partnership; Clayton Dubilier & Rice Fund IX; Newco, a-to-be-formed limited partnership.
20200066	G	Clayton, Dubilier & Rice Fund X, L.P.; Clayton, Dubilier & Rice Fund IX, L.P.; Clayton, Dubilier & Rice Fund X, L.P.
10/24/2019		
20191956	S	Frank Tiegs; NORPAC Foods, Inc.; Frank Tiegs.
10/25/2019		
20192093	G	Ellie Mae Parent, LP; Francisco Partners IV, L.P.; Ellie Mae Parent, LP.
20200057	G	Swedish Orphan Biovitrum AB (publ); Paul B. Manning; Swedish Orphan Biovitrum AB (publ).
20200067	G	Broadridge Financial Solutions, Inc.; Thomas E. McInerney and Paula McInerney; Broadridge Financial Solutions, Inc.
20200069	G	B. Riley Financial, Inc.; BR Brand Acquisition LLC; B. Riley Financial, Inc.
20200077	G	Phillip G. Ruffin; MGM Resorts International; Phillip G. Ruffin.
20200078	G	GPAQ Acquisition Holdings, Inc.; Stuart Lichter; GPAQ Acquisition Holdings, Inc.
20200084	G	Lantheus Holdings, Inc.; Progenics Pharmaceuticals, Inc.; Lantheus Holdings, Inc.
20200085	G	Avaya Holdings Corp.; RingCentral, Inc.; Avaya Holdings Corp.
20200086	G	RingCentral, Inc.; Avaya Holdings Corp.; RingCentral, Inc.
20200087	G	Trust 463; The Eurona Foundation; Trust 463.
20200090	G	2019 HS TopCo, LP; HGGC Fund III–A, L.P.; 2019 HS TopCo, LP.
20200093	G	Cerberus Institutional Partners VI, L.P.; GI Partners Fund IV L.P.; Cerberus Institutional Partners VI, L.P.
20200096	G	AMP Capital Global Infrastructure Fund II B LP; Landmark Media Enterprises, LLC; AMP Capital Global Infrastructure Fund II B LP.
10/29/2019		
20200015	G	MIWD Holding Company LLC; Masco Corporation; MIWD Holding Company LLC.
20200075	G	Harvest Partners VIII, L.P.; Yellowstone Holdings, LLC; Harvest Partners VIII, L.P.
20200076	G	Harvest Partners VIII (Parallel), L.P.; Yellowstone Holdings, LLC; Harvest Partners VIII (Parallel), L.P.
20200083	G	Shiseido Company, Limited; Drunk Elephant Holdings, LLC; Shiseido Company, Limited.
20200099	G	TZP Capital Partners III, L.P.; Wells Fargo & Company; TZP Capital Partners III, L.P.
10/30/2019		
20200058	G	Health Sciences Acquisitions Corporation; Roivant Sciences Ltd.; Health Sciences Acquisitions Corporation.
20200088	G	AustralianSuper; Generate Capital, Inc.; AustralianSuper.
20200095	G	Brentwood Associates Private Equity VI, L.P.; LOR, Inc.; Brentwood Associates Private Equity VI, L.P.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry (202–326–3100), Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024.

By direction of the Commission.

April Tabor,

Acting Secretary.

[FR Doc. 2020–00093 Filed 1–7–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Treatments for Acute Pain: A Systematic Review

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 *Treatments for Acute Pain: A Systematic Review,* 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* on or before 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 Treatments for Acute Pain: A Systematic Review. 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 *Treatments for Acute Pain: A Systematic Review,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/treatments-acute-pain/protocol.*

This is to notify the public that the EPC Program would find the following information on *Treatments for Acute Pain: A Systematic Review* 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 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)

Each Key Question (KQ) focuses on a specific acute pain condition. The conditions and related subquestions are listed below:

KQ1: Acute back pain (including back pain with radiculopathy)

KQ2: Acute neck pain (including neck pain with radiculopathy)

KQ3: Musculoskeletal pain not otherwise included in KQ1 or KQ2 (including fractures)

KQ4: Peripheral neuropathic pain (related to herpes zoster and trigeminal neuralgia)

KQ5: Postoperative pain after discharge

KQ6: Dental pain (surgical and nonsurgical after discharge)

KQ7: Kidney stones

KQ8: Sickle cell crisis (episodic pain)

For each condition above, the following subquestions will be addressed:

Opioid Therapy

a. What is the comparative effectiveness of opioid therapy versus: (1) Nonopioidpharmacologic therapy (*e.g.,* acetaminophen, nonsteroidal anti-inflammatory drugs [NSAIDs], antidepressants, anticonvulsants) or (2) nonpharmacologic therapy (*e.g.,* exercise, cognitive behavioral therapy, acupuncture) for outcomes related to pain, function, pain relief satisfaction, and quality of life and after followup at the following intervals: Less than 1 day; 1 day to less than 1 week; 1 week to less than 2 weeks; 2 weeks to less than 4 weeks; 4 weeks or longer?

b. How does effectiveness of opioid therapy vary depending on: (1) Patient demographics (*e.g.* age, race, ethnicity, gender); (2) patient medical or psychiatric comorbidities; (3) dose of opioids; (4) duration of opioid therapy, including number of opioid prescription refills and quantity of pills used; (5) opioid use history; (6) substance use history; (7) use of concomitant therapies?

c. What are the harms of opioid therapy versus nonopioid pharmacologic therapy, or nonpharmacologic therapy with respect to: (1) misuse, opioid use disorder, and related outcomes; (2) overdose; (3) other harms including gastrointestinal-related harms, falls, fractures, motor vehicle accidents, endocrinological harms, infections, cardiovascular events, cognitive harms, and psychological harms (*e.g.,* depression)?

d. How do harms vary depending on: (1) Patient demographics (*e.g.,* age, gender); (2) patient medical or psychiatric comorbidities; (3) the dose of opioid used; (4) the duration of opioid therapy; (5) opioid use history; or (6) substance use history?

e. What are the effects of prescribing opioid therapy versus not prescribing opioid therapy for acute pain on (1) short-term (<3 months) continued need for prescription pain relief, such as need for opioid refills, and (2) long-term opioid use (3 months or greater)?

f. For patients with acute pain being considered for opioid therapy, what is the accuracy of instruments for predicting risk of opioid misuse, opioid use disorder, or overdose?

g. For patients with acute pain being considered for opioid therapy, what is the effectiveness of instruments for predicting risk of opioid misuse, opioid use disorder, or overdose?

h. For patients with acute pain being considered for opioid therapy, what is the effect of the following factors on the decision to prescribe opioids: (1) Existing opioid management plans; (2) patient education; (3) clinician and patient values and preferences related to opioids; (4) urine drug screening; (5) use of prescription drug monitoring program data; (6) availability of close followup?

Nonopioid Pharmacologic Therapy

i. What is the comparative effectiveness of nonopioid pharmacologic therapy (*e.g.,* acetaminophen, nonsteroidal anti-inflammatory drugs [NSAIDs], antidepressants, anticonvulsants) versus: (1) Other nonopioid pharmacologic treatments, such as those in a different medication class; or (2) nonpharmacologic therapy for outcomes related to pain, function, pain relief satisfaction, and quality of life after followup at the following intervals: <1 day; 1 day to <1 week; 1 week to <2 weeks; 2 weeks to less than 4 weeks; 4 weeks or longer?

j. How does effectiveness of nonopioid pharmacologic therapy vary depending on: (1) Patient demographics (*e.g.* age, race, ethnicity, gender); (2) patient medical and psychiatric comorbidities; (3) the type of nonopioid medication; (4) dose of medication; (5) duration of treatment?

k. What are the harms of nonopioid pharmacologic therapy versus other nonopioid pharmacologic therapy, or nonpharmacologic therapy with respect to: (1) Misuse, (2) overdose; (3) other harms including gastrointestinal-related harms, cardiovascular-related harms, kidney-related harms, falls, fractures, motor vehicle accidents, endocrinological harms, infections, cognitive harms, and psychological harms (*e.g.,* depression)?

l. How do harms vary depending on: (1) Patient demographics (*e.g.* age, gender); (2) patient medical comorbidities; (3) the type of nonopioid medication; (4) dose of medication; (5) the duration of therapy?

Nonpharmacologic Therapy

m. What is the comparative effectiveness of nonpharmacologic therapy versus sham treatment, waitlist, usual care, attention control, and no treatment after followup at the following intervals: Less than 1 day; 1 day to less than 1 week; 1 week to less than 2 weeks; 2 weeks to less than 4 weeks; 4 weeks or longer?

n. What is the comparative effectiveness of nonpharmacologic treatments (*e.g.* exercise, cognitive behavioral therapy, acupuncture) for outcomes related to pain, function, pain relief satisfaction, and quality of life after followup at the following intervals: Less than 1 day; 1 day to less than 1 week; 1 week to less than 2 weeks; 2 weeks to less than 4 weeks; 4 weeks or longer?

o. How does effectiveness of nonpharmacologic therapy vary depending on: (1) Patient demographics (*e.g.* age, gender); (2) patient medical and psychiatric comorbidities?

p. How do harms vary depending on: (1) Patient demographics (*e.g.* age, gender); (2) patient medical and psychiatric comorbidities; (3) the type of treatment used; (4) the frequency of therapy; (5) the duration of therapy?

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, SETTINGS)

Picots element	Inclusion criteria
Population	Adults with acute pain related to the following conditions: 1. Acute back pain (including back pain with radiculopathy). 2. Acute neck pain (including neck pain with radiculopathy). 3. Other musculoskeletal pain. 4. Peripheral neuropathic pain (related to herpes zoster and trigeminal neuralgia). 5. Postoperative pain after discharge. 6. Dental pain. 7. Kidney stones. 8. Sickle cell crisis (episodic pain). * Special populations: ▪ General adult. ▪ Older populations >65 years. ▪ Patients with history of substance use disorder. ▪ Patients currently under treatment for opioid use disorder with opioid agonist therapy or naltrexone. ▪ Patients with a history of psychiatric illness. ▪ Patients with history of overdose. ▪ Pregnant/breastfeeding women. ▪ Patients with comorbidities (*e.g.,* kidney disease, sleep disordered breathing).
Interventions	Opioid therapy: a–e. Any systemic opioid, including agonists, partial agonists, and mixed mechanism opioids. f. Instruments, genetic/metabolic tests for predicting risk of misuse, opioid use disorder, and overdose. g. Use of risk prediction instruments, genetic/metabolic tests. h. The following factors: (1) Existing opioid management plans; (2) patient education; (3) clinician and patient values and preferences related to opioids; (4) urine drug screening; (5) use of prescription drug monitoring program data; (6) availability of close followup. Nonopioid therapy: Oral, parenteral, or topical nonopioid pharmacological therapy used for acute pain (acetaminophen, nonsteroidal anti-inflammatory drugs, skeletal muscle relaxants, benzodiazepines, antidepressants, anticonvulsants, cannabis).

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, SETTINGS)—Continued

Picots element	Inclusion criteria
	Noninvasive nonpharmacological therapy: Noninvasive nonpharmacological therapies used for acute pain (exercise [and related therapies], cognitive behavioral therapy, meditation, relaxation, music therapy, virtual reality, acupuncture, massage, manipulation/mobilization, physical modalities [transcutaneous electrical nerve stimulation, ultrasound, braces, traction, heat, cold]).
Comparators	Opioid therapy: a–d. Usual care, another opioid, nonopioid drug, or noninvasive, nonpharmacological therapy. e. Usual care, another opioid, nonopioid drug, or noninvasive, nonpharmacological therapy, no opioid/nothing prescribed. f. Reference standard for misuse, opioid use disorder, or overdose; or other benchmarks. g. Usual care. h. Not utilizing the factors specified in interventions (h) above. Nonopioid pharmacological therapy: Other nonopioid pharmacological therapy or noninvasive nonpharmacological therapy. Noninvasive nonpharmacological therapy: Sham treatment, waitlist, usual care, attention control, and no treatment; or other noninvasive nonpharmacological therapy.
Outcomes	Opioid therapy: a–d, g, i. Pain, function, pain relief satisfaction, and quality of life, harms, adverse events (including withdrawal, risk of misuse, opioid, opioid use disorder, overdose). e. Persistent opioid use. f. Measures of diagnostic accuracy. h. Opioid prescribing rates. Nonopioid therapy: Pain, function, pain relief satisfaction, quality of life and quality of life, harms, adverse events, opioid use. Noninvasive nonpharmacological therapy: Pain, function, pain relief satisfaction, quality of life and quality of life, harms, adverse events, opioid use.
Time of followup	<1 day; 1 day to <1 week; 1 week to <2 weeks; 2 weeks to <4 weeks; ≥4 weeks.
Setting	Emergency department (initiation of therapy and following discharge), physician's office, outpatient or inpatient surgical center, dental clinic or oral surgery center, inpatient (sickle cell only).
Study design	All KQs: RCTs; in addition: e. Cohort studies (for long-term opioid use). f. studies assessing diagnostic accuracy. h. cohort studies and before-after studies assessing effects on prescribing rates.

Abbreviations: RCT = randomized controlled trial.

Dated: January 3, 2020.

Virginia Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2020–00104 Filed 1–7–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Data Collection for the Next Generation of Enhanced Employment Strategies Project (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) within the Administration for Children and Families (ACF) is proposing data collection activities conducted for the Next Generation of Enhanced Employment Strategies (NextGen) Project. The objective of this project is to identify and rigorously evaluate innovative interventions designed to promote employment and economic security among low-income individuals with complex challenges to employment. The project will include an experimental impact study, descriptive study, and cost study.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov*. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: To further build the evidence around effective strategies for helping low-income individuals find and sustain employment, OPRE is conducting the NextGen Project. This project will identify and test up to 10 innovative, promising employment interventions designed to help individuals facing complex challenges secure a pathway toward economic independence. These challenges may be physical and mental health conditions, a criminal history, or limited work skills and experience. The project is actively coordinating with the Building Evidence on Employment Strategies for Low-Income Families Project (0970–0537), another OPRE project focused on strengthening ACF's understanding of effective interventions aimed at supporting low-income individuals to find jobs, advance in the labor market, and improve their economic security. Additionally, the project is working closely with the Social Security Administration (SSA) to incorporate a focus on employment-related early interventions for individuals with current or foreseeable disabilities who have limited work

history and are potential applicants for Supplemental Security Income (SSI).

The NextGen Project will use a two-phased approach for approval of this proposed information collection activity. In Phase 1 (current request) the research team seeks approval to formally recruit programs, to administer the informed consent form and baseline participant survey, and to collect identifying and contact information for study participants. The project intends for these data collections to be uniform across programs selected for evaluation and it does not anticipate that they will require revisions.

Under Phase 2 of the request, the project will update the information collection request for the remaining instruments to tailor to each program selected for the evaluation, as needed.

The proposed information collection activities cover an experimental impact study, descriptive study, and cost study. Data collection activities for the impact study include: (1) Baseline survey and identifying and contact information data collection, (2) a first follow-up survey, and (3) a second follow-up survey. Data collection activities for the descriptive study include: (1) Service receipt tracking; (2) staff characteristics survey; (3) program leadership survey; (4) semi-structured program discussion guide (conducted with program leaders, supervisors, partners, staff, and providers); (5) semi-structured employer discussion guide (for those interventions that include an employer component); and (6) in-depth participant interviews. Data collection activities for the cost study include an Excel-based cost workbook.

Respondents: Program staff, program partners, employer staff, and individuals enrolled in the NextGen Project. Program staff and partners may include case managers, health professionals, workshop instructors, job developers, supervisors, managers, and administrators. Employers may include administrators, human resources staff, and worksite supervisors.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
PHASE 1					
Baseline survey & identifying and contact information—participants	10,000	3,333	1	0.42	1,400
Baseline survey & identifying and contact information—staff	200	67	50	0.42	1,407
Estimated Total Annual Burden Hours, Phase 1:					2,807
PHASE 2 ESTIMATES					
First follow-up survey—participants	8,000	2,667	1	0.83	2,214
Second follow-up survey—participants	8,000	2,667	1	0.83	2,214
Service receipt tracking—program staff	200	67	250	0.08	1,340
Staff characteristics survey—program staff	200	67	1	0.42	28
Program leadership survey—program leaders	50	17	1	0.25	4
Semi-structured program discussion guide—program leaders	40	13	1	1.5	20
Semi-structured program discussion guide—program supervisors and partners	80	27	1	1.0	27
Semi-structured program discussion guide—program staff, providers	80	27	1	0.75	20
Semi-structured employer discussion guide—employers	50	17	1	1.0	17
In-depth participant interview guide—participants	200	67	1	2.0	134
Cost workbook—program staff	40	13	1	32.0	416
Estimated Total Annual Burden Hours, Phase 2:					6,434

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 413 of the Social Security Act, as amended by the FY 2017 Consolidated Appropriations Act, 2017 (Public Law 115–31).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–00107 Filed 1–7–20; 8:45 am]

BILLING CODE 4184–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0764]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Animal Feed Regulatory Program Standards

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 February 7, 2020.

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 0910–0760. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Animal Feed Regulatory Program Standards

OMB Control Number 0910–0760—Extension

I. Background

In the United States, Federal and State Government Agencies ensure the safety of animal feed. FDA is responsible for ensuring that all food and feed moving in interstate commerce, except those under the U.S. Department of Agriculture jurisdiction, are safe, wholesome, and labeled properly. States are responsible for conducting inspections and regulatory activities that help ensure food and feed produced, processed, and distributed within their jurisdictions are safe and in compliance with State laws and regulations. States primarily perform inspections under their own regulatory authority. Some States conduct inspections of feed facilities under contract with FDA. Because jurisdictions may overlap, FDA and States collaborate and share resources to protect animal feed.

The FDA Food Safety Modernization Act (Pub. L. 111–353) passed on January 4, 2011, calls for enhanced partnerships and provides a legal mandate for developing an Integrated Food Safety System (IFSS). FDA is committed to implementing an IFSS thereby optimizing coordination of food and feed safety efforts with Federal, State, local, tribal, and territorial regulatory and public health agencies. Model standards provide a consistent, underlying foundation that is critical for uniformity across State and Federal Agencies to ensure credibility of food and feed programs within the IFSS.

II. Significance of Feed Program Standards

The Animal Feed Regulatory Program Standards (AFRPS) provide a uniform and consistent approach to feed regulation in the United States. Implementation of the draft feed program standards is voluntary. States implementing the standards will identify and maintain program improvements that will strengthen the safety and integrity of the U.S. animal feed supply.

The feed standards are the framework that each State should use to design, manage, and improve its feed program. The standards include the following: (1) Regulatory foundation; (2) training; (3) inspection program; (4) auditing; (5) feed-related illness or death and emergency response; (6) enforcement program; (7) outreach activities; (8) budget and planning; (9) assessment and improvement; (10) laboratory services; and (11) sampling program.

Each standard has a purpose statement, requirement summary, description of program elements, projected outcomes, and a list of required documentation. When a State program voluntarily agrees to implement the feed standards, it must fully implement and maintain the individual program elements and documentation requirements in each standard in order to fully implement the standard.

The feed standards package includes forms, worksheets, and templates to help the State program assess and meet the program elements in the standard. State programs are not obligated to use the forms, worksheets, and templates provided with the feed standards. Other manual or automated forms, worksheets, and templates may be used as long as the pertinent data elements are present. Records and other documents specified in the feed standards must be maintained in good order by the State program and must be available to verify the implementation of each standard. The feed standards are not intended to address the performance appraisal processes that a State agency may use to evaluate individual employee performance.

As set forth in the feed standards, the State program is expected to review and update its improvement plan on an annual basis. The State program completes an evaluation of its implementation status at least every 3 years following the baseline evaluation by reviewing and updating the self-assessment worksheets and required documentation for each standard. The evaluation is needed to determine if each standard's requirements are, or remain, fully met, partially met, or not met. The State program revises the improvement plan based upon this evaluation.

Although FDA plans to provide financial support to State programs that implement the feed standards, funding opportunities are contingent upon the availability of funds. Funding opportunities may be only available to State feed regulatory programs that currently have an FDA feed inspection contract. State programs receiving financial support to implement the feed standards will be audited by FDA.

III. Electronic Access

Persons with access to the internet may submit requests for a single copy of the current feed standards from *OP-PRA@fda.hhs.gov.*

In the **Federal Register** of September 20, 2019 (84 FR 49524), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was submitted but did not address any of the topics solicited and we therefore do not discuss the comment here.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
State Animal Feed Regulatory Program in the United States	34	1	34	569	19,346

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to the information collection are State agencies seeking to avail themselves of the options described in the document. State agencies that conduct feed inspections under contract are interested in implementing the standards. The total estimated annual recordkeeping burden for implementation is 569 hours per respondent. The burden was determined by capturing the average amount of time for each respondent to assess the current state of the program and work toward implementation of each of the 11 standards contained in the AFRPS. The hours per State feed regulatory program will average the same to account for continual improvement and self-sufficiency in the program. Our burden estimate reflects a decrease of 100,654 hours as a result of fewer respondents to the collection and a reevaluation of the time we ascribe for recordkeeping activities.

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00073 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5550]

Elite Laboratories, Inc., et al.; Withdrawal of Approval of 23 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 23 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 040448	Phentermine Hydrochloride (HCl) Capsules USP, 30 milligrams (mg).	Elite Laboratories, Inc., 165 Ludlow Ave., Northvale, NJ 07647.
ANDA 060272	E-Mycin (erythromycin) Delayed-Release Tablets USP, 250 mg and 333 mg.	Arbor Pharmaceuticals, LLC, 6 Concourse Parkway, Suite 1800, Atlanta, GA 30328.
ANDA 061639	E.E.S. 200 (erythromycin ethylsuccinate) for Oral Suspension, Equivalent to (EQ) 200 mg base/5 milliliters (mL).E.E.S. 400 (erythromycin ethylsuccinate) for Oral Suspension, EQ 400 mg base/5 mL.	Do.
ANDA 062290	EryDerm (erythromycin) Topical Solution USP, 2%	Arbor Pharmaceuticals, LLC.
ANDA 062304	Pediamycin (erythromycin ethylsuccinate) Oral Suspension USP, EQ 200 mg base/5 mL Pediamycin 400 (erythromycin ethylsuccinate) Oral Suspension USP, EQ 400 mg base/5 mL.	Do.
ANDA 062659	Claforan ADD-Vantage (cefotaxime) for Injection USP, EQ 1 gram (g) base/vial and EQ 2 g base/vial.	Sanofi-Aventis U.S., LLC, 55 Corporate Dr., Bridgewater, NJ 08807.
ANDA 070347	Hydro-Ride (amiloride HCl and hydrochlorothiazide) Tablets, EQ 5 mg Anhydrous/50 mg.	Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977.
ANDA 071142	Clonidine HCl and Chlorthalidone Tablets USP, 0.3 mg/15 mg.	Do.
ANDA 071178	Clonidine HCl and Chlorthalidone Tablets USP, 0.2 mg/15 mg.	Do.
ANDA 071179	Clonidine HCl and Chlorthalidone Tablets USP, 0.1 mg/15 mg.	Do.
ANDA 073191	Triamterene and Hydrochlorothiazide Capsules USP, 50 mg/25 mg.	CASI Pharmaceuticals, Inc., c/o Target Health, Inc., 261 Madison Ave., 24th Floor, New York, NY 10016.
ANDA 073416	E–Z Scrub (chlorhexidine gluconate) Sponge, 4%	Becton, Dickinson and Co., 9450 South State St., Sandy, UT 84070.
ANDA 076075	Econazole Nitrate Cream, 1%	CASI Pharmaceuticals, Inc., c/o Target Health, Inc.
ANDA 076192	Ribavirin Capsules USP, 200 mg	Do.
ANDA 076514	Midodrine HCl Tablets USP, 2.5 mg, 5 mg, and 10 mg	Do.

Application No.	Drug	Applicant
ANDA 078665	Next Choice (levonorgestrel) Tablets, 0.75 mg	Foundation Consumer Healthcare, LLC, 1190 Omega Dr., Pittsburgh, PA 15205.
ANDA 086809	Spironolactone Tablets USP, 25 mg	CASI Pharmaceuticals, Inc., c/o Target Health, Inc.
ANDA 087143	Acetasol HC (hydrocortisone and acetic acid) Otic Solution USP, 1% and 2%.	Actavis Mid Atlantic, LLC, Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 088432	Meperidine HCl Injection USP, 10 mg/mL	ICU Medical, Inc., 600 North Field Dr., Lake Forest, IL 60045.
ANDA 090288	Naratriptan Tablets USP, EQ 1 mg base and EQ 2.5 mg base.	CASI Pharmaceuticals, Inc., c/o Target Health, Inc.
ANDA 091597	Gemcitabine for Injection USP, EQ 200 mg base/vial and EQ 1 g base/vial.	Sagent Pharmaceuticals, Inc., 1901 North Roselle Rd., Schaumburg, IL 60195.
ANDA 200670	Next Choice One Dose (levonorgestrel) Tablets, 1.5 mg	Foundation Consumer Healthcare, LLC.
ANDA 203384	Epinastine HCl Ophthalmic Solution, 0.05%	CASI Pharmaceuticals, Inc., c/o Target Health, Inc.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of February 7, 2020. Approval of each entire application is withdrawn, including any strengths or products inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on February 7, 2020 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00076 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5801]

Revocation of Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection of and/or Diagnosis of Zika or Ebola Virus

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of three Emergency Use Authorizations (EUAs) (the Authorizations) issued to OraSure Technologies, Inc. (OraSure) for the OraQuick Ebola Rapid Antigen Test used with whole blood specimens; OraSure for the OraQuick Ebola Rapid Antigen Test used with cadaveric oral fluid swab specimens; and DiaSorin Inc. (DiaSorin) for the LIAISON XL Zika Capture IgM II assay. FDA revoked both of OraSure's Authorizations on October 10, 2019, under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), in consideration of a De Novo classification request granted to OraSure for the OraQuick Ebola Rapid Antigen Test on October 10, 2019. FDA revoked DiaSorin's Authorization on October 28, 2019, under the FD&C Act, in consideration of the premarket clearance of DiaSorin's LIAISON XL Zika Capture IgM II assay, which FDA determined to be substantially equivalent to a legally marketed class II predicate device on October 28, 2019. The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: OraSure's Authorizations are revoked as of October 10, 2019. DiaSorin's Authorization is revoked as of October 28, 2019.

ADDRESSES: Submit written requests for single copies of the revocation(s) to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations.

First, on July 31, 2015, FDA issued an EUA to OraSure for the OraQuick Ebola Rapid Antigen Test used with whole blood specimens, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on September 14, 2015 (80 FR 55125), as required by section 564(h)(1) of the FD&C Act. In response to requests from OraSure, this EUA was amended on March 18, 2016, and January 30, 2019.

Second, on March 4, 2016, FDA issued an EUA to OraSure for the OraQuick Ebola Rapid Antigen Test used with cadaveric oral fluid, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on April 22, 2016 (81 FR 23709), as required by section 564(h)(1) of the FD&C Act. In response to requests from OraSure, this EUA was amended on November 14, 2016, and February 1, 2019. Subsequently, on October 10, 2019, FDA granted a De Novo classification request for the OraQuick Ebola Rapid Antigen Test under the generic name ''Device to detect antigens of biothreat microbial agents in human clinical specimens,'' as Class II (special controls) under product code QID (*https://www.accessdata.fda.gov/cdrh_docs/pdf19/DEN190025.pdf*).

Third, on April 5, 2017, FDA issued an EUA to DiaSorin for the LIAISON XL

Zika Capture IgM II assay, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on June 30, 2017 (82 FR 29886), and corrected on July 10, 2017 (82 FR 31783), as required by section 564(h)(1) of the FD&C Act. In response to requests from DiaSorin, this EUA was amended on November 6, 2017, and December 27, 2018. Subsequently, DiaSorin submitted a premarket notification to FDA for the LIAISON XL Zika Capture IgM II assay. On October 28, 2019, FDA determined that the LIAISON XL Zika Capture IgM II assay was substantially equivalent to a legally marketed class II predicate device under product code QFO with the generic name ''Zika virus serological reagents'' (*https://www.accessdata.fda.gov/cdrh_docs/pdf19/K192046.pdf*).

II. EUA Criteria for Issuance No Longer Met

Under section 564(g)(2) of the FD&C Act, the Secretary of HHS may revoke an EUA if, among other things, the criteria for issuance are no longer met. Under section 564(c)(3) of the FD&C Act, an EUA may be issued only if FDA concludes there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating the disease or condition. On October 10, 2019, FDA revoked the EUAs for OraSure's OraQuick Ebola Rapid Antigen Test for use with whole blood specimens and cadaveric oral fluid, and on October 28, 2019, FDA revoked the EUA for DiaSorin's LIAISON XL Zika Capture IgM II assay because the criteria for issuance were no longer met. FDA determined that the criteria for issuance of OraSure's two Authorizations are no longer met because OraSure had a De Novo classification request granted for the OraQuick Ebola Rapid Antigen Test as a Class II device under the generic name ''Device to detect antigens of biothreat microbial agents in human clinical specimens'' on October 10, 2019.

FDA also determined that the criteria for issuance of DiaSorin's Authorization are no longer met because the LIAISON XL Zika Capture IgM II assay was determined to be substantially equivalent to a legally marketed class II predicate device with the generic name ''Zika virus serological reagents.'' As such, in each case FDA concluded that there is an adequate, approved, and available alternative for purposes of section 564(c)(3) of the FD&C Act and accordingly revoked the Authorizations pursuant to section 564(g)(2)(B) of the Act.

III. Electronic Access

An electronic version of this document and the full text of the revocation are available on the internet at *https://www.regulations.gov/*.

IV. The Revocations

Having concluded that the criteria for revocations of the Authorizations under section 564(g) of the FD&C Act are met, FDA has revoked the EUAs for OraSure's OraQuick Ebola Rapid Antigen Test for use with whole blood specimens and cadaveric oral fluid and for DiaSorin's LIAISON XL Zika Capture IgM II assay. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–22–P

U.S. FOOD & DRUG ADMINISTRATION

October 10, 2019

Tiffany Miller
Director, Regulatory Affairs
OraSure Technologies, Inc.
220 East First Street
Bethlehem, PA 18015

Dear Ms. Miller:

This letter is to notify you of the revocation of the Emergency Use Authorizations (EUA150006 and EUA160001) for emergency use of OraSure Technologies Inc.'s ("OraSure's"): (1) OraQuick Ebola Rapid Antigen Test for use with whole blood specimens issued on July 31, 2015, and amended on March 18, 2016, and January 30, 2019 (EUA150006), and (2) OraQuick Ebola Rapid Antigen Test for use with cadaveric oral fluid issued on March 4, 2016, and amended on November 14, 2016, and February 1, 2019 (EUA160001).

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revised or revoked when the circumstances described under section 564(b)(1) of the Act no longer exist, the criteria under section 564(c) of the Act for issuance of such authorization are no longer met, or other circumstances make such revision or revocation appropriate to protect the public health or safety.

FDA has determined that the criteria for issuance of such authorizations under section 564(c) of the Act are no longer met. Under section 564(c)(3) of the Act, an EUA may be issued only if FDA concludes there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating the disease or condition. The OraSure OraQuick Ebola Rapid Antigen Test had a De Novo classification request granted as a Class II device under the generic name "Device to detect antigens of biothreat microbial agents in human clinical specimens" in 21 CFR 866.4002 on October 10, 2019 (https://www.accessdata.fda.gov/cdrh_docs/pdf19/DEN190025.pdf). FDA has concluded that this is an adequate, approved[1], and available alternative to OraSure's EUA products (EUA150006 and EUA160001) for diagnosing Ebola Virus Disease.

Accordingly, FDA revokes EUA150006 and EUA160001 for emergency use of both OraQuick Ebola Rapid Antigen Tests, pursuant to section 564(g)(2) of the Act. As of the date of this letter,

[1] As used in section 564(c)(3) of the Act, the term "approved" refers to a product that is approved, authorized, licensed, or cleared under section 505, 510(k), 513, or 515 of the Act or section 351 of the Public Health Service Act.

the OraQuick Ebola Rapid Antigen Tests that were authorized by FDA for emergency use under EUA150006 and EUA160001 are no longer authorized by FDA.

FDA does not have concerns with the use of any remaining inventory of the OraQuick Ebola Rapid Antigen Tests that were distributed prior to revocation of their EUAs, when such product is used in conjunction with the OraQuick Ebola Rapid Antigen Test labeling associated with the De Novo request granted October 10, 2019. FDA encourages the relabeling of any product already manufactured but not distributed prior to the revocation of the EUAs with the OraQuick Ebola Rapid Antigen Test labeling associated with the De Novo request granted October 10, 2019. Importantly, the OraQuick Ebola Rapid Antigen Test products for which FDA had issued EUAs and the product for which FDA has granted De Novo classification are manufactured under the same quality system according to equivalent specifications and lot release criteria. OraSure should instruct customers who have remaining OraQuick Ebola Rapid Antigen Test EUA product inventory to use their EUA product in combination with labeling associated with the De Novo request granted October 10, 2019, or to work with OraSure to replace the EUA product with the device associated with the De Novo request granted October 10, 2019. FDA encourages OraSure to use all appropriate means (e.g., mail, email, or website link) to notify affected customers of the EUA revocations and provide access to the labeling associated with the De Novo request granted October 10, 2019.

Notice of both revocations will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

October 28, 2019

Mari Meyer
Vice President, Regulatory and Clinical Affairs,
North America
DiaSorin Incorporated
1951 Northwestern Avenue
Stillwater, MN 55082

Dear Ms. Meyer:

This letter is to notify you of the revocation of the Emergency Use Authorization (EUA170003) for emergency use of DiaSorin Inc.'s ("DiaSorin's") LIAISON XL Zika Capture IgM II assay issued on April 5, 2017, and amended on November 6, 2017, and December 27, 2018.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revised or revoked when the circumstances described under section 564(b)(1) of the Act no longer exist, the criteria under section 564(c) of the Act for issuance of such authorization are no longer met, or other circumstances make such revision or revocation appropriate to protect the public health or safety.

FDA has determined that the criteria for issuance of such authorization under section 564(c) of the Act are no longer met. Under section 564(c)(3) of the Act, an EUA may be issued only if FDA concludes there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating the disease or condition. DiaSorin submitted a premarket submission to FDA for the LIAISON XL Zika Capture IgM II (K192046) that was determined to be substantially equivalent to a legally marketed Class II predicate device, classified under 21 CFR 866.3935, with the generic name "Zika virus serological reagents," on October 28, 2019. FDA has concluded that this is an adequate, approved[1], and available alternative to DiaSorin's EUA product (EUA170003) for diagnosing Zika virus infection.

Accordingly, FDA revokes EUA170003 for emergency use of the LIAISON XL Zika Capture IgM II assay, pursuant to section 564(g)(2) of the Act. As of the date of this letter, the LIAISON XL Zika Capture IgM II assay that was authorized by FDA for emergency use under EUA170003 is no longer authorized by FDA.

[1] As used in section 564(c)(3) of the Act, the term "approved" refers to a product that is approved, authorized, licensed, or cleared under section 505, 510(k), 513, or 515 of the Act or section 351 of the Public Health Service Act.

Page 2 – Ms. Meyer, DiaSorin Incorporated

FDA does not have concerns with the use of any remaining inventory of the LIAISON XL Zika Capture IgM II assay that was distributed prior to revocation of the EUA, when such product is used in conjunction with the LIAISON XL Zika Capture IgM II assay labeling associated with the device cleared on October 28, 2019, under premarket notification submission K192046. FDA encourages the relabeling of any product already manufactured but not distributed prior to the revocation of the EUA with the LIAISON XL Zika Capture IgM II assay labeling associated with the device cleared on October 28, 2019, under premarket notification submission K192046. Importantly, the LIAISON XL Zika Capture IgM II assay product for which FDA had issued an EUA and the device cleared under K192046 are manufactured under the same quality system. DiaSorin should instruct customers who have remaining LIAISON XL Zika Capture IgM II assay EUA product inventory to use their EUA product in combination with labeling associated with the device cleared on October 28, 2019, under premarket notification submission K192046, or to work with DiaSorin to replace the EUA product with the device cleared under K192046. FDA encourages DiaSorin to use all appropriate means (e.g., mail, email, or website link) to notify affected customers of the EUA revocation and provide access to the labeling associated with the device cleared on October 28, 2019, under premarket notification submission K192046.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00063 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5843]

Pharmacia and Upjohn Co., et al.; Withdrawal of Approval of 19 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 19 new drug applications (NDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
NDA 004570	Heparin Sodium Injection, 1,000 units/milliliter (mL), 5,000 units/mL, and 10,000 units/mL.	Pharmacia and Upjohn Co. (a subsidiary of Pfizer Inc.), 235 East 42nd St., New York, NY 10017–7555.
NDA 009838	Reserpine Tablets, 0.1 milligram (mg) and 0.25 mg	Sandoz Inc., 2555 W. Midway Blvd., Broomfield, CO 80020–1632.
NDA 017063	Ismotic (isosorbide solution), 100 grams (g)/220 mL	Alcon Research, LLC, 6201 South Freeway, Fort Worth, TX 76134–2099.
NDA 017521	Dextrose Injection, 0.2 g/mL, 0.3 g/mL, 0.4 g/mL, 0.5 g/mL, 0.6 g/mL, and 0.7 g/mL.	Baxter Healthcare Corp., 1 Baxter Parkway, Deerfield, IL 60015.
NDA 017690	Imodium (loperamide hydrochloride (HCl)) Capsules, 2 mg.	Johnson and Johnson Consumer Inc., McNeil Consumer Healthcare Division, 7050 Camp Hill Rd., Fort Washington, PA 19034.
NDA 017694	Imodium (loperaminde HCl) Capsules, 2 mg	Do.

Application No.	Drug	Applicant
NDA 018361	Serophene (clomiphene citrate) Tablets, 50 mg	EMD Serono, Inc., 1 Technology Pl., Rockland, MA 02370.
NDA 020262	Taxol (paclitaxel) Injection, 6 mg/mL	HQ Specialty Pharma Corp., 120 Route 17 North, Paramus, NJ 07652.
NDA 020264	Megace (megestrol acetate) Oral Suspension, 40 mg/mL.	Bristol-Myers Squibb Co., P.O. Box 4000, Mail Stop: D.2341, Princeton, NJ 08543–4000.
NDA 020413	Zerit (stavudine) for Oral Solution, 1 mg/mL	Do.
NDA 020823	Exelon (rivastigmine tartrate) Capsules, equivalent to (EQ) 1.5 mg base, EQ 3 mg base, EQ 4.5 mg base, and EQ 6 mg base.	Novartis Pharmaceuticals Corp.
NDA 021025	Exelon (rivastigmine tartrate) Solution, EQ 2 mg base/mL.	Do.
NDA 021217	Exalgo (hydromorphone HCl) Extended-Release Tablets, 8 mg, 12 mg, 16 mg, and 32 mg.	SpecGx LLC, 385 Marshall Ave., Webster Groves, MO 63119.
NDA 022046	Bupivacaine HCl and epinephrine bitartrate Injection, 0.5%/0.0091 mg/mL.	Hospira, Inc., 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045.
NDA 050632	Azactam (aztreonam) 10 mg/mL, 20 mg/mL, and 40 mg/mL.	Bristol-Myers Squibb Co.
NDA 202342	Esomeprazole Strontium Delayed-Release Capsules, EQ 20 mg base and EQ 40 mg base.	R2 Pharma, LLC, 11550 North Meridian St., Suite 290, Carmel, IN 46032–5505.
NDA 207931	Technivie (ombitasvir, paritaprevir, and ritonavir) Tablets, 12.5 mg/75 mg/50 mg.	AbbVie Inc., 1 North Waukegan Rd., Dept. PA77/Bldg. AP30, North Chicago, IL 60064.
NDA 208603	Arymo ER (morphine sulfate) Extended-Release Tablets, 15 mg, 30 mg, and 60 mg.	Zyla Life Sciences US Inc., 600 Lee Rd., Suite 100, Wayne, PA 19087.
NDA 208624	Viekira XR (dasabuvir, ombitasvir, paritaprevir, and ritonavir) Extended-Release Tablets, 200 mg/8.33 mg/50 mg/33.33 mg.	AbbVie Inc.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of February 7, 2020. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on February 7, 2020 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00075 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–6098]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration (All Food and Drug Administration-Regulated Products)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information for the generic collection for focus groups as used by FDA (all FDA-regulated products).

DATES: Submit either electronic or written comments on the collection of information by March 9, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2019–N–6098 for ''Agency Information Collection Actitivites; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration (All FDA-Regulated Products).'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Focus Groups as Used by the Food and Drug Administration (All FDA-Regulated Products)

OMB Control Number 0910–0497—Extension

FDA conducts focus group interviews on a variety of topics involving FDA-regulated products, including drugs, biologics, devices, food, tobacco, and veterinary medicine.

Focus groups provide an important role in gathering information because they allow for a more indepth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

• To obtain consumer information that is useful for developing variables and measures for quantitative studies,

• To better understand consumers' attitudes and emotions in response to topics and concepts, and

• To further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine their ideas but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

Respondents to this collection of information will include members of the general public, healthcare professionals, the industry, and other stakeholders who are related to a product under FDA's jurisdiction. Inclusion and exclusion criteria will vary depending on the research topic.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus Group Interviews	8,800	1	8,800	1.75	15,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00074 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6580]

Drug Products Labeled as Homeopathic; Draft Guidance for Food and Drug Administration Staff and Industry; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the notice entitled ''Drug Products Labeled as Homeopathic; Draft Guidance for Food and Drug Administration Staff and Industry'' that appeared in the **Federal Register** of October 25, 2019. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice published October 25, 2019 (84 FR 57441). Submit either electronic or written comments on the draft guidance by March 23, 2020, 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–2017–D–6580 for ''Drug Products Labeled as Homeopathic.'' 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.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Elaine Lippmann, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6238, Silver Spring, MD 20993, 301–796–3600; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 25, 2019 (84 FR 57441), FDA published a notice with a 90-day comment period to request comments on the revised draft guidance for industry and staff entitled ''Drug Products Labeled as Homeopathic.'' FDA is extending the comment period, in response to a request from a stakeholder, until March 23, 2020. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying publication of the final version of the guidance.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: January 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00091 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5405]

Alaco, Inc., et al.; Proposal To Withdraw Approval of Seven New Animal Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Veterinary Medicine (CVM) is proposing to withdraw approval of seven new animal drug applications (NADAs) and is announcing an opportunity for the NADA holders to request a hearing on this proposal. The basis for the proposal is that the NADA holders have repeatedly failed to file required annual reports for those NADAs.

DATES: The NADA holders may submit a request for a hearing by February 7, 2020. Submit all data, information, and analyses upon which the request for a hearing relies March 9, 2020. Submit electronic or written comments by March 9, 2020.

ADDRESSES: The request for a hearing may be submitted by the NADA holders by either of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to *https://www.regulations.gov,* including any attachments to the request for a hearing, will be posted to the docket unchanged.

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.
- Because your request for a hearing will be made public, you are solely responsible for ensuring that your request 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. The request for a hearing must include the Docket No. FDA–2019–N–5405 for ''Alaco, Inc., et al.; Proposal to Withdraw Approval of Seven New Animal Drug Applications; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

The NADA holders may submit all data and analyses upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- Confidential Submissions—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. 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 any decisions on this matter. 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* or available at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law.

Comments Submitted by Other Interested Parties: For all comments submitted by other interested parties, submit comments 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–N–5405 for ''Alaco, Inc., et al.; Proposal to Withdraw Approval of Seven New Animal Drug Applications; Opportunity for a Hearing.'' Received comments, those filed in a timely manner (see **DATES**), 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.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Vernon Toelle, Center for Veterinary Medicine (HFV–234), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5637.

SUPPLEMENTARY INFORMATION: The FDA's CVM is proposing to withdraw approval of seven new animal drug applications (NADAs) and is announcing an opportunity for the NADA sponsors to request a hearing on this proposal. The new animal drugs approved in these NADAs have not been marketed for several years. The establishments associated with these drug products are not registered under 21 CFR 207.21 nor are these drug products listed under 21 CFR 207.45. The basis for this proposal is that these NADA sponsors have repeatedly failed to submit annual drug experience reports to FDA concerning their approved NADA as required under § 514.80 (21 CFR 514.80). These sponsors have not responded to the Agency's requests, sent by certified mail, for submission of the reports. The delinquent approved NADAs and their sponsors are listed in table 1.

TABLE 1—APPROVED NADAS FOR WHICH REQUIRED REPORTS HAVE NOT BEEN SUBMITTED

Application No.	Trade name (drug)	Sponsor	Citation in 21 CFR
031–971	CUPRATE (cupric glycinate)	Walco International, Inc., 15 West Putnam, Porterville, CA 93257.	522.518
045–863	PALOSEIN (orgotein)	OXIS International, Inc., 6040 N Cutter Circle, Suite 317, Portland, OR 97217–3935.	522.1620
046–922	SERGEANTS SURE SHOT (n-butyl chloride) Capsules.	ConAgra Pet Products Co., 3902 Leavenworth St., Omaha, NE 68105.	520.260
046–923	SERGEANTS (n-butyl chloride) Puppy Worm Capsules.	ConAgra Pet Products Co., 3902 Leavenworth St., Omaha, NE 68105.	520.260
065–067	Tetracycline HCl Tablets	Premo Pharmaceutical Laboratories, Inc., 111 Leuning St., South Hackensack, NJ 07606.	Not codified
140–850	ELITE (dichlorophene and toluene) Dog & Cat Wormer.	RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620.	520.580
141–107	BAPTEN for Injection (ß-aminopropionitrile fumarate).	Alaco, Inc., 1500 N Wilmot Rd., Suite 290–C, Tucson, AZ 85712.	522.84

Therefore, notice is given to the holders of the approved NADAs listed in table 1 and to all other interested persons that the Director of CVM proposes to issue an order, under section 512(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(e)), withdrawing approval of the NADAs and all amendments and supplements thereto on the grounds that the NADA holders have failed to submit the reports required under § 514.80. Upon withdrawal of approval of these NADAs, the regulations published pursuant to section 512(i) of the FD&C Act in 21 CFR 510.600, 520.260, 520.580, 522.84, 522.518, and 522.1620 will be revoked.

In accordance with section 512 of the FD&C Act and parts 12 and 514 (21 CFR parts 12 and 514), the NADA holders are hereby provided an opportunity for a hearing to show why the approval of the NADAs listed previously should not be withdrawn (and the corresponding regulations revoked) and an opportunity to raise, for administrative determination, all issues relating to the legal status of the new animal drug products covered by these NADAs.

An NADA holder who decides to seek a hearing must file the following: (1) A written notice of participation and a request for a hearing (see **DATES** and **ADDRESSES**) and (2) the data, information, and analyses relied on to justify a hearing (see **DATES** and **ADDRESSES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of

participation and request for a hearing, the information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 514.200 (21 CFR 514.200) and in part 12.

The failure of an NADA holder to file a timely written notice of participation and request for a hearing, as required by § 514.200 and part 12, constitutes an election by that NADA holder not to avail itself of the opportunity for a hearing concerning CVM's proposal to withdraw approval of the NADAs and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the NADAs, and the new animal drug products may not thereafter be lawfully introduced or delivered for introduction into interstate commerce. Any new animal drug product introduced or delivered for introduction into interstate commerce without an approved NADA, conditional approval, or index listing is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 514.80. If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in two copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

This notice is issued under section 512 of the FD&C Act and under authority delegated to the Principal Associate Commissioner for Policy by the Commissioner of Food and Drugs.

Dated: January 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00072 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3592]

Certificates of Confidentiality; Guidance for Sponsors, Sponsor-Investigators, Researchers, Industry, and Food and Drug Administration Staff; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the notice entitled ''Certificates of Confidentiality; Guidance for Sponsors, Sponsor-Investigators, Researchers, Industry, and Food and Drug Administration Staff; Availability'' that appeared in the **Federal Register** of November 25, 2019. The Agency is taking this action to allow interested persons additional time to submit comments before finalization of the guidance.

DATES: FDA is extending the comment period on the notice published November 25, 2019 (84 FR 64906). Submit either electronic or written comments on the draft guidance by January 24, 2020, 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–3592 for ''Certificates of Confidentiality; Guidance for Sponsors, Sponsor-Investigators, Researchers, Industry, and Food and Drug Administration Staff.'' 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.govinfo.gov/content/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 guidance to the Office of Policy, Bldg. 32, Rm. 4248, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4248, Silver Spring, MD 20993–0002, 301–796–4850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 25, 2019 (84 FR 64906), FDA published a notice with a 45-day comment period to request comments on the draft guidance for industry and staff entitled ''Certificates of Confidentiality; Guidance for Sponsors, Sponsor-Investigators, Researchers, Industry, and Food and Drug Administration Staff.'' FDA is extending the comment period, in response to a request from a stakeholder, until January 24, 2020. The Agency believes the extension allows adequate time for interested persons to submit comments without significantly delaying publication of the final version of the guidance.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Regulatory Information/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00070 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2836]

Agency Information Collection Activities; Proposed Collection; Comment Request; Donor Risk Assessment Questionnaire for the Food and Drug Administration/National Heart, Lung, and Blood Institute-Sponsored Transfusion-Transmissible Infections Monitoring System—Risk Factor Elicitation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on an information collection request regarding risk factors associated with transfusion-transmissible infections (TTI) in blood donors.

DATES: Submit either electronic or written comments on the collection of information by March 9, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–2836 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Donor Risk Assessment Questionnaire for FDA/National Heart, Lung, and Blood Institute-Sponsored Transfusion-Transmissible Infections Monitoring System—Risk Factor Elicitation.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in

its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Donor Risk Assessment Questionnaire for FDA/National Heart, Lung, and Blood Institute (NHLBI)-Sponsored Transfusion-Transmissible Infections Monitoring System (TTIMS)—Risk Factor Elicitation (RFE)

OMB Control Number 0910–0841—Extension

FDA intends to interview blood donors to collect risk factor information associated with testing positive for a TTI. This collection of information is part of a larger initiative called TTIMS, which is a collaborative project funded by FDA, the NHLBI of the National Institutes of Health (NIH), and the Department of Health and Human Services (HHS) Office of the Assistant Secretary of Health with input from other Agencies in HHS, including the Centers for Disease Control and Prevention (CDC). FDA will use these scientific data collected through such interview-based risk factor elicitation of blood donors to monitor and help ensure the safety of the U.S. blood supply.

Previous assessments of risk factor profiles among blood donors found to be positive for human immunodeficiency virus (HIV) were funded by CDC for approximately 10 years after implementation of HIV serologic screening of blood donors in the mid-1980s, whereas studies of Hepatitis C virus (HCV) seropositive donors, funded by NIH, were conducted in the early 1990s. Information on current risk factors in blood donors as assessed using analytical study designs was next evaluated by the Transfusion-Transmitted Retrovirus and Hepatitis Virus Rates and Risk Factors Study conducted by the NHLBI Retrovirus Epidemiology Donor Study–II (REDS–II) approved under OMB control number 0925–0630. Through a risk factor questionnaire, this study elicited risk factors in blood donors who tested confirmed positive for one of four transfusion-transmissible infections: HIV, HCV, Hepatitis B virus (HBV), and Human T-cell Lymphotropic virus. The study also elicited risk factors from donors who did not have any infections (controls) and compared their responses to those of the donors with confirmed infection (cases). Results from the REDS–II study were published in 2015.

FDA issued a document entitled ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry'' dated December 2015 (available at: *https://www.fda.gov/media/92490/download*), which changed the blood donor criterion for men who have sex with men (MSM) from an indefinite (permanent) deferral to a 12-month deferral since last MSM contact. The impact of this change in the deferral criteria requires a national monitoring effort as part of TTIMS to assess if the relative proportions of risk factors for infection in blood donors have changed following the adoption of the 12-month donor deferral for MSM. TTIMS will use similar procedures as the ones used in the REDS–II study to monitor and evaluate risk factors among HIV-positive donors and recently HCV or HBV infected donors as well as controls.

This study will help identify the specific risk factors for TTI and their prevalence in blood donors and help inform FDA on the proportion of incident (new) infections among all HIV positive blood donors. Donations with incident infections have the greatest potential transmission risk because they could be missed during routine blood screening. The study will help FDA evaluate the effectiveness of screening strategies in reducing the risk of HIV transmission from at-risk donors and to evaluate if there are unexpected consequences associated with the recent change in donor deferral policy such as an increase in HIV incidence among donors. These data also will inform FDA regarding future blood donor deferral policy options to reduce the risk of HIV transmission, including the feasibility of moving from the existing time-based deferrals related to risk behaviors to alternate deferral options, such as the use of individual risk assessments, and to inform the design of potential studies to evaluate the feasibility and effectiveness of such alternative deferral options.

TTIMS will include a comprehensive interview-based epidemiological study of risk factor information for viral infection-positive blood donors at the American Red Cross (ARC), Blood Systems, Inc. (BSI), New York Blood

Center (NYBC), and OneBlood that will identify the current predominant risk factors and reasons for virus-positive donations. The TTIMS program establishes a new, ongoing donor hemovigilance capacity that currently does not exist in the United States. Using procedures developed by the REDS–II study, TTIMS will establish this capacity in greater than 50 percent of all blood donations collected in the country.

As part of the TTIMS project, a comprehensive hemovigilance database will be created that integrates the risk factor information collected through donor interviews of blood donor with the resulting data from disease marker testing and blood components collected by participating organizations into a research database. Following successful initiation of the risk factor interviews, the TTIMS network is poised to be expanded to include additional blood centers and/or refocused on other safety threats as warranted. In this way, the TTIMS program will maintain standardized, statistically, and scientifically robust processes for applying hemovigilance information across blood collection organizations.

The specific objectives are to:

• Determine current behavioral risk factors associated with all HIV infections, incident HBV, and incident HCV infections in blood donors (including parenteral and sexual risks) across the participating blood collection organizations using a case-control study design.

• Determine infectious disease marker prevalence and incidence for HIV, HBV, and HCV overall and by demographic characteristics of donors in the majority of blood donations collected in the country. This will be accomplished by forming epidemiological databases consisting of harmonized operational data from ARC, BSI, NYBC, and OneBlood.

• Analyze integrated risk factor and infectious marker testing data concurrently because when taken together these may suggest that blood centers are not achieving the same degree of success in educational efforts to prevent donation by donors with risk behaviors across all demographic groups.

The respondents will be persons who donated blood in the United States and these participants will be defined as cases and controls. The estimated number of respondents is based on an overall expected participation in the risk factor survey. We estimate a case-to-control ratio of 1:2 (200 to 400) with a 50 percent case enrollment.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Questionnaire/survey	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cases and controls [2]	600	1	600	0.50 (30 minutes)	300

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Cases consist of virus-positive donations, and controls represent uninfected donors.

We have adjusted our burden estimate, which has resulted in a decrease to the currently approved burden. Based on experience with this survey, we decreased the average burden per response from 45 to 30 minutes, resulting in a change from 450 to 300 total hours.

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00047 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5799]

Modernizing the Food and Drug Administration's Data Strategy; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Modernizing FDA's Data Strategy.'' The purpose of the public meeting and the request for comments is to discuss possible Agency level approaches to modernizing FDA's data strategy, including approaches to data quality, data stewardship, data exchange, and data analytics.

DATES: The public meeting will be held on March 27, 2020, from 9 a.m. to 5 p.m. Eastern time. The public meeting may be extended or may end early. Submit electronic or written comments on this public meeting by April 30, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rooms 1503B/C), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/about-fda/white-oak-campus-information/public-meetings-fda-white-oak-campus.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 30, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 30, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

comments, that information will be posted on *https://www.regulations.gov.*

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2019–N–5799 for ''Modernizing FDA's Data Strategy; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Jessica Berrellez, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 2308, Silver Spring, MD 20993, 301–796–0511, *Jessica.Berrellez@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In September 2019, FDA announced its Technology Modernization Action Plan (TMAP; *https://www.fda.gov/about-fda/reports/fdas-technology-modernization-action-plan*). The TMAP describes important near-term actions that FDA is taking to modernize use of technology—computer hardware, software, data, and analytics—to advance FDA's public health mission. The TMAP will provide a foundation for developing a more fluid, agile, and efficient FDA that is responsive to novel technologies and rapidly increasing workloads.

To achieve these goals, FDA intends to develop a modernized Agency-wide, strategic approach not only to technology, but to data itself. Data is at the heart of FDA's work as a science-based Agency, and we anticipate ongoing, rapid increases in the amount and complexity of the data that informs FDA's regulatory decision-making process and how we advance our public health mission. FDA will hold a public meeting on March 27, 2020, from 9 a.m. to 5 p.m., to provide an opportunity to hear from FDA staff and outside experts on topics directly related to modernizing FDA's data strategy, including data quality, data stewardship, data exchange, and data analytics.

II. Topics for Discussion at the Public Meeting

FDA is gathering scientific and technical information to help inform its development of an Agency-wide, strategic approach to modernizing its data strategy, including data quality, data stewardship, data exchange, and data analytics. The Agency has determined that a public meeting and an open public docket will encourage public input and engagement in this important topic.

The Agency welcomes any relevant scientific and technical information related to FDA's consideration of the following topics:

1. Standards and policy, including:

a. How can FDA best use policy and common data standards to help ensure the effective and efficient use of data assets?

b. What are the consequences/issues as we move from ''static point-in-time data sets'' to updating digital data streams for analyses?

c. As we move into increased sharing and integrated data sets, how might FDA manage data in a way that avoids unnecessary duplication?

2. Data security, privacy, and management including:

a. How can FDA modernize its data strategy to continue ensuring privacy and security of data?

b. What should FDA do to promote the management and organization of data assets across the Agency, as the amount and complexity of data (*e.g.,* in regulatory submissions to FDA) is rapidly increasing?

3. Data strategies and data sharing, including:

a. How can FDA's data strategy facilitate broader goals of integration and interoperability of health care data, and scientific data/virtual patient data generated using scientific models?

b. How can FDA design its data strategy to reflect a global marketplace and promote clarity to data providers like regulated industry and other stakeholders?

c. How can FDA design its data strategy and policy development to facilitate appropriate data access, data sharing within the Agency and via data sharing agreements, as well as the appropriate reuse and repurposing of data to advance Agency regulatory science priorities?

d. For stakeholders, including regulated industry, that submit data to FDA, how can FDA enhance the efficiency of the preparation and submission of data to FDA?

III. Participating in the Public Meeting

Registration: If you wish to attend this public meeting in person, please register via *https://fdapublicmeeting modernizingdatastrategy.eventbrite.com* by 11:59 p.m. Eastern Time on March 24, 2020. Those without email access can register to attend in person by contacting Jessica Berrellez at 301–796–0511 by March 24, 2020 (see **FOR**

FURTHER INFORMATION CONTACT). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by 11:59 p.m. Eastern Time on March 24, 2020. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization.

If you need special accommodations due to a disability, please contact *Jessica.Berrellez@fda.hhs.gov* (see **FOR FURTHER INFORMATION CONTACT**) no later than 11:59 p.m. Eastern Time on March 20, 2020.

Presenters and Panelists: FDA is interested in gathering scientific and technical information from individuals with a broad range of perspectives on the topics to be discussed at the public meeting. Presenters and panelists will discuss their scientific and/or technical knowledge on the questions and presentations in each session. Presenters and panelists will be responsible for their own travel arrangements.

To be considered to serve as a presenter and/or panelist, please provide the following:

- *Presenters:* A brief abstract for each presentation. The abstract should identify the specific topic(s) to be addressed and the amount of time requested.
- *Presenters and panelists:* A one-page biosketch that describes and supports your scientific or technical expertise on the specific topic(s) being presented, nature of your experience and research in the scientific field, positions held, and any program development activities.

If you are interested in serving as a presenter or a panelist, you must submit the above information, along with the topic(s) on which you would like to speak, to *Jessica.Berrellez@fda.hhs.gov* by January 28, 2020.

We will do our best to accommodate requests to make presentations and serve on the panel. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify presenters and panelists by March 6, 2020. If selected for presentation, any presentation materials must be emailed to *Jessica.Berrellez@fda.hhs.gov* no later than 11:59 p.m. Eastern Time on March 20, 2020. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. Please register for the streaming webcast of the workshop via *https://fdapublicmeetingmodernizingdatastrategy.eventbrite.com* by 11:59 p.m. Eastern Time on March 24, 2020. Pre-registration for the webcast is recommended, but not required. The webcast will be available and active during the public meeting at *https://collaboration.fda.gov/fdadmpm/.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

An agenda for the public meeting and any other background materials will be made available 5 days before the public meeting at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/modernizing-fdas-data-strategy-03272020-03272020.*

Persons attending FDA's meetings are advised that the Agency is not responsible for providing access to electrical outlets.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/modernizing-fdas-data-strategy-03272020-03272020.*

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00071 Filed 1–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Refinement and Testing of Interventions to Sustain ADHD Treatment Effects (R34).

Date: February 10, 2020.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Services: Member Conflict.

Date: February 25, 2020.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Mental Health, NSC, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 3, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00111 Filed 1–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Academic-Industrial Partnerships for Translation of Medical Technologies.
Date: February 3, 2020.
Time: 8:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, Bethesda, Metro Center, 1 Bethesda, MD 20814.
Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group Development—2 Study Section.
Date: February 3–4, 2020.
Time: 8:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.
Date: February 3, 2020.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.
Date: February 4–5, 2020.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.
Date: February 5–6, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, Metro Center, 1, Bethesda, MD 20814.
Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.
Date: February 5–6, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.
Date: February 5–6, 2020.
Time: 8:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Washington, DC Downtown, 1199 Vermont Avenue NW, Washington, DC 20005.
Contact Person: Gianina Ramona Dumitrescu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4193–C, Bethesda, MD 28092, 301–827–0696, *dumitrescurg@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section.
Date: February 5, 2020.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Molecular and Cellular Endocrinology Study Section.
Date: February 5–6, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue NW, Washington, DC 20037.
Contact Person: Liliana Norma Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4215, Bethesda, MD 20892, *liliana.berti-mattera@nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.
Date: February 5–6, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: New Orleans Marriott, 555 Canal Street, New Orleans, LA 70130.
Contact Person: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–6480, *weikts@mail.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiological Basis of Mental Disorders and Addictions Study Section.
Date: February 5–6, 2020.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.
Date: February 5, 2020.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00110 Filed 1–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN K99 to Promote Diversity.

Date: January 28, 2020.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham San Antonio Riverwalk, 111 E Pecan St., San Antonio, TX 78205.

Contact Person: Delany Torres, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, Neuroscience Center Building (NSC), 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, *delany.torressalazar@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Neuroscience Development for Advancing the Careers of a Diverse Research Workforce (R25).

Date: February 10, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, NSC Building, Bethesda, MD 20892, 301–496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative Research Opportunities in Human U01 Review.

Date: February 12, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301 451–2854, *li.jia@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Program Project Grant P01.

Date: February 13–14, 2020.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *Ana.Olariu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00066 Filed 1–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services Research Committee SERV.

Date: February 26, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 3, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00113 Filed 1–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 11, 2020.

Open: 8:00 a.m. to 12:00 p.m.

Agenda: To discuss program policies and issues.

Place: Porter Neuroscience Research Center, Building 35A, Room: 640, 35 Convent Drive, Bethesda, MD 20892.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Porter Neuroscience Research Center, Building 35A, Room: 640, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, 301–827–5517, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00067 Filed 1–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: February 4–5, 2020.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

Date: February 5–6, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: February 5, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Los Angeles Westside, 5990 Green Valley Circle, Culver City, CA 90230.

Contact Person: Emily Foley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, Bethesda, MD 20892, (301) 435–0627, *emily.foley@nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: February 6–7, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Charles Morrow, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: February 6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4179, *thomas.cho@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: February 6–7, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: February 6–7, 2020.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: February 6, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 1 Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda 20892, 301–827–6830, *unja.hayes@nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: February 6–7, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: February 6–7, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00109 Filed 1–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; SBIR Phase I.

Date: February 4, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, DEM1, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, 6701 Democracy Blvd., Rm. 1078, Bethesda, MD 20892, 301–594–7319, *khanr2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 3, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00112 Filed 1–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2019–0882]

BNSF Railway Bridge Across the Missouri River at Bismarck, North Dakota; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent to prepare an EIS; and request for comments.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the regulations implemented by the Council on Environmental Quality (CEQ), and the National Historic Preservation Act (NHPA), the Coast Guard announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of replacing the existing BNSF bridge across the Missouri River at Bismarck, ND, or constructing a bridge adjacent to the existing bridge. CEQ regulations require an early and open process for determining the scope of issues that the Coast Guard needs to address in an EIS (''scoping''). Scoping determines which issues to analyze in depth in the EIS and eliminates from detailed study the issues that are not significant or were covered in prior environmental reviews. This document invites the participation of affected federal, state, and local agencies, any affected Indian tribes and other interested persons in determining the appropriate issues for EIS analysis for this project.

DATES: Comments must be submitted to the online docket via *https://www.regulations.gov/*, on or before February 24, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0882 using the Federal eRulemaking Portal at *https://www.regulations.gov/*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Rob McCaskey, Coast Guard District Eight Project Officer, 314–269–2381.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

BNSF Railway Company owns and operates the existing bridge that crosses the Missouri River between the cities of Mandan, and Bismarck, North Dakota. With components over 130 years old, the in-place structure is approaching the end of its useful service life. The structure has a history of exposure to ice jams and its substructure configuration renders it potentially susceptible to scour events. Although currently stable, the structure has experienced structural issues at both approaches in the past, resulting in unanticipated substructure movements. Since constructing the original bridge in 1882, the east hill slope began to move and resulted in the slope moving the pier west towards the river inches per year. Multiple remediation efforts to correct the pier damage/location and slope movement took place from the early 1800s to the mid 1950s. The intent of the project is to construct a new, independent bridge across the Missouri River upstream of the in-place structure. Operationally, the new structure will carry the mainline track and the current structure will be taken down. The new structure will provide a significant improvement in operational reliability and safety, and will provide enhanced structural redundancy thereby making it less susceptible to damage. As the current structure is 130 years old, it requires substantial inspection and maintenance, which are disruptive to rail service. The new structure will be a single-track bridge but have the capability to carry a second track in the future when and if volumes necessitate that addition.

The BNSF Bismarck Bridge was constructed with similar methods in the same era as the Brooklyn Bridge. It is an iconic landmark that predates official North Dakota statehood by six years. The bridge is eligible for listing in the National Register of Historic Places for its association with broad patterns of railroad, commercial and military history of the United States. Because of these attributes, certain interest groups have expressed a desire to preserve the existing bridge.

The federal bridge statutes, including the River and Harbors Act of 1899, as amended, the Act of March 23, 1906, as amended, and the General Bridge Act of 1946 (33 U.S.C. 525 *et seq.*), require that the location and plans of bridges in or over navigable waters of the United States be approved by the Secretary of Homeland Security, who has delegated that responsibility to the Coast Guard. The Missouri River is a navigable water of the United States as defined in 33

CFR 2.36(a). In exercising these bridge authorities, the Coast Guard considers navigational and environmental impacts, which include historic and tribal effects. The Coast Guard's primary responsibility regarding BNSF's proposed railroad bridge is to ensure the structure does not unreasonably obstruct navigation.

The Coast Guard is the lead federal agency (LFA) for this project and, as such, responsible for the review of its potential effects on the human environment, including historic properties and tribal impacts, pursuant to NEPA and NHPA. The Coast Guard is, therefore, required by law to ensure potential environmental effects are carefully evaluated in each bridge permitting decision.

On December 14, 2017, the Coast Guard held a public meeting and open house in Bismarck, ND, to identify impacts of the bridge alteration or replacement and to provide an opportunity for the public to offer comments relating to the bridge project. The meeting was held in compliance with Section 106 of the NHPA, 36 CFR 800.2(d). In addition, the meeting was also used to explain the NEPA process for this project. At the meeting, the Coast Guard accepted input from the public on the potential impacts associated with the project that should be addressed while developing the Environmental Assessment. Since that time, it has been determined that there might be a significant impact associated with the potential removal of the existing historic bridge. Therefore, the Coast Guard has decided to proceed with the development of an EIS. During this process, the Coast Guard will be addressing the significant impact on the historic bridge through a Programmatic Agreement in accordance with Section 106 of the NHPA. Both the draft EIS and draft Programmatic Agreement will be available for public comment when the documents are developed.

The transcript for the meeting is available on the Federal Docket associated with this notice and provides a summary of the impacts associated with the alternatives considered to date. The four alternatives considered include different span lengths, with the piers at different distances from the current bridge. Specifically, the options included:

- Building a new bridge with 200 foot spans and piers 92.5 [1] feet upstream of the existing bridge (alternative considered keeping the existing bridge and removing the existing bridge)
- Building a new bridge with 400 foot spans and piers 92.5 [1] feet upstream of the existing bridge (alternative considered keeping the existing bridge and removing the existing bridge)
- Building a new bridge with 200 foot spans and piers 42.5 feet upstream of the existing bridge (alternative considered keeping the existing bridge and removing the existing bridge)
- Building a new bridge with 200 foot spans and piers 20 feet upstream of the existing bridge and removing the existing bridge (BNSF Preferred Design).

The alternatives were developed to meet the purpose and need of the project, which is to provide BNSF Railway with a new bridge that can accommodate two tracks at a future date should a second track become needed. There are specific constraints in the area that must be taken into consideration as designs are evaluated. For example, the bridge is close to the Missouri River Natural Area, which is a federally funded park managed by the North Dakota Parks and Recreation Department in cooperation with the North Dakota Department of Transportation, Morton County Parks, and the City of Mandan. The Missouri River Natural Area is the home to many species, including bald eagles, fox, deer and owls. Likewise, the bridge is in close proximity to the Bismarck Reservoir, which is a major source of drinking water for residents of the area and is located in an area with a history of significant slope stability issues.

The Federal Docket also contains a slide show and Fact Sheet providing additional information on the alternatives being considered.

As part of this evaluation process, the Coast Guard solicits comments from State and Federal agencies with expertise in, and authority over, particular resources that may be impacted by a project. Additionally, the Coast Guard seeks input from any tribes that may be affected or otherwise have expertise or equities in the project. Agencies that have already participated in the environmental review of this Project include the U.S. Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service (USFWS), the U.S. Federal Emergency Management Agency (FEMA), the North Dakota State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP).

This project meets the definition of a Major Infrastructure Project under Executive Order 13807*: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,* also known as ''One Federal Decision.'' Pursuant to the requirements in One Federal Decision, the Coast Guard intends to issue a single Final EIS and Record of Decision (ROD) document, unless the Coast Guard determines statutory criteria or practicability considerations preclude issuance of a combined document. One Federal Decision prescribes an average of two years from the date of publication of a notice of intent to a single Final EIS and ROD.

II. Scoping Process

CEQ NEPA regulations at 40 CFR part 1501.7 require an early and open process for determining the scope of issues that the LFA needs to address in an EIS. This is known as scoping. LFAs are required to invite the participation of affected federal, state, and local agencies, any affected Indian tribes and other interested persons in determining the appropriate issues for EIS analysis. Scoping determines which issues to analyze in depth in the EIS and eliminates from detailed study the issues that are not significant or were covered in prior environmental reviews.

When evaluating potential alternatives to this project, the Coast Guard will consider impacts on historic properties including the current bridge, impacts to endangered or threatened species and impacts to the Bismarck Reservoir and the Missouri River Natural Area. Additionally, FEMA has identified the area of the project as a floodplain under the National Flood Insurance Program. As such, the design must meet FEMA's ''no net rise'' requirement, which is intended to prevent increasing flood hazard risks to existing structures and property.

[1] In prior communications with stakeholders at the 2017 public meeting, the preferred alternative (bridge) was described as having a track 80ft and a space for a future second track at 105ft from the center line of the current bridge. Note the distance between the tracks (*e.g.* new and future) is 25ft, and the centerline of the proposed bridge is located half way in between these tracks, which is 92.5ft from the center of the existing bridge. For the purpose of simplifying the description of the preferred alternative, the dimension from the existing bridge was referenced as the distance between the centerline of the existing and proposed bridge, instead of distance to tracks. In short, the 92.5ft referenced in the BNSF November 2019 presentation, ''BNSF Br. 196.6 Replacement Design Concepts Considered'' is exactly the same placement as previously communicated.

III. Information Requested

The Coast Guard is developing a draft EIS that addresses impacts associated with the alternatives mentioned in Section I above. These impacts include those environmental control laws listed in the Coast Guard's Bridge Permit Application Guide (available at *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5pw/Office%20of%20Bridge%20Programs/BPAG%20COMDTPUB%20P16591%203D_Sequential%20Clearance%20Final(July2016).pdf*), as well as those impacts associated with floodplain rise, the Bismarck Water Reservoirs and the Missouri River Natural Area. Impacts associated with the historic bridge will be addressed in a Section 106 Programmatic Agreement, which will be made available for comment when the draft EIS is made available for comment. If there are other items that should be addressed in the draft EIS, please send those comments to the Coast Guard as indicated in Section IV below.

IV. Public Participation and Request for Comments

In accordance with the CEQ regulations, the Coast Guard invites public participation in the NEPA and NHPA process. This notice requests public participation in the scoping process, establishes a public comment period, and provides information on how to participate. If you submit a comment, please include the docket number for this notice and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

V. Public Meeting

We do not plan to hold public meetings during this scoping period. Our scoping meeting for NEPA and the NHPA was held on December 14, 2017, at the commencement of the Coast Guard bridge permitting process.

Dated: January 2, 2020.

Brian L. Dunn,

Chief, Office of Bridge Programs.

[FR Doc. 2020–00053 Filed 1–7–20; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L14400000.BJ0000–20X; MO#4500141612]

Notice of Proposed Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Official Filing.

SUMMARY: The plats of survey for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the Bureau of Land Management, Butte Field Office, Butte Montana, are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: *jalexand@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 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 lands surveyed are:

Principal Meridian, Montana

T. 7 N., R. 3 W.
Sec. 8.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day after all timely protests have been dismissed or otherwise resolved, including appeals.

If a notice of protest is received after the scheduled date of official filing and the 10 calendar day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chapter 3.

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2020–00108 Filed 1–7–20; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–624–625 and 731–TA–1450–1451 (Final)]

Quartz Surface Products From India and Turkey; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–624–625 and 731–TA–1450–1451 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of quartz surface products from India and Turkey, provided for in subheading 6810.99.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202) 708–2579), 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 at *https://www.usitc.gov.* The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.— For purposes of these investigations, Commerce has defined the subject merchandise as Quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigation. However, the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the investigation includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the investigation includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigation whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish. In addition, quartz surface products are covered by the investigation whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the quartz surface products. The scope of the investigation does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than 1 centimeter wide as measured at their widest cross-section (Glass Pieces); and (4) the distance between any single Glass Piece and the closest separate Glass Piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India and Turkey of quartz surface products, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on May 8, 2019, by Cambria Company LLC, Eden Prairie, Minnesota.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations 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 final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will

maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 15, 2020, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, April 28, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 23, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on April 24, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 21, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 5, 2020. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 5, 2020. On May 22, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 27, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. 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.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 3, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–00094 Filed 1–7–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On December 19, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Oklahoma in the lawsuit entitled *United States, et al.* v. *Cyprus Amax Minerals Company, Case No. 4:19–cv–00697–GKF–JFJ.* The proposed Consent Decree resolves the United States' claims, on behalf of the United States Department of the Interior, and claims of the Cherokee Nation, the Delaware Tribe of Indians, and the Osage Nation (''Plaintiffs'' or ''trustees''), under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for the recovery of damages for injury to, destruction of, loss of, and loss of use of natural resources and their services resulting from the release and threat of a release of hazardous substances at and from the National Zinc Corporation Site, including one or more smelters, located near West 11th and Virginia Streets, on the west side of Bartlesville, Washington County, Oklahoma. Plaintiffs are trustees for those natural resources. Under the proposed Consent Decree, Cyprus Amax agrees to pay the sum of $1,696,500 to reimburse the trustees for past assessment costs and to fund future restoration actions to resolve the Plaintiffs' claims.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Cyprus Amax Minerals Company, Case No. 4:19–cv–00697–GKF–JFJ,* D.J. Ref. No. 90–11–2–10689. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined

and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–00045 Filed 1–7–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Application Data

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled ''Job Corps Application Data.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 9, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response and estimated total burden, may be obtained free by contacting Lawrence Lyford by telephone at 202–693–3121 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Lyford.Lawrence@dol.gov.*

Submit written comments about or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW, Room N–4507, Washington, DC 20210; by email: *Lyford.Lawrence@dol.gov;* or by Fax 202–693–3113.

FOR FURTHER INFORMATION CONTACT: Lawrence Lyford by telephone at 202–693–3121 (this is not a toll free number) or by email at *Lyford.Lawrence@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 55 years, Job Corps has helped prepare over 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 121 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSE), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by DOL through the Office of Job Corps and six regional offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 96 Job Corps centers under contractual agreements with DOL. These contract center operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 25 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement. DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0025.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Job Corps Application Data.

Forms: ETA Form 652, ETA Form 655, and ETA Form 682.

OMB Control Number: 1205–0025.

Affected Public: Job Corps applicants.

Estimated Number of Respondents: 139,814.

Frequency: Annually.

Total Estimated Annual Responses: 139,814.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 12,543.

Total Estimated Annual Other Cost Burden: $90,938.

Authority: 44 U.S.C. 3506(c)(2)(A).

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–00064 Filed 1–7–20; 8:45 am]

BILLING CODE 4510–FT–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, and 50–530; NRC–2019–0254]

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Extend Implementation Times

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, issued to Arizona Public Service Company (the licensee), for operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde). The proposed amendments would extend the implementation time from February 23, 2020, to August 31, 2020, for the NRC-approved license amendments issued May 29, 2019, associated with risk-informed completion times in accordance with Nuclear Energy Institute (NEI) Topical Report NEI 06–09, Revision 0–A, ''Risk-Informed Technical Specification Initiative 4b, Risk-Managed Technical Specifications (RMTS) Guidelines.'' The licensee is requesting this extension due to unforeseen circumstances.

DATES: Submit comments by February 7, 2020. Requests for a hearing or petition for leave to intervene must be filed by March 9, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0254. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564; email: *Siva.Lingam@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0254 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0254.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The license amendment request dated December 26, 2019, is available in ADAMS under Accession No. ML19360A155.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0254 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 issued to Arizona Public Service Company, for operation of Palo Verde, located in Maricopa County, Arizona.

The proposed amendments would extend the implementation time from February 23, 2020, to August 31, 2020, for the NRC-approved license amendments issued May 29, 2019 (Amendment Nos. 209; ADAMS Accession No. ML19085A525), associated with risk-informed completion times in accordance with NEI 06–09, Revision 0–A, ''Risk-Informed Technical Specification Initiative 4b, Risk-Managed Technical Specifications (RMTS) Guidelines.'' The licensee is requesting this extension due to unforeseen circumstances.

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2)

create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed extension of the implementation date of the Risk-Informed Completion Time (RICT) License Amendment (LA) Number (No.) 209 does not involve a significant increase in the probability of an accident previously evaluated because the existing Technical Specification (TS) Conditions, Required Actions and Completion Times (CT) will remain in effect during the extended implementation period.

The current TSs are effective and acceptable for establishing all actions necessary to mitigate the consequences of an accident previously evaluated and have been previously approved by the NRC. Therefore, the proposed extended RICT TS implementation does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed extension of the implementation date of the RICT LA No. 209 does not create the possibility of a new or different kind of accident from any accident previously evaluated because the existing TS Conditions, Required Actions and CTs will be in effect during the extended implementation period. The proposed change does not involve a physical alteration of the plant and does not involve installation of new or different kind of equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed extension of the implementation date of the RICT LA No. 209 is not a significant reduction in margin of safety since the existing TS Conditions, Required Actions and CTs will remain in effect during the extended implementation period, have an acceptable margin of safety and have been approved by the NRC.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day notice period if the Commission concludes the amendments involve no significant hazards consideration. In addition, the Commission may issue the amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final

determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendments. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendments unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited

delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the licensee's application dated December 26, 2019 (ADAMS Accession No. ML19360A155).

Attorney for licensee: Michael G. Green, Associate General Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 7602, Phoenix, AZ 85072–2034.

NRC Branch Chief: Jennifer Dixon-Herrity.

Dated at Rockville, Maryland, this 2nd day of January, 2020.

For the Nuclear Regulatory Commission.

Margaret W. O'Banion,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–00054 Filed 1–7–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87882; File No. SR–NASDAQ–2019–101]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Equity 7, Section 118(a)

January 2, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, Section 118(a) to amend the Exchange's transaction fees at Equity 7, Section 118(a) to raise the qualifying thresholds for several of the Exchange's credits for displayed orders/quotes that provide liquidity to the Exchange and to eliminate one such credit, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the schedule of credits it provides to members, pursuant to Equity 7, Section 118(a), in several respects.

First, the Exchange proposes to amend its schedule of credits by raising the volume thresholds to qualify for four of the credits it provides to its members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange, as follows:

- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a $0.0029 per share executed credit to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume[3] during the month. The Exchange proposes to raise the qualifying volume threshold for this credit from 0.60% to 0.70% of Consolidated Volume.
- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a $0.0029 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.70% of Consolidated Volume during the month and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.70% to 0.80% of Consolidated Volume and the second threshold from 0.50% to 0.60% of Consolidated Volume.
- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a $0.0028 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume during the month,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As used in Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.225% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.60% to 0.75% of Consolidated Volume and the second threshold from 0.225% to 0.35% of Consolidated Volume.

• For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a $0.0027 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.175% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.50% to 0.60% of Consolidated Volume and the second threshold from 0.175% to 0.25% of Consolidated Volume.

For each of the foregoing credits, the Exchange intends to raise qualifying volumes to incentivize members to increase the extent of their liquidity adding activity to qualify for and to continue to qualify for these credits.

Second, the Exchange proposes to eliminate its $0.0026 per share executed credit that it presently provides to a member (i) with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average during the month and (ii) doubles the daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in January 2017. The Exchange has observed that historically, few members have received this credit, with little associated volume, and it has not served to meaningfully increase activity on the Exchange or improve the quality of the market. The Exchange therefore proposes to eliminate it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

In particular, the Exchange proposes to raise the volume thresholds to qualify for two of its $0.0029 per share executed credits and its $0.0028 and $0.0027 per share executed credits because as Nasdaq has grown over time, the activity of members that currently qualify for these credits has also grown, such that an increase in credit qualifying criteria is now needed to ensure that this credit remains relevant to current levels of liquidity providing activity on the Exchange. To the extent that this proposal results in an increase in liquidity adding activity on the Exchange, this will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Nasdaq also believes that it is reasonable to eliminate its $0.0026 per share executed credit because few members historically have received the credit (and only one member currently receives it), related volume is low, and it has not served to meaningfully increase volume or market quality.

The Exchange notes that those participants that are dissatisfied with the proposed amended credits are free to shift their order flow to competing venues.

The Proposal Is an Equitable Allocation of Charges

The Exchange believes its proposal will allocate its charges fairly among its market participants. It is equitable for the Exchange to raise the qualification requirement for the two $0.0029 per share executed credits and the $0.0028 and $0.0027 per share executed credits because as Nasdaq has grown, the activity of members that currently qualify for these credits has also grown, such that an increase in credit qualifying criteria is now needed to ensure this credit remains relevant to current levels of liquidity providing

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

activity on the Exchange. The Exchange anticipates that all members that currently qualify for these credits will continue to do so under the proposals. The Exchange notes that any increase in liquidity providing activity on the Exchange that ensues from its proposals will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Likewise, the Exchange believes that it is equitable to eliminate the $0.0026 per share executed credit because few members have received this credit historically (only one receives it presently) and it has not prompted a meaningful increase in volume or market quality. The one member that would be affected by the elimination of the credit may seek to qualify for other credits that the Exchange offers.

The Proposed Amended Credits Are Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Although the Exchange's proposal to raise the qualifying criteria for its two $0.0029 per share executed credits and its $0.0028 and $0.0027 per share executed credits will require members to add more liquidity than is currently required to qualify for these credits, any resulting increase in liquidity to the market will improve market-wide quality and price discovery, to the benefit all market participants.

Additionally, the Exchange believes that elimination of its $0.0026 per share executed credit is not unfairly discriminatory. Historically, only a few members have received the credit, and only one member presently qualifies for it and would be affected by its elimination. Elimination of the credit for this member would not be unfair, however, because the credit has not fulfilled its intended purpose of prompting meaningful increases in volume or market quality. Moreover, elimination of the credit from the rule book will allow the Exchange to consider new, more effective incentives.

Finally, the Exchange notes that any participant that does not find the amended credits to be sufficiently attractive is free to shift its order flow to a competing venue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage.

The Exchange's proposals to raise the qualification requirements for two $0.0029 per share executed credits and the $0.0028 and $0.0027 per share executed credits will not disadvantage any category of member because all members that currently qualify for these credits will continue to do so under the proposed changes. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuates.

The Exchange's proposal to eliminate the $0.0026 per share executed credit will not place any undue burden on competition. Although elimination of the credit would impact the one member that currently receives it, that member may seek to mitigate the effects of the loss of the credit by qualifying for other similar credits that the Exchange offers. Any residual burden that the proposal imposes on this member is outweighed by the fact that the credit has not served its intended purpose of incentivizing a broader population of members to increase their market-improving participation.

Moreover, members are free to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed amended credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 38% of industry volume for the month of November 2019.

The Exchange's proposals to raise the qualification requirement for its two $0.0029 per share executed credits and its $0.0028 and $0.0027 per share executed credits per share executed credit are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

As discussed above, the Exchange's proposal to eliminate its $0.0026 per share executed credit will not meaningfully impact intermarket competition. Only one member currently receives the credit.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–101 and should be submitted on or before January 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87883; File No. SR–CBOE–2019–126]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules Regarding Complex Orders

January 2, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2019, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules to adopt a new complex order instruction, Index Combo orders, to further facilitate delta neutral transactions for investors that use complex orders to trade index options.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules to adopt a new complex order instruction, Index Combo orders, to further facilitate delta neutral transactions for investors that use complex orders to trade index options. Under the Exchange's current Rules, a ''complex order'' is an order involving the concurrent execution of two or more different series in the same class (the ''legs'' or ''components'' of the complex order), for the same account, occurring at or near the same time and for the purpose of executing a particular investment strategy with no more than the applicable number of legs (which number the Exchange determines on a class-by-class basis). For purposes of Rules 5.33 (regarding electronic processing of complex orders) and 5.85(b)(1) (regarding priority of complex orders with respect to open outcry trading), the term ''complex order'' means a complex order with any ratio

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00), a stock-option order, or a security future-option order.[3] In other words, the Exchange only accepts for electronic processing complex orders with any ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). The Exchange accepts for manual handling complex orders with any ratio; however, only those with a ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) are eligible for complex order increments and complex order priority.[4] The ratio of a complex order is determined by comparing the size of the smallest-sized option component and the largest-sized option component. For example, a complex order with a leg to buy 30 XYZ May 18 calls and sell 10 XYZ April 16 calls is three-to-one (30:10).

A complex order can also be a ''stock-option order.'' A stock-option order is the purchase or sale of a stated number units of an underlying stock or a security convertible into the stock (''convertible security'') coupled with the purchase or sale of an option contract(s) on the opposite side of the market representing either (1) the same number of units of the underlying stock or convertible security or (2) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg(s) to the total number of units of the underlying stock or convertible security in the stock leg.[5]

An option's price can be influenced by a number of different factors. Some of these are known as the ''Greeks'' because they are commonly abbreviated with Greek letters: Delta, Gamma, Theta, and Vega.

• *Delta:* The Delta (Δ) is a measure of the change in an option's price (premium of an option) resulting from a change in the underlying security. The value of Delta ranges from −100 to 0 for puts and 0 to 100 for calls (multiplied by 100 to shift the decimal). Puts generate negative delta because they have a negative relationship with the underlying; that is, put premiums fall when the underlying rises and vice versa. Conversely, call options have a positive relationship with the price of the underlying: If the underlying rises, so does the call premium provided there are no changes in other variables such as implied volatility or time remaining until expiration. If the price of the underlying falls, the call premium will also decline provided all other things remain constant.[6] Delta changes as an option becomes more valuable or in-the-money. In-the-money means that the value of the option increases due to the option's strike price being more favorable to the underlying's price. As the option gets further in the money, Delta approaches 100 on a call and −100 on a put with the extremes eliciting a one-for-one relationship between changes in the option price and changes in the price of the underlying. In effect, at Delta values of −100 and 100, the option behaves like the underlying in terms of price changes.[7]

• *Gamma:* The Gamma (Γ), sometimes referred to as the option's curvature, is the rate of change in the delta as the underlying price changes. The gamma is usually expressed in deltas gained or lost per one-point change in the underlying, with the delta increasing by the amount of gamma when the underlying rises and falling by the amount of the gamma when the underlying falls. If an option has a gamma of five, for each point rise (fall) in the price of the underlying, the option will gain (lose) five deltas. If the option initially has a delta of 25 and the underlying moves up (down) one full point, the new delta will be 30 (20).[8]

• *Theta:* An option's value is made up of intrinsic value[9] and time value.[10] As time passes, the time-value portion gradually disappears until, at expiration, the option is worth exactly its intrinsic value. The theta (Θ), or time decay, is the rate at which an option loses value as time passes, assuming that all other market conditions remain unchanged. It is usually expressed as value lost per one day's passage of time. An option with a theta of 0.05 will lose 0.05 in value for each day that passes with no movement in the underlying. If an option's theoretical value today is 4.00, one day later, it will be worth 3.95. Two days later, it will be worth 3.90.[11]

• *Vega:* Just as option values are sensitive to changes in the underlying price (delta) and to the passage of time (theta), they are also sensitive to changes in volatility. Although the terms delta, gamma, and theta are generally used by all option traders, there is no one generally accepted term for the sensitivity of an option's theoretical value to a change in volatility. The most commonly used term in the trading community is vega.[12] The vega of an option is usually expressed as the change in theoretical value for each one percentage point change in volatility. Because all options gain value with rising volatility, the vega for both calls and puts is positive. If an option has a vega of 0.15, for each percentage point increase (decrease) in volatility, the option will gain (lose) 0.15 in theoretical value. If the option has a theoretical value of 3.25 at a volatility of 20%, then it will have a theoretical value of 3.40 at a volatility of 21% and a theoretical value of 3.10 at a volatility of 19%.[13]

Options can be traded not only for profits attributable to movements in the underlying, but also for profits attributable to changes in other factors such as volatility or the amount of time left until expiration. An investor may seek exposure to the Greeks (*i.e.,* Delta, Gamma, Theta, and Vega) while minimizing exposure to movements in the price of the underlying by creating a delta neutral position. An option position could be hedged with options that exhibit a delta that is opposite to that of the current options holding to maintain a delta neutral position. Delta hedging is an options strategy that aims to reduce or hedge the risk associated with price movements in the underlying asset.[14] Strategies that involve creating a delta neutral position are typically used for one of three main purposes. They can be used to profit from time decay or from volatility, or they can be used to hedge an existing position and protect it against small price movements.[15]

A delta neutral position is one in which the overall delta is approximately zero, which minimizes the options' price movements in relation to the underlying asset. For example, assume an investor holds one call option with a delta of 0.50, which indicates the option is at-the-money and wishes to maintain a delta neutral position. The investor could purchase an at-the-

[3] *See* Rule 1.1 (definition of complex order).

[4] *See id.; see also* Rules 5.4(b) and 5.85(b).

[5] *See* Rule 5.33(b)(5) (definition of stock-option order). The Rules also permit complex orders to be security future-option orders.

[6] *See* John Summa, *Option Greeks: The 4 Factors to Measure Risks,* Investopedia, available at *https://www.investopedia.com/trading/getting-to-know-the-greeks/* (October 11, 2019).

[7] *See id.*

[8] *See* Sheldon Natenberg, Option Volatility & Pricing 105 (McGraw Hill Education, 2nd ed. 2015).

[9] The intrinsic value of an option is the difference between the price of the underlying asset and the strike price.

[10] The time value of an option is equal to the option premium minus its intrinsic value.

[11] *See* Natenberg, *supra* note 9 at 108.

[12] *See id.* at 110.

[13] *See id.*

[14] *See* James Chen, *Delta Hedging,* Investopedia, available at *https://www.investopedia.com/terms/d/deltahedging.asp* (May 22, 2019).

[15] *Delta Neutral Options Strategies, OptionsTrading.Org* (December 4, 2019), available at *https://optionstrading.org/strategies/other/delta-neutral/.*

money put option with a delta of -0.50 to offset the positive delta, which would make the position have a delta of zero, thereby minimizing unwanted exposure to the price of the underlying and allowing the investor to focus instead on the desired exposure (*i.e.,* Delta, Gamma, Theta, or Vega). An options position could also be delta hedged using shares of the underlying stock. One share of the underlying stock has a delta of one as the stock's value changes by $1. For example, assume an investor is long one call option on a stock with a delta of 0.75, or 75 since options have a multiplier of 100. In this case, the investor could delta hedge the call option by selling 75 shares of the underlying stock.[16] The following is an example of a delta neutral stock-option order, which provides the investor with volatility exposure.

Example #1

Strategy 1: Buy 8 XYZ May 18 Calls and Sell 100 Shares XYZ Underlying (25 times)

Buy 8 (25x) XYZ May 18 Calls

Sell 100 (25x) Shares XYZ Underlying

Buy 8 XYZ May 18 Calls (12.5 Delta)

Sell 100 XYZ Shares (100 Delta) (where 100 shares of the underlying = 1 option contract) (8 * 12.5 delta) + (−1 * 100 Delta) + 100 Delta − 100 Delta = 0 Delta

Strategy 1 Position = +200 XYZ May 18 Calls −2500 Shares of XYZ

Buying a call on an equity stock and selling a put on an equity stock (or selling a call on an equity stock and buying a put on an equity stock) with the same expiration date and strike price results in the creation of a synthetic stock position. For example, assume a call and put for XYZ have a strike price of $15. Buying a call gives the buyer the right, but not the obligation, to purchase the stock (XYZ) at the strike price ($15). Selling a put imposes upon the sell the obligation (and not just the right) to purchase the stock (XYZ) at the strike price ($15) should the put be exercised.

If the stock price of XYZ is greater than the strike price of the call option ($15) at expiration, the call option may be exercised and the holder of the call option has the right to purchase XYZ at $15 resulting in a long position of 100 shares of XYZ. If the stock price of XYZ is greater than the strike price of the put option ($15), the put expires worthless as the holder of the put can sell shares on the open market at a price greater than the option's strike price.

If the stock price of XYZ is less than the strike price of the call option ($15), the call option expires worthless as it is cheaper to purchase the stock on the open market. If the stock price of XYZ is less than the strike price of the put option at expiration, the put will be exercised and the seller of the put will be obligated to purchase 100 shares of XYZ.

The net result is that the combination of buying a call and selling a put with the same expiration date and strike price results in an effective (or synthetic) long position of 100 shares of XYZ stock, regardless of whether the stock price is above or below the strike price of the call or put option. Similarly, selling the call and buying the put for the same expiration date and strike price would result in an effective (or synthetic) short position of 100 shares of XYZ stock (−100). The following is an example of a synthetic underlying.

Example #2

Strategy 2: Sell 1 XYZ May 15 Call, Buy 1 XYZ May 15 Put and Buy 100 XYZ Stock (25 times)

Combination:

Sell 1 (25x) XYZ May 15 Calls

Buy 1 (25x) XYZ May 15 Puts

Stock:

Buy 100 (25x) shares XYZ Stock

Sell 1 XYZ May 15 Call (55 delta)

Buy 1 XYZ May 15 Put (45 delta)

Buy 100 XYZ shares (100 delta) (where 100 shares of stock = 1 option)

(−1 * 55 delta) + (1 * −45 delta) + (1 * 100 delta) −55 + (−45) + 100 = 0

Strategy 2 Position = −25 May 15 Calls + 25 May 15 Puts + 2500 XYZ Stock

Example #3

Strategy 1 Position: +200 XYZ May 18 Calls − 2500 XYZ Stock

Strategy 2 Position: −25 XYZ May 15 Calls +25 XYZ May 15 Put + 2500 XYZ Stock

Net Position:

+ 200 XYZ May 18 Calls −25 XYZ May 15 Calls + 25 XYZ May 15 Puts

+2500 deltas (200 × 12.5)

−2500 deltas (−25 × 55) + (25 × −45)

0 net deltas

Combined the equation may be expressed as: (200 × 12.5) + (−25 × 55) + (25 × −45) = 0

The net position that results from combining Strategy 1 from Example #1 above and Strategy 2 from Example #2 above is a long position of 200 May 18 Calls—the May 15 Combination 25x (a short synthetic stock position of 2,500 shares as a result of selling a call and buying a put with the same expiration date and strike price).[17]

The Exchange proposes to adopt a complex order instruction in Rule 5.33(b)(5) to codify and further facilitate delta neutral hedging for all index options listed for trading on the Exchange.[18] Trading Permit Holders that transact in index options currently have the ability to submit for electronic processing complex orders that are delta neutral, so long as the component ratio conforms to the current rule for complex orders of one-to-three/three-to-one. Additionally, Trading Permit Holders have the ability to submit for manual handling complex orders that are delta neutral in any ratio; however, only those with a one-to-three/three-to-one ratio are not eligible for complex order increments or complex order priority.[19] Specifically, the Exchange proposes to adopt a definition of an ''Index Combo'' order as an order to purchase or sell one or more index option series and the offsetting number of Index Combinations defined by the delta. For purposes of an Index Combo Order, the Exchange proposes to adopt a definition of an ''Index Combination'' as a purchase (sale) of an index option call and sale (purchase) of an index option put with the same underlying index, expiration date, and strike price. Additionally, the Exchange proposes to adopt a definition of ''delta'' as the positive (negative) number of Index Combinations that must be sold (purchased) to establish a market neutral hedge with one or more series of the same index option.[20]

As noted above, the Exchange lists multiple index options for trading. MIAX currently only lists options on one index—the SPIKE Index. The primary basis for MIAX's adoption of a SPIKES Combo Order was the lack of an

[16] *See supra* note 15.

[17] Strategy 1 and Strategy 2 may currently be entered and executed on the Exchange under the Exchange's current rules.

[18] The Exchange currently lists options on 24 indexes: Dow Jones Industrial Average (DJX), MSCI EAFE Index (MXEA), MSCI Emerging Markets Index (MXEF), S&P 100 Index (OEX), Russell 1000 Growth Index (RLG), Russell 1000 Value Index (RLV), Russell 1000 Index (RUI), Russell 2000 Index (RUT), S&P Materials Select Sector Index (SIXB), S&P Communication Services Select Sector Index (SIXC), S&P Energy Select Sector Index (SIXE), S&P Industrials Select Sector Index (SIXI), S&P Financial Select Sector (SIXM), S&P Consumer Staples Select Sector Index (SIXR), S&P Real Estate Select Sector Index (SIXRE), S&P Technology Select Sector Index (SIXT), S&P Utilities Select Sector Index (SIXU), S&P Health Care Select Sector Index (SIXV), S&P Consumer Discretionary Select Sector Index (SIXY), S&P 500 Index (SPX), FTSE 100 Index (reduced-value) (UKXM), Cboe Volatility Index (VIX), Mini-S&P 100 Index (XEO), and Mini-S&P 500 Index (XSP).

[19] *See* Rules 5.4(b) and 5.85(b).

[20] *See* Rule 5.33(b)(5).

underlying for the SPIKES Index that investors may use for hedging purposes.[21] There was nothing about the SPIKES Combo Order specific to the SPIKES Index itself. While MIAX adopted a combo order for a single index, all index options, including those the Exchange lists for trading, lack an underlying that investors may use for hedging purposes. Therefore, the Exchange believes it is appropriate to offer investors a combo order for all index options. Additionally, MIAX is an electronic only exchange, while the Exchange has a trading floor for open outcry trading. As noted above, Trading Permit Holders may currently engage in delta neutral hedging for index options electronically or on the trading floor, subject to certain ratio restrictions. The Exchange believes all Trading Permit Holders should be able to use Index Combo orders in the same manner, regardless of whether they choose to submit them for electronic or open outcry trading.

The Exchange also proposes to adopt a provision that states an Index Combo order may not have a ratio greater than eight options to one Index Combination (8.00). The Exchange proposes to use this ratio as it is already a defined conforming ratio in the System[22] used for stock-option orders, and it will allow the Exchange to implement the trading of Index Combo orders in a fashion similar to stock-option orders. Currently, stock-options may be traded in a ratio of eight-to-one, where the ratio represents contracts to the underlying security. Similarly, the Exchange proposes to use the same ratio for Index Combo orders where the ratio would represent contracts to Index Combinations. Lastly, the Exchange proposes to add an internal cross reference to state that Index Combo orders will be subject to all provisions applicable to complex orders (excluding the one-to-three/three-to-one ratio) in the Rules.[23]

Index options do not have an underlying that can serve as a hedge, as the option is based on an index. However, a synthetic underlying position may be created by purchasing a call and selling a put (or selling a call and purchasing a put), as discussed above. An Index Combination creates a synthetic underlying position that is the functional equivalent of the stock leg in stock-option orders. Therefore, the Exchange proposes to amend the ratio from one-to-three/three-to-one to eight-to-one for Index Combo orders to align the treatment of these orders to that of stock-option orders. This will allow for more transactions with better hedging opportunities in all index options.

Below is an example of an index option delta neutral strategy that provides the investor exposure to the Greeks that may be created under the Exchange's proposal to allow Index Combo orders to leverage the eight-to-one ratio afforded stock-option orders.

Example #4

Strategy A: Buy 8 ABC Index May 18 Calls, Sell 1 ABC Index May 15 Calls, and Buy 1 ABC Index May 15 Put (25 times)

Calls: Buy 8 (25) ABC Index May 18 Calls

Combination:
Sell 1 (25) ABC Index May 15 Call
Buy 1 (25) ABC Index May 15 Put
Buy 8 ABC Index May 18 Calls (12.5 Delta)
Sell 1 ABC Index May 15 Call (55 Delta)
Buy 1 ABC Index May 15 Put (45 Delta)
$(8 * 12.5) + (-1 * 55) + (1 * -45)$
$100 - 55 - 45 = 0$

Net Position: + 200 ABC Index May 18 Calls −25 ABC Index May 15 Calls + 25 ABC Index May 15 Puts
+2500 Deltas (200×12.5)
−2500 Deltas $(-25 \times 55) + (25 \times -45)$
0 Net Deltas

Combined, the equation may be expressed as: $(200 \times 12.5) + (-25 \times 55) + (25 \times -45) = 0$

Example #4 illustrates a delta neutral position in an index option which is identical to the net delta neutral position demonstrated in Example #1 for a stock-option order. This position may be accomplished in a single transaction by using the proposed Index Combo order, which includes an Index Combination. The Index Combination (sell call, buy put with the same underlying index, expiration date, and strike price) creates the synthetic underlying position for the index option, similar to the way selling the XYZ call and buying the XYZ put creates the synthetic stock position demonstrated in Example #3.

Under the Exchange's proposal, Index Combinations would be treated similar to the stock-leg component of a stock-option order. As demonstrated in Example #3 above, the stock leg component of a stock-option order can be created synthetically by selling a call and buying a put option with the same expiration date and strike price. The Exchange proposes to define this transaction as an Index Combination and allow Index Combo orders to be treated similarly to stock-option orders by permitting these orders to leverage the eight-to-one ratio defined for stock-option orders. The Exchange believes that a ratio greater than three-to-one, but not greater than eight-to-one, would allow investors the opportunity to create additional delta neutral transactions with index options.

The Exchange represents that it has the System capacity and capability to handle the potential increase in transaction rates. Further, the Exchange represents that it has surveillances in place to surveil for conduct that violates the Exchange's Rules, specifically as it pertains to delta neutral transactions as described herein.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[24] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system

[21] *See* Securities Exchange Act Release No. 87199 (October 2, 2019), 84 FR 53786 (October 8, 2019) (SR–MIAX–2019–37).

[22] The ''System'' means the Exchange's hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange, and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub.

[23] The Exchange makes conforming changes to Rules 1.1 (definition of complex order), 5.4(b), 5.6(c) (definition of complex order), 5.30(a) and (b), 5.83(b), and 5.85(b).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.*

and, in general, protects investors and the public interest, by further facilitating the creation of delta neutral transactions in index options. Delta neutral strategies protect investors and the public interest by providing a means to gain exposure to other elements related to the price of an option while reducing the risk associated with changes in the price of the underlying. Permitting additional delta neutral transactions will improve liquidity in the marketplace which will benefit all investors. Additionally, the Exchange's proposal protects investors and the public interest as all the rules applicable to complex orders on the Exchange will apply equally to Index Combo orders, with the exception of the one-to-three/three-to-one ratio limitation.

The proposed eight-to-one ratio for Index Combo orders is already a conforming ratio on the Exchange for stock-option orders. The Exchange's proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, by providing similar hedging capabilities as afforded stock-option orders.

Additionally, another options exchange that offers options on an index provides for the creation of delta neutral strategies.[27] Providing investors the ability to create delta neutral transactions similar to those created on another exchange reduces investor confusion and in turn strengthens investor confidence in the marketplace by providing consistency among exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as it will be applicable to all Trading Permit Holders equally. Any Trading Permit Holder may trade index options and submit Index Combo orders, and all Trading Permit Holders can benefit from the creation of delta neutral transactions as described in this proposal. The System will handle all Index Combo orders in the same manner. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, because another exchange options offers the same order type for the index option listed on that exchange.[28] The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition, because it will provide index options with similar hedging capabilities currently afforded stock-option orders. Additionally, providing investors the ability to create delta neutral transactions similar to those created on another exchange reduces investor confusion and in turn strengthens investor confidence in the marketplace by providing consistency among exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act[29] and Rule 19b–4(f)(6)[30] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[31] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) under the Act[32] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would provide investors as soon as possible with similar hedging capabilities for index options that they have currently for stock-option orders. In addition, the Exchange notes that the proposal is not novel or unique because another exchange currently offers the same order type for an index option it lists for trading.[33] The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The Commission believes that the proposal will benefit investors by permitting additional delta neutral transactions for index options. The Commission notes that another options exchange currently permits Combo Orders for options on an index.[34] Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–126. This file number should be included on the subject line if email is used. To help the

[27] *See* Miami International Securities Exchange, LLC (''MIAX'') Rule 518, Interpretation and Policy .07.

[28] *See id.*

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] *See supra* note 21 and MIAX Rule 518, Interpretation and Policy .07.

[34] *See id.*

[35] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–126 and should be submitted on or before January 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00061 Filed 1–7–20; 8:45 am]

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[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87881; File No. SR–LCH SA–2019–009]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Amendments to CDSClear Reference Guide To Allow Index Basis Packages Margining

January 2, 2020.

I. Introduction

On October 29, 2019, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA'' or ''CDSClear''), 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 relating to amendments to the CDSClear Reference Guide (the ''CDSClear Risk Methodology'') to allow Index Basis Packages margining. The proposed rule change was published for comment in the **Federal Register** on November 19, 2019.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

LCH SA is proposing to amend its CDSClear Risk Methodology in order to allow Index Basis Packages margining as a single instrument.[4] LCH SA CDSClear currently clears CDS on a number of indices such as iTraxx Main, iTraxx Cross-over, iTraxx Senior Financials as well as all the Single Name constituents of these indices. Indices and their constituents are currently managed and margined as independent instruments. However, market participants may execute Index Basis Packages consisting of an Index CDS trade and individual Single Name CDS trades on each of the reference entities constituents of such Index perfectly offsetting the Index.

A transaction would need to satisfy the following criteria to constitute an Index Basis Package:

- The package is constituted of an Index CDS and Single Name CDS on all the entities constituting the index;
- The position (Long/Short) on the Index offsets the positions on the Single Names (Short/Long);
- The notional of the Index and across all the Singles Names match exactly;
- All the Single Names CDS trades have the same currency, coupon, and maturity as constituents of the Index CDS; and
- All the Single Name CDS trades have the same Seniority, ISDA Definition and Restructuring Clause as constituents of the Index CDS.

Clearing Members and/or Clients would be required to identify all trades being part of an Index Basis Package and to notify LCH SA CDSClear. CDSClear would then perform controls to ensure all principles and requirements stated above for qualifying the trades as an Index Basis Package are satisfied and would flag them with a common ID number. These trades would continue to be margined as different trades until LCH SA completes these controls and confirms the qualification as an Index Basis Package.

Once an Index Basis Package is validated as complete, the margin enhancement proposed in the current rule change would then be applied as part of the overnight margin calculation.

In order to ensure that the trades continue to meet the criteria of an Index Basis Package, controls would be performed every day at the start of the overnight batch process.

Index Basis Packages identified and flagged as such would be excluded from compression runs with the rest of the portfolio in order to avoid breaking any packages.

Index Basis Packages could be un-flagged as such at the Clearing Member and/or Client's request. The Index CDS and the Single Name CDS would then be treated and margined separately as per the current framework.

In case of a Clearing Member's default, CDSClear would have the ability to liquidate Index Basis Packages in a dedicated auction should it be advised to do so by the Default Management Group in order to minimize the liquidation costs.

A. Proposed Changes to CDSClear Risk Methodology

In order to take into account the specific risk created by Index Basis Packages positions, LCH SA proposes to amend the calculation of the Spread Margin and the calculation of the Liquidity Charge Margin as described in its Reference Guide, *CDSClear Margin Framework.*

1. Spread Margin

LCH SA CDSClear currently considers an Index Basis Package as multiple instruments in the calculation of its Spread Margin. In accordance with the portfolio margining requirements under Article 27 of Commission Delegated Regulation (EU) No 153/2013[5] (the ''RTS''), LCH SA CDSClear applies a cap of 80% to the possible margin offsets reduction. Therefore, the Spread Margin of an Index Basis Package is calculated as the maximum between the expected shortfall of the package and 20% of the sum of the expected shortfalls

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to Amendments to CDSClear Reference Guide To Allow Index Basis Packages Margining; Exchange Act Release No. 87522 (Nov. 13, 2019); 84 FR 63912 (Nov. 19, 2019) (''Notice'').

[4] The description herein is substantially excerpted from the Notice, 84 FR 63912.

[5] *See https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0041:0074:EN:PDF.*

calculated for each components of the package.

CDSClear believes that this does not appropriately reflect the actual risk of an Index Basis Package meeting the criteria stated above, so it is proposing to amend its CDSClear Risk Methodology in order to consider Index Basis Packages identified as such as a single instrument when calculating the amount of margins required. In particular, the 80% cap on offsets between the components of the Index Basis Package would not be applied in the calculation of the Spread Margin, but would be maintained between an Index Basis Package and all the other positions in the portfolio. This may result in a lower amount of margin being collected on an Index Basis Package.

In the opinion published in April 2017 [6] and clarifying the application of Article 27 of the RTS, the European Securities and Market Authority (''ESMA''), acknowledges the low level of risk presented by a package consisting of a future on an index and futures on each of the constituents of the index and allows a CCP to acknowledge margin reduction in excess of 80% in this specific case. This proposal acknowledges this position.

2. Liquidity Charge Margin

Considering that an Index Basis Package would likely be sold off in a dedicated auction in case of default of a Clearing Member, LCH SA also proposes to amend the calculation of the Liquidity Charge Margin described in the CDSClear Risk Methodology in order to better reflect the actual cost it would incur when liquidating an Index Basis Package. CDSClear proposes to charge a specific bid/ask spread for each Index family underlying an Index Basis Package identified as such rather than use the current Liquidity Charge Margin algorithm based on charging bid/ask spreads for each individual component in the package taken independently. The current Liquidity Charge Margin methodology would nevertheless remain in the calculation specific to Index Basis Packages identified as such by acting as a cap to the new calculation method. Because the bid/ask spread may be smaller, a lower amount of this category of margin could be collected.

3. Other Exclusions

Finally, Index Basis Packages flagged as such would be excluded from the Recovery Risk, Interest Risk, or Wrong Way Risk Margin calculations as by construction Index Basis Packages are immune to the risks these margins aim at capturing.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [8] and Rules 17Ad–22(e)(6)(i) and (iii) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible, and, in general, to protect investors and the public interest.[10] As discussed above, the proposed rule change would amend the LCH SA CDSClear Risk Methodology to allow Index Basis Packages margining as a single instrument. As a result, LCH SA would require a lesser amount of margin to better reflect the lower risk of an Index Basis Package compared to its individual component instruments. The Commission believes that these changes would help ensure that LCH SA's margin requirements are commensurate with the risks associated with clearing Index Basis Packages, which in turn would help ensure that LCH SA does not require higher margins than necessary and that Clearing Members are able to effectively accumulate and manage their financial resources.

Additionally, as noted above, LCH SA also proposes to amend the calculation of the Liquidity Charge Margin to better reflect the actual cost it would incur when liquidating an Index Basis Package. Similarly, LCH SA proposes to exclude Index Basis Packages from inapplicable margin calculations such as the Recovery Risk, Interest Risk, and Wrong Way Risk Margin calculations because Index Basis Packages are not subject to these risks. Similar to the Spread Margins discussed above, the Commission believes that these changes would result in the collection of margins more commensurate to the risks associated with clearing Index Basis Packages, which in turn would help ensure that LCH SA does not require higher margins than necessary and that Clearing Members are able to effectively accumulate and manage their financial resources.

Taken together, the Commission believes that these changes would enhance the operation and effectiveness of LCH SA's margin collection system, which is necessary to manage LCH SA's credit exposures to its Clearing Members and the risks associated with clearing security based swap-related portfolios. By managing such exposures and risks, LCH SA's margin system helps it avoid losses that could result from the mismanagement of such credit exposures and risks. Because such losses could disrupt LCH SA's ability to promptly and accurately clear security based swap transactions, by making the above-described improvements to LCH SA's margin system, the proposed rule change would help promote the prompt and accurate clearance and settlement os securities transactions. Similarly, given that such losses could threaten LCH SA's access to securities and funds in LCH SA's control, by making the above-described improvements to LCH SA's margin system, the Commission believes that the proposed rule change would help assure the safeguarding of funds and securities which are in the custody or control of LCH SA or for which it is responsible. As noted above, the Commission believes that these changes also would help promote the prudent and accurate accumulation and management of financial resources by both LCH SA and its Clearing Members.

Therefore, for the reasons stated above, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in LCH SA's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(6)(i)

Rule 17Ad–22(e)(6)(i) requires a covered clearing agency that provides central counterparty services to cover its credit exposures to its participants by establishing a risk-based margin system

[6] *See https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-18_opinion_on_portfolio_margining.pdf.*

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(6)(i) and (iii).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

that, as applicable, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[12] As noted above, LCH SA is proposing to amend its CDSClear Risk Methodology in order to allow Index Basis Packages margining as a single instrument as long as it meets the criteria noted above. As a result, LCH SA would amend its Spread Margin and Liquidity Charge Margin so that these margin requirements reflect a single rather than separate trades, which may result in a lower level of margin being collected. The Commission believes that these changes would help ensure that LCH SA's margin requirements are commensurate with the risks associated with clearing Index Basis Packages, including by reflecting the lower risk levels commensurate with Index Basis Packages viewed as a single instrument, as opposed to the individual component instruments that make up the Index Basis Package.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(6)(i).[13]

C. Consistency With Rule 17Ad–22(e)(6)(iii)

Rule 17Ad–22(e)(6)(iii) requires a covered clearing agency that provides central counterparty services to cover its credit exposures to its participants by establishing a risk-based margin system that, as applicable, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.[14] As noted above, with respect to the liquidity charge margin, LCH SA proposes to charge a specific bid/ask spread for each Index family underlying an Index Basis Package identified as such, rather than use the current Liquidity Charge Margin algorithm based on charging bid/ask spreads for each individual component in the package taken independently. These proposed changes reflect that, in the event of a Clearing Member default, Index Basis Packages most likely would be sold off as a single instrument in a dedicated auction, rather than broken apart into individual components with each component instrument sold in an independent auction. By helping to ensure that the liquidity charge margin applied to Index Basis Packages would be commensurate with the risks associated with clearing Index Basis Packages, the Commission believes that the proposed rule change would be consistent with the requirement to have margin sufficient to cover potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[15] and Rules 17Ad–22(e)(6)(i) and (iii) thereunder.[16]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[17] that the proposed rule change (SR–LCH SA–2019–009), be, and hereby is, approved.[18]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00062 Filed 1–7–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 240.17Ad–22(e)(6)(i).

[13] 17 CFR 240.17Ad–22(e)(6)(i).

[14] 17 CFR 240.17Ad–22(e)(6)(iii).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(6)(i) and (iii).

[17] 15 U.S.C. 78s(b)(2).

[18] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Asset Management Advisory Committee (''AMAC'') will hold a public meeting on Tuesday, January 14, 2020 at 9:00 a.m.

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC.

STATUS: The meeting will begin at 9:00 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On December 30, 2019, the Commission published notice of the Committee meeting (Release No. 34–87835), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The meeting will include a discussion of various aspects of the asset management industry as well as administrative items.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: January 6, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–00168 Filed 1–6–20; 4:15 pm]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36372]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

Union Pacific Railroad Company (UP), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for the acquisition of temporary overhead trackage rights over an approximately 51.7-mile rail line of BNSF Railway Company (BNSF) between milepost 579.3 near Mill Creek, Okla., on BNSF's Creek Subdivision and milepost 631.0 near Joe Junction, Tex., on BNSF's Madill Subdivision, pursuant to the terms of a Temporary Trackage Rights Agreement (Agreement).[1]

UP states that the purpose of the temporary trackage rights is to permit it to move empty and loaded unit ballast trains solely for UP's maintenance of way projects. The Agreement provides that the trackage rights are temporary in nature and are scheduled to expire on December 31, 2020.

The transaction may be consummated on or after January 22, 2020, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any

[1] A copy of the Agreement was filed with the verified notice.

employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (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. Petitions for stay must be filed no later than January 15, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36372, 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 UP's representative, Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

According to UP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(4) and historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2020–00092 Filed 1–7–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0716]

Agency Information Collection Activity: (Complaint of Employment Discrimination; Information for Pre-Complaint Processing)

AGENCY: The Office of Resolution Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Resolution Management (ORM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 9, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Gina Suppa, Office of Resolution Management, Office of Policy and Compliance (08), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Gina.Suppa@va.gov.* Please refer to ''OMB Control No. 2900–0716'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: William Preston, Office of Resolution Management, Office of Policy and Compliance by telephone at: (216) 390–3607, electronically at: *Gina.Suppa@va.gov* or by facsimile at: (202) 501–2811.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, ORM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ORM's functions, including whether the information will have practical utility; (2) the accuracy of ORM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501—3521.

Title: a. Complaint of Employment Discrimination, VA Form 4939.

b. Information for Pre-Complaint Processing, VA Form 08–10192.

OMB Control Number: 2900–0716.

Type of Review: Reinstatement of a previously OMB approved collection.

Abstract: VA employees, former employees and applicants for employment who believe they were denied employment based on race, color, religion, gender, national origin age, physical or mental disability and/or reprisal for prior Equal Employment Opportunity activity complete VA Form 4939 to file a complaint of discrimination.

Affected Public: Individuals and households.

Estimated Annual Burden: 230 burden hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 460.

By direction of the Secretary.

Danny S. Green,

Department Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–00055 Filed 1–7–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Part 23

Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE84

Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is publishing for public comment a proposed rule (''Proposed Rule'') addressing the cross-border application of certain swap provisions of the Commodity Exchange Act (''CEA or ''Act''), as added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). Specifically, the Proposed Rule addresses the cross-border application of the registration thresholds and certain requirements applicable to swap dealers (''SDs'') and major swap participants (''MSPs''), and establishes a formal process for requesting comparability determinations for such requirements from the Commission. The Commission is proposing a risk-based approach that, consistent with section 2(i) of the CEA, and with due consideration of international comity principles and the Commission's interest in focusing its authority on potential significant risks to the U.S. financial system, would advance the goals of the Dodd-Frank Act's swap reform, while fostering greater liquidity and competitive markets, promoting enhanced regulatory cooperation, and advancing the global harmonization of swap regulation.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: You may submit comments, identified by RIN 3038–AE84, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that is exempt from disclosure under the Freedom of Information Act (''FOIA''),[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, (202) 418–6056, *jsterling@cftc.gov;* Frank Fisanich, Chief Counsel, (202) 418–5949, *ffisanich@cftc.gov;* Amanda Olear, Associate Director, (202) 418–5283, *aolear@cftc.gov;* Rajal Patel, Associate Director, 202–418–5261, *rpatel@cftc.gov;* Lauren Bennett, Special Counsel, 202–418–5290, *lbennett@cftc.gov;* Jacob Chachkin, Special Counsel, (202) 418–5496, *jchachkin@cftc.gov;* Pamela Geraghty, Special Counsel, 202–418–5634, *pgeraghty@cftc.gov;* or Owen Kopon, Special Counsel, *okopon@cftc.gov,* 202–418–5360, Division of Swap Dealer and Intermediary Oversight (''DSIO''), Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

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[1] 5 U.S.C. 552.

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I. Background

A. Statutory Authority and Prior Commission Action

In 2010, the Dodd-Frank Act [3] amended the CEA [4] to, among other things, establish a new regulatory framework for swaps. Added in the wake of the 2008 financial crisis, the Dodd-Frank Act was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system. Given the global nature of the swap market, the Dodd-Frank Act amended the CEA by adding section 2(i) to provide that the swap provisions of the CEA enacted by Title VII of the Dodd-Frank Act (''Title VII''), including any rule prescribed or regulation promulgated under the CEA, shall not apply to activities outside the United States (''U.S.'') unless those activities have a direct and significant connection with activities in, or effect on, commerce of the United States, or they contravene Commission rules or regulations as are necessary or appropriate to prevent evasion of the swap provisions of the CEA enacted under Title VII.[5]

In May 2012, the CFTC and Securities and Exchange Commission (''SEC'') jointly issued an adopting release that, among other things, further defined and provided registration thresholds for SDs and MSPs in § 1.3 of the CFTC's regulations (''Entities Rule'').[6]

In July 2013, the Commission published interpretive guidance and a policy statement regarding the cross-border application of certain swap provisions of the CEA (''Guidance'').[7] The Guidance included the Commission's interpretation of the ''direct and significant'' prong of section 2(i) of the CEA.[8] In addition, the Guidance established a general, non-binding framework for the cross-border application of many substantive Dodd-Frank Act requirements, including registration and business conduct requirements for SDs and MSPs, as well as a process for making substituted compliance determinations. Given the complex and dynamic nature of the global swap market, the Guidance was intended as a flexible and efficient way to provide the Commission's views on cross-border issues raised by market participants, allowing the Commission to adapt in response to changes in the global regulatory and market landscape.[9] The Commission accordingly stated that it would review and modify its cross-border policies as the global swap market continued to evolve and consider codifying the cross-border application of the Dodd-Frank Act swap provisions in future rulemakings, as appropriate.[10] The Commission notes that, at the time that the Guidance was adopted, it was tasked with regulating a market that grew to a global scale without any meaningful regulation in the United States or overseas, and that the United States was the first of the G20 member countries to adopt most of the swap reforms agreed to at the G20 Pittsburgh Summit in 2009.[11] Developing a regulatory framework to fit that market necessarily requires adapting and responding to changes in the global market, including developments resulting from requirements imposed on market participants under the Dodd-Frank Act and the Commission's implementing regulations in the U.S., as well as those that have been imposed by non-U.S. regulatory authorities since the Guidance was issued.

On November 14, 2013, DSIO issued a staff advisory (''ANE Staff Advisory'') stating that a non-U.S. SD that regularly uses personnel or agents located in the United States to arrange, negotiate, or execute a swap with a non-U.S. person (''ANE Transactions'') would generally be required to comply with ''Transaction-Level Requirements,'' as the term was used in the Guidance (discussed in section VI.A).[12] On November 26, 2013, Commission staff issued certain no-action relief to non-U.S. SDs registered with the Commission from these requirements in connection with ANE Transactions (''ANE No-Action Relief'').[13] In January 2014, the Commission published a request for comment on all aspects of the ANE Staff Advisory (''ANE Request for Comment'').[14]

In May 2016, the Commission issued a final rule on the cross-border application of the Commission's margin requirements for uncleared swaps (''Cross-Border Margin Rule'').[15] Among other things, the Cross-Border Margin Rule addressed the availability of substituted compliance by outlining the circumstances under which certain SDs and MSPs could satisfy the Commission's margin requirements for uncleared swaps by complying with comparable foreign margin requirements. The Cross-Border Margin Rule also established a framework by which the Commission would assess whether a foreign jurisdiction's margin requirements are comparable.

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] 7 U.S.C. 1 *et seq.*

[5] 7 U.S.C. 2(i).

[6] *See* 17 CFR 1.3, ''Swap dealer'' and ''Major swap participant''; Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

[7] *See* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (Jul. 26, 2013).

[8] *Id.* at 45297–301. The Commission is now restating this interpretation, as discussed in section I.C below.

[9] *Id.* at 45297 n.39.

[10] *See id.*

[11] *See* G20 Leaders' Statement: The Pittsburgh Summit, A Framework for Strong, Sustainable, and Balanced Growth (Sep. 24–25, 2009), available at *https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[12] *See* CFTC Staff Advisory No. 13–69, Applicability of Transaction-Level Requirements to Activity in the United States (Nov. 14, 2013), available at *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-69.pdf.*

[13] CFTC Staff Letter No. 13–71, No-Action Relief: Certain Transaction-Level Requirements for Non-U.S. Swap Dealers (Nov. 26, 2013), available at *https://www.cftc.gov/csl/13-71/download.* Commission staff subsequently extended this relief in CFTC Letter Nos. 14–01, 14–74, 14–140, 15–48, 16–64, and 17–36. All Commission staff letters are available at *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm.*

[14] Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 FR 1347, 1348–49 (Jan. 8, 2014).

[15] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

In October 2016, the Commission proposed regulations regarding the cross-border application of certain requirements under the Dodd-Frank Act regulatory framework for SDs and MSPs (''2016 Proposal'').[16] The 2016 Proposal incorporated various aspects of the Cross-Border Margin Rule and addressed when U.S. and non-U.S. persons, such as foreign consolidated subsidiaries (''FCSs'') and non-U.S. persons whose swap obligations are guaranteed by a U.S. person, would be required to include swaps or swap positions in their SD or MSP registration threshold calculations, respectively.[17] The 2016 Proposal also addressed the extent to which SDs and MSPs would be required to comply with the Commission's business conduct standards governing their conduct with swap counterparties (''external business conduct standards'') in cross-border transactions.[18] In addition, the 2016 Proposal addressed ANE Transactions, including the types of activities that would constitute arranging, negotiating, and executing within the context of the 2016 Proposal, the treatment of such transactions with respect to the SD registration threshold, and the application of external business conduct standards with respect to such transactions.[19]

The Commission is today withdrawing the 2016 Proposal. The Proposed Rule reflects the Commission's current views on the matters addressed in the 2016 Proposal, which have evolved since the 2016 Proposal as a result of market and regulatory developments in the swap markets and in the interest of international comity, as discussed in this release.

B. Global Regulatory and Market Structure

The regulatory landscape is far different now than it was when the Dodd-Frank Act was enacted. Even when the CFTC published the Guidance in 2013, very few jurisdictions had made significant progress in implementing the global swap reforms to which the G20 leaders agreed at the Pittsburgh G20 Summit. Today, however, as a result of the cumulative implementation efforts by regulators throughout the world, significant progress has been made by regulators in the world's primary swap trading jurisdictions to implement the G20 commitments.[20] Since the enactment of the Dodd-Frank Act, regulators in a number of large developed markets have adopted regulatory regimes that are designed to mitigate systemic risks associated with a global swap market. Regulators have adopted rules regarding matters including central clearing, margin requirements for non-centrally cleared derivatives, and other risk mitigation requirements.[21]

Many swaps involve at least one counterparty that is located in the United States or another jurisdiction that has adopted comprehensive swap regulations.[22] However, conflicting and duplicative requirements between U.S. and foreign regimes can contribute to potential market inefficiencies and regulatory arbitrage, as well as competitive disparities that undermine the relative positions of U.S. SDs and their counterparties. This may result in market fragmentation, which can lead to significant inefficiencies that result in additional costs to end-users. Market fragmentation can reduce the capacity of financial firms to serve both domestic and international customers.[23] The Proposed Rule has been designed to support a cross-border framework that promotes the integrity, resilience, and vibrancy of the swap market while furthering the important policy goals of the Dodd-Frank Act. In that regard, giving due regard to how market practices have evolved since the publication of the Guidance is an important consideration. As certain market participants may have adjusted their practices to take the Guidance into account, the Proposed Rule, if adopted, should cause limited additional costs and burdens for these market participants if it is adopted, while supporting the continued operation of markets that are much more comprehensively regulated than they were before the Dodd-Frank Act and the actions of governments worldwide taken in response to the Pittsburgh G20 Summit.

The approach described below is informed by the Commission's understanding of current market practices of global financial institutions under the Guidance. Driven by business and regulatory reasons, a financial group that is active in the swap market often operates in multiple market centers around the world and carries out swap activity with geographically-diverse counterparties using a number of different operational structures.[24] From discussions with market participants, the Commission understands that financial groups typically prefer to operate their swap dealing businesses and manage swap portfolios in the jurisdiction where the swaps and the underlying assets have the deepest and most liquid markets. In operating their swap dealing businesses in these market centers, financial groups seek to take advantage of expertise in products traded in those centers and obtain access to greater liquidity. These arrangements permit them to price products more efficiently and compete more effectively in the global swap market, including in jurisdictions different from the market center in which the swap is traded.

In this sense, a global financial enterprise effectively operates as a single business, with a highly integrated network of business lines and services conducted through various branches or affiliated legal entities that are under the control of the parent entity.[25] Branches and affiliates in a global financial enterprise are highly interdependent, with separate entities in the group providing financial or credit support to each other, such as in the form of a guarantee or the ability to transfer risk

[16] Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 FR 71946 (proposed Oct. 18, 2016).

[17] *Id.* at 71947. As noted above, the SD and MSP registration thresholds are codified in the definitions of those terms at 17 CFR 1.3.

[18] *Id.* The Commission's external business conduct standards are codified in 17 CFR part 23, subpart H (17 CFR 23.400 through 23.451).

[19] *Id.*

[20] *See, e.g.,* Financial Stability Board (''FSB''), OTC Derivatives Market Reforms: 2019 Progress Report on Implementation (Oct. 15, 2019) (''2019 FSB Progress Report''), available at *https://www.fsb.org/wp-content/uploads/P151019.pdf;* and FSB, Implementation and Effects of the G20 Financial Regulatory Reforms: Fourth Annual Report (Nov. 28, 2018), available at *http://www.fsb.org/wp-content/uploads/P281118-1.pdf.*

[21] For example, at the end of September 2019, 16 FSB member jurisdictions had comprehensive swap margin requirements in force. *See* 2019 FSB Progress Report, at 2.

[22] *See, e.g.,* 2019 FSB Progress Report; and Bank of International Settlements (''BIS''), Triennial Central Bank Survey of Foreign Exchange and Over-the-counter Derivatives Markets in 2019 (Sep. 16, 2019), available at *https://www.bis.org/statistics/rpfx19.htm.*

[23] *See, e.g.,* Institute of International Finance, Addressing Market Fragmentation: The Need for Enhanced Global Regulatory Cooperation (Jan. 2019), available at *https://www.iif.com/Portals/0/Files/IIF%20FSB%20Fragmentation%20Report.pdf.*

[24] *See* BIS, Committee on the Global Financial System, No. 46, The macrofinancial implications of alternative configurations for access to central counterparties in OTC derivatives markets, at 1 (Nov. 2011), available at *http://www.bis.org/publ/cgfs46.pdf* (stating that ''[t]he configuration of access must take account of the globalised nature of the market, in which a significant proportion of OTC derivatives trading is undertaken across borders'').

[25] The largest U.S. banks have thousands of affiliated global entities, as shown in data from the National Information Center (''NIC''), a repository of financial data and institutional characteristics of banks and other institutions for which the Federal Reserve Board has a supervisory, regulatory, or research interest. *See* NIC, available at *https://www.ffiec.gov/npw.*

through inter-affiliate trades or other offsetting transactions. Even in the absence of an explicit arrangement or guarantee, a parent entity may, for reputational or other reasons, choose to assume the risk incurred by its affiliates, branches, or offices located overseas. Swaps are also traded by an entity in one jurisdiction, but booked and risk-managed by an affiliate in another jurisdiction. The Proposed Rule recognizes that these and similar arrangements among global financial enterprises create channels through which swap-related risks can have a direct and significant connection with activities in, or effect on, commerce of the United States.

C. Interpretation of CEA Section 2(i)

The Commission's interpretation of CEA section 2(i) in this release mirrors the approach that the Commission took in the Guidance. However, in light of the passage of time since the publication of the Guidance, the Commission is restating its interpretation of section 2(i) of the CEA with the Proposed Rule.

CEA section 2(i) provides that the swap provisions of Title VII shall not apply to activities outside the United States unless those activities—

- have a direct and significant connection with activities in, or effect on, commerce of the United States; or
- contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA that was enacted by the Dodd-Frank Act.

The Commission believes that section 2(i) provides it express authority over swap activities outside the United States when certain conditions are met, but it does not require the Commission to extend its reach to the outer bounds of that authorization. Rather, in exercising its authority with respect to swap activities outside the United States, the Commission will be guided by international comity principles and will focus its authority on potential significant risks to the U.S. financial system.

1. Statutory Analysis

In interpreting the phrase ''direct and significant,'' the Commission has examined the plain language of the statutory provision, similar language in other statutes with cross-border application, and the legislative history of section 2(i).

The statutory language in CEA section 2(i) is structured similarly to the statutory language in the Foreign Trade Antitrust Improvements Act of 1982 (''FTAIA''),[26] which provides the standard for the cross-border application of the Sherman Antitrust Act (''Sherman Act'').[27] The FTAIA, like CEA section 2(i), excludes certain non-U.S. commercial transactions from the reach of U.S. law. Specifically, the FTAIA provides that the antitrust provisions of the Sherman Act shall not apply to anti-competitive conduct involving trade or commerce with foreign nations.[28] However, like paragraph (1) of CEA section 2(i), the FTAIA also creates exceptions to the general exclusionary rule and thus brings back within antitrust coverage any conduct that: (1) Has a direct, substantial, and reasonably foreseeable effect on U.S. commerce;[29] and (2) such effect gives rise to a Sherman Act claim.[30] In *F. Hoffman-LaRoche, Ltd.* v. *Empagran S.A.,* the U.S. Supreme Court stated that ''this technical language initially lays down a general rule placing *all* (nonimport) activity involving foreign commerce outside the Sherman Act's reach. It then brings such conduct back within the Sherman Act's reach *provided that* the conduct *both* (1) sufficiently affects American commerce, *i.e.,* it has a 'direct, substantial, and reasonably foreseeable effect' on American domestic, import, or (certain) export commerce, *and* (2) has an effect of a kind that antitrust law considers harmful, *i.e.,* the 'effect' must 'giv[e] rise to a [Sherman Act] claim.' ''[31]

It is appropriate, therefore, to read section 2(i) of the CEA as a clear expression of congressional intent that the swap provisions of Title VII of the Dodd-Frank Act apply to activities beyond the borders of the United States when certain circumstances are present.[32] These circumstances include, pursuant to paragraph (1) of section 2(i), when activities outside the United States meet the statutory test of having a ''direct and significant connection with activities in, or effect on,'' U.S. commerce.

An examination of the language in the FTAIA, however, does not provide an unambiguous roadmap for the Commission in interpreting section 2(i) of the CEA because there are both similarities, and a number of significant differences, between the language in CEA section 2(i) and the language in the FTAIA. Further, the Supreme Court has not provided definitive guidance as to the meaning of the direct, substantial, and reasonably foreseeable test in the FTAIA, and the lower courts have interpreted the individual terms in the FTAIA differently.

Although a number of courts have interpreted the various terms in the FTAIA, only the term ''direct'' appears in both CEA section 2(i) and the FTAIA.[33] Relying upon the Supreme Court's definition of the term ''direct'' in the Foreign Sovereign Immunities Act (''FSIA''),[34] the U.S. Court of Appeals for the Ninth Circuit construed the term ''direct'' in the FTAIA as requiring a ''relationship of logical causation,''[35] such that ''an effect is 'direct' if it follows as an immediate consequence of the defendant's activity.''[36] However, in an en banc decision, *Minn-Chem, Inc.* v. *Agrium, Inc.,* the U.S. Court of Appeals for the Seventh Circuit held that ''the Ninth Circuit jumped too quickly on the assumption that the FSIA and the FTAIA use the word 'direct' in the same way.''[37] After examining the text of the FTAIA as well as its history and purpose, the Seventh Circuit found persuasive the ''other school of thought [that] has been articulated by the Department of Justice's Antitrust Division, which takes the position that, for FTAIA purposes, the term 'direct' means only 'a reasonably proximate causal nexus.' ''[38] The Seventh Circuit rejected interpretations of the term ''direct'' that included any requirement that the consequences be foreseeable, substantial, or immediate.[39] In 2014, the

[26] 15 U.S.C. 6a.

[27] 15 U.S.C. 1–7.

[28] 15 U.S.C. 6a.

[29] 15 U.S.C. 6a(1).

[30] 15 U.S.C. 6a(2).

[31] 542 U.S. 155, 162 (2004) (emphasis in original).

[32] *SIFMA* v. *CFTC,* 67 F.Supp.3d 373, 425–26 (D.D.C. 2014) (''The plain text of this provision 'clearly expresse[s]' Congress's 'affirmative intention' to give extraterritorial effect to Title VII's statutory requirements, as well as to the Title VII rules or regulations prescribed by the CFTC, whenever the provision's jurisdictional nexus is satisfied.''). *See also Prime Int'l Trading, Ltd.* v. *BP P.L.C.,* 937 F.3d 94, 103 (2d Cir. 2019) (stating that ''Section 2(i) contains, on its face, a 'clear statement,' *Morrison,* 561 U.S. at 265, 130 S.Ct. 2869, of extraterritorial application'' and describing it as ''an enumerated extraterritorial command'').

[33] Guidance, 78 FR at 45299.

[34] *See* 28 U.S.C. 1605(a)(2).

[35] *United States* v. *LSL Biotechnologies,* 379 F.3d 672, 693 (9th Cir. 2004). ''As a threshold matter, many courts have debated whether the FTAIA established a new jurisdictional standard or merely codified the standard applied in [*United States* v. *Aluminum Co. of Am.,* 148 F.2d 416 (2d Cir. 1945)] and its progeny. Several courts have raised this question without answering it. The Supreme Court did as much in [*Harford Fire Ins. Co.* v. *California,* 509 U.S. 764 (1993)].'' *Id.* at 678.

[36] *Id.* at 692–3, *quoting Republic of Argentina* v. *Weltover, Inc.,* 504 U.S. 607, 618 (1992) (providing that, pursuant to the FSIA, 28 U.S.C. 1605(a)(2), immunity does not extend to commercial conduct outside the United States that ''causes a direct effect in the United States'').

[37] *Minn-Chem, Inc.* v. *Agrium, Inc.,* 683 F.3d 845, 857 (7th Cir. 2012) (en banc).

[38] *Id.*

[39] *Id.* at 856–57.

U.S. Court of Appeals for the Second Circuit followed the reasoning of the Seventh Circuit in the *Minn-Chem* decision.[40] That said, the Commission would like to make clear that its interpretation of CEA section 2(i) is not reliant on the reasoning of any individual judicial decision, but instead is drawn from a holistic understanding of both the statutory text *and* legal analysis applied by courts to analogous statutes and circumstances. In short, as the discussion below will illustrate, the Commission's interpretation of section 2(i) is not solely dependent on one's view of the Seventh Circuit's *Minn-Chem* decision, but informed by its overall understanding of the relevant legal principles.

Other terms in the FTAIA differ from the terms used in section 2(i) of the CEA. First, the FTAIA test explicitly requires that the effect on U.S. commerce be a ''reasonably foreseeable'' result of the conduct,[41] whereas section 2(i) of the CEA, by contrast, does not provide that the effect on U.S. commerce must be foreseeable. Second, whereas the FTAIA solely relies on the ''effects'' on U.S. commerce to determine cross-border application of the Sherman Act, section 2(i) of the CEA refers to both ''effect'' and ''connection.'' ''The FTAIA says that the Sherman Act applies to foreign 'conduct' with a certain kind of harmful domestic effect.''[42] Section 2(i), by contrast, applies more broadly—not only to particular instances of conduct that have an effect on U.S. commerce, but also to activities that have a direct and significant ''connection with activities in'' U.S. commerce. Unlike the FTAIA, section 2(i) applies the swap provisions of the CEA to activities outside the United States that have the requisite connection with activities in U.S. commerce, regardless of whether a ''harmful domestic effect'' has occurred.

As the foregoing textual analysis of the relevant statutory language indicates, section 2(i) differs from its analogue in the antitrust laws. Congress delineated the cross-border scope of the Sherman Act in section 6a of the FTAIA as applying to conduct that has a ''direct'' and ''substantial'' and ''reasonably foreseeable'' ''effect'' on U.S. commerce. In section 2(i), on the other hand, Congress did not include a requirement that the effects or connections of the activities outside the United States be ''reasonably foreseeable'' for the Dodd-Frank Act swap provisions to apply. Further, Congress included language in section 2(i) to apply the Dodd-Frank Act swap provisions in circumstances in which there is a direct and significant connection with activities in U.S. commerce, regardless of whether there is an effect on U.S. commerce. The different words that Congress used in paragraph (1) of section 2(i), as compared to its closest statutory analogue in section 6a of the FTAIA, inform the Commission in construing the boundaries of its cross-border authority over swap activities under the CEA.[43] Accordingly, the Commission believes it is appropriate to interpret section 2(i) such that it applies to activities outside the United States in circumstances in addition to those that would be reached under the FTAIA standard.

One of the principal rationales for the Dodd-Frank Act was the need for a comprehensive scheme of systemic risk regulation. More particularly, a primary purpose of Title VII of the Dodd-Frank Act is to address risk to the U.S. financial system created by interconnections in the swap market.[44] Title VII of the Dodd-Frank Act gave the Commission new and broad authority to regulate the swap market to seek to address and mitigate risks arising from swap activities that could adversely affect the resiliency of the financial system in the future.

In global markets, the source of such risk is not confined to activities within U.S. borders. Due to the interconnectedness between firms, traders, and markets in the U.S. and abroad, a firm's failure, or trading losses overseas, can quickly spill over to the United States and affect activities in U.S. commerce and the stability of the U.S. financial system. Accordingly, Congress explicitly provided for cross-border application of Title VII to activities outside the United States that pose risks to the U.S. financial system.[45] Therefore, the Commission construes section 2(i) to apply the swap provisions of the CEA to activities outside the United States that have either: (1) A direct and significant effect on U.S. commerce; or, in the alternative, (2) a direct and significant connection with activities in U.S. commerce, and through such connection present the type of risks to the U.S. financial system and markets that Title VII directed the Commission to address. The Commission interprets section 2(i) in a manner consistent with the overall goals of the Dodd-Frank Act to reduce risks to the resiliency and integrity of the U.S. financial system arising from swap market activities.[46] Consistent with this

[40] *Lotes Co., Ltd.* v. *Hon Hai Precision Industry Co.,* 753 F.3d 395, 406–08 (2d Cir. 2014).

[41] *See, e.g., Animal Sciences Products.* v. *China Minmetals Corp.,* 654 F.3d 462, 471 (3d Cir. 2011) (''[T]he FTAIA's 'reasonably foreseeable' language imposes an objective standard: the requisite 'direct' and 'substantial' effect must have been 'foreseeable' to an objectively reasonable person.'').

[42] *Hoffman-LaRoche,* 452 U.S. at 173.

[43] The provision that ultimately became section 722(d) of the Dodd-Frank Act was added during consideration of the legislation in the House of Representatives. *See* 155 Cong. Rec. H14685 (Dec. 10, 2009). The version of what became Title VII that was reported by the House Agriculture Committee and the House Financial Services Committee did not include any provision addressing cross-border application. *See* 155 Cong. Rec. H14549 (Dec. 10, 2009). The Commission finds it significant that, in adding the cross-border provision before final passage, the House did so in terms that, as discussed in text, were different from, and broader than, the terms used in the analogous provision of the FTAIA.

[44] *Cf.* 156 Cong. Rec. S5818 (July 14, 2010) (statement of Sen. Lincoln) (''In 2008, our Nation's economy was on the brink of collapse. America was being held captive by a financial system that was so interconnected, so large, and so irresponsible that our economy and our way of life were about to be destroyed.''), available at *http://www.gpo.gov/fdsys/pkg/CREC-2010-07-14/pdf/CREC-2010-07-14.pdf;* 156 Cong. Rec. S5888 (July 15, 2010) (statement of Sen. Shaheen) (''We need to put in place reforms to stop Wall Street firms from growing so big and so interconnected that they can threaten our entire economy.''), available at *http://www.gpo.gov/fdsys/pkg/CREC-2010-07-15/pdf/CREC-2010-07-15-senate.pdf;* 156 Cong. Rec. S5905 (July 15, 2010) (statement of Sen. Stabenow) (''For too long the over-the-counter derivatives market has been unregulated, transferring risk between firms and creating a web of fragility in a system where entities became too interconnected to fail.''), available at *http://www.gpo.gov/fdsys/pkg/CREC-2010-07-15/pdf/CREC-2010-07-15-senate.pdf.*

[45] The legislative history of the Dodd-Frank Act shows that in the fall of 2009, neither the Over-the-Counter Derivatives Markets Act of 2009, H.R. 3795, 111th Cong. (1st Sess. 2009), reported by the Financial Services Committee chaired by Rep. Barney Frank, nor the Derivatives Markets Transparency and Accountability Act of 2009, H.R. 977, 111th Cong. (1st Sess. 2009), reported by the Agriculture Committee chaired by Rep. Collin Peterson, included a general territoriality limitation that would have restricted Commission regulation of transactions between two foreign persons located outside of the United States. During the House Financial Services Committee markup on October 14, 2009, Rep. Spencer Bachus offered an amendment that would have restricted the jurisdiction of the Commission over swaps between non-U.S. resident persons transacted without the use of the mails or any other means or instrumentality of interstate commerce. Chairman Frank opposed the amendment, noting that there may well be cases where non-U.S. residents are engaging in transactions that have an effect on the United States and that are insufficiently regulated internationally and that he would not want to prevent U.S. regulators from stepping in. Chairman Frank expressed his commitment to work with Rep. Bachus going forward, and Rep. Bachus withdrew the amendment. *See* H. Fin. Serv. Comm. Mark Up on Discussion Draft of the Over-the-Counter Derivatives Markets Act of 2009, 111th Cong., 1st Sess. (Oct. 14, 2009) (statements of Rep. Bachus and Rep. Frank), available at *http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=231922.*

[46] The Commission also notes that the Supreme Court has indicated that the FTAIA may be interpreted more broadly when the government is seeking to protect the public from anticompetitive conduct than when a private plaintiff brings suit.

overall interpretation, the Commission interprets the term ''direct'' in section 2(i) to require a reasonably proximate causal nexus, and not to require foreseeability, substantiality, or immediacy.

Further, the Commission does not read section 2(i) to require a transaction-by-transaction determination that a specific swap outside the United States has a direct and significant connection with activities in, or effect on, commerce of the United States to apply the swap provisions of the CEA to such transaction. Rather, it is the connection of swap activities, viewed as a class or in the aggregate, to activities in commerce of the United States that must be assessed to determine whether application of the CEA swap provisions is warranted.[47]

This conclusion is bolstered by similar interpretations of other federal statutes regulating interstate commerce. For example, the Supreme Court has long supported a similar ''aggregate effects'' approach when analyzing the reach of U.S. authority under the Commerce Clause.[48] For example, the Court phrased the holding in the seminal ''aggregate effects'' decision, *Wickard* v. *Filburn,*[49] in this way: ''[The farmer's] decision, when considered in the aggregate along with similar decisions of others, would have had a substantial effect on the interstate market for wheat.'' [50] In another relevant decision, *Gonzales* v *Raich,*[51] the Court adopted similar reasoning to uphold the application of the Controlled Substance Act [52] to prohibit the intrastate use of medical marijuana for medicinal purposes. In *Raich,* the Court held that Congress could regulate purely intrastate activity if the failure to do so would ''leave a gaping hole'' in the federal regulatory structure. These cases support the Commission's cross-border authority over swap activities that as a class, or in the aggregate, have a direct and significant connection with activities in, or effect on, U.S. commerce—whether or not an individual swap may satisfy the statutory standard.[53]

2. Principles of International Comity

Principles of international comity counsel the government in one country to act reasonably in exercising its jurisdiction with respect to activity that takes place in another country. Statutes should be construed to ''avoid unreasonable interference with the sovereign authority of other nations.'' [54] This rule of construction ''reflects customary principles of international law'' and ''helps the potentially conflicting laws of different nations work together in harmony—a harmony particularly needed in today's highly interdependent commercial world.'' [55]

The Restatement (Third) of Foreign Relations Law of the United States,[56] together with the Restatement (Fourth) of Foreign Relations Law of the United States [57] (collectively, the ''Restatement''), provides that a country has jurisdiction to prescribe law with respect to ''conduct outside its territory that has or is intended to have substantial effect within its territory.'' [58] The Restatement also provides that even where a country has a basis for extraterritorial jurisdiction, it should not prescribe law with respect to a person or activity in another country when the exercise of such jurisdiction is unreasonable.[59]

As a general matter, the Fourth Restatement has indicated that the concept of reasonableness as it relates to foreign relations law is ''a principle of statutory interpretation'' that ''operates in conjunction with other principles of statutory interpretation.'' [60] More specifically, the Fourth Restatement characterizes the inquiry into the reasonableness of exercising extraterritorial jurisdiction as an examination into whether ''a genuine connection exists between the state seeking to regulate and the persons, property, or conduct being regulated.'' [61] The Restatement explicitly indicates that the ''genuine connection'' between the state and the person, property, or conduct to be regulated can derive from the effects of the particular conduct or activities in question.[62]

Consistent with the Restatement, the Commission has carefully considered, among other things, the level of the foreign jurisdiction's supervisory interests over the subject activity and the extent to which the activity takes place within the foreign territory. In doing so, the Commission has strived to minimize conflicts with the laws of other jurisdictions while seeking, pursuant to section 2(i), to apply the swaps requirements of Title VII to activities outside the United States that have a direct and significant connection with activities in, or effect on, U.S. commerce.

The Commission believes the Proposed Rule strikes an appropriate balance between these competing factors to ensure that the Commission can discharge its responsibilities to protect the U.S. markets, market participants, and financial system,

See Hoffman-LaRoche, 452 U.S. at 170 (''A Government plaintiff, unlike a private plaintiff, must seek to obtain the relief necessary to protect the public from further anticompetitive conduct and to redress anticompetitive harm. And a Government plaintiff has legal authority broad enough to allow it to carry out its mission.'').

[47] The Commission believes this interpretation is supported by Congress's use of the plural term ''activities'' in CEA section 2(i), rather than the singular term ''activity.'' The Commission believes it is reasonable to interpret the use of the plural term ''activities'' in section 2(i) to require not that each particular activity have the requisite connection with U.S. commerce, but rather that such activities in the aggregate, or a class of activity, have the requisite nexus with U.S. commerce. This interpretation is consistent with the overall objectives of Title VII, as described above. Further, the Commission believes that a swap-by-swap approach to jurisdiction would be ''too complex to prove workable.'' *See Hoffman-LaRoche,* 542 U.S. at 168.

[48] *Nat'l Fed'n of Indep. Bus.* v. *Sebelius,* 567 U.S. 519 (2012).

[49] 317 U.S. 111 (1942).

[50] 567 U.S. at 552–53. At issue in *Wickard* was the regulation of a farmer's production and use of wheat even though the wheat was ''not intended in any part for commerce but wholly for consumption on the farm.'' 317 U.S. at 118. The Supreme Court upheld the application of the regulation, stating that although the farmer's ''own contribution to the demand for wheat may be trivial by itself,'' the federal regulation could be applied when his contribution ''taken together with that of many others similarly situated, is far from trivial.'' *Id.* at 128–29. The Court also stated it had ''no doubt that Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose . . . .'' *Id.*

[51] 545 U.S. 1 (2005).

[52] 21 U.S.C. 801 *et seq.*

[53] In *Sebelius,* the Court stated in dicta, ''Where the class of activities is regulated, and that class is within the reach of federal power, the courts have no power to excise, as trivial, individual instances of the class.'' 567 U.S. at 551 (*quoting Perez* v. *United States,* 402 U.S. 146, 154 (1971)). *See also Taylor* v. *U.S.*136 S. Ct. 2074, 2079 (2016) (''[A]ctivities . . . that ''substantially affect'' commerce . . . may be regulated so long as they substantially affect interstate commerce in the aggregate, even if their individual impact on interstate commerce is minimal.'')

[54] *Hoffman-LaRoche,* 542 U.S. at 164.

[55] *Id.* at 165.

[56] Restatement (Third) section 402 cmt. d (1987).

[57] Julian Ku, American Law Institute Approves First Portions of Restatement on Foreign Relations Law (Fourth), OpinioJuris.com, May 22, 2017, *http://opiniojuris.org/2017/05/22/american-law-institute-approves-first-portions-of-restatement-on-foreign-relations-law-fourth/;* Jennifer Morinigo, U.S. Foreign Relations Law, Jurisdiction Approved, ALI Adviser, May 22, 2017, *http://www.thealiadviser.org/us-foreign-relations-law/jurisdiction-approved/;* Restatement (Fourth) of Foreign Relations Law Intro. (Westlaw 2018) (explaining that ''this is only a partial revision'' of the Third Restatement).

[58] Restatement (Fourth) section 409 (Westlaw 2018).

[59] Restatement (Fourth) section 405 cmt. a (Westlaw 2018); *see id.* at section 407 Reporters' Note 3 (''Reasonableness, in the sense of showing a genuine connection, is an important touchstone for determining whether an exercise of jurisdiction is permissible under international law.'').

[60] *Id.* at section 405 cmt. a.

[61] *Id.* at section 407 cmt. a; *see id.* at section 407 Reporters' Note 3.

[62] *Id.* at section 407.

consistent with international comity, as set forth in the Restatement. Of particular relevance is the Commission's approach to substituted compliance in the Proposed Rule, which would mitigate burdens associated with potentially conflicting foreign laws and regulations in light of the supervisory interests of foreign regulators in entities domiciled and operating in their own jurisdictions.

D. Proposed Rule

The Proposed Rule addresses which cross-border swaps or swap positions a person would need to consider when determining whether it needs to register with the Commission as an SD or MSP, as well as related classifications of swap market participants and swaps (*e.g.,* U.S. person, foreign branch, swap conducted through a foreign branch).[63] Further, the Commission is proposing exceptions from, and a substituted compliance process for, certain regulations applicable to registered SDs and MSPs. The Proposed Rule also would create a framework for comparability determinations for such regulations that emphasizes a holistic, outcomes-based approach that is grounded in principles of international comity. Finally, the Proposed Rule would require SDs and MSPs to create a record of their compliance with the Proposed Rule and to retain such records in accordance with § 23.203.[64] If adopted, the Proposed Rule would supersede the Commission's policy views with respect to its interpretation of section 2(i) of the CEA and the covered swap provisions, as set forth in the Guidance.[65] The Proposed Rule would not supersede the Commission's policy views as stated in the Guidance or elsewhere with respect to any other matters.

The Proposed Rule takes into account the Commission's experience implementing the Dodd-Frank Act reforms, including its experience with the Guidance and the Cross-Border Margin Rule, comments submitted in connection with the ANE Request for Comment, as well as discussions that the Commission and its staff have had with market participants, other domestic[66] and foreign regulators, and other interested parties. It is essential that a cross-border framework recognize the global nature of the swap market and the supervisory interests of foreign regulators with respect to entities and transactions covered by the Commission's swap regime.[67] In determining the extent to which the Dodd-Frank Act swap provisions addressed by the Proposed Rule would apply to activities outside the United States, the Commission has strived to protect U.S. interests as contemplated by Congress in Title VII, and minimize conflicts with the laws of other jurisdictions. The Commission has carefully considered, among other things, the level of a home jurisdiction's supervisory interests over the subject activity and the extent to which the activity takes place within the home country's territory.[68] At the same time, the Commission has also considered the potential for cross-border activities to have a significant connection with activities in, or effect on, commerce of the United States, as well as the global, highly integrated nature of today's swap markets. To fulfill the purposes of the Dodd-Frank Act swap reform, the Commission's supervisory oversight cannot be confined to activities strictly within the territory of the United States. In exercising its supervisory oversight outside the United States, however, the Commission will do so only as necessary to address risk to the resiliency and integrity of the U.S. financial system.[69] The Commission will also strive to show deference to non-U.S. regulation when such regulation achieves comparable outcomes to mitigate unnecessary conflict with effective non-U.S. regulatory frameworks and limit fragmentation of the global marketplace.

The Commission has also sought to target those classes of entities whose activities—due to the nature of their relationship with a U.S. person or U.S. commerce—most clearly present the risks addressed by the Dodd-Frank Act provisions, and related regulations covered by the Proposed Rule. The Proposed Rule is designed to limit opportunities for regulatory arbitrage by applying the registration thresholds in a consistent manner to differing organizational structures that serve similar economic functions or have similar economic effects. At the same time, the Commission is mindful of the impact of its choices on market efficiency and competition, as well as the importance of international comity when exercising the Commission's authority. The Commission believes that the Proposed Rule reflects a measured approach that advances the goals underlying SD and MSP regulation, consistent with the Commission's statutory authority, while mitigating market distortions and inefficiencies, and avoiding fragmentation.

II. Key Definitions

The Commission is proposing to define certain terms for the purpose of applying the Dodd-Frank Act swap provisions addressed by the Proposed Rule to cross-border transactions. If adopted, certain of these definitions would be relevant in assessing whether a person's activities have the requisite ''direct and significant'' connection with activities in, or effect on, U.S. commerce within the meaning of CEA section 2(i). Specifically, the definitions would be relevant in determining whether certain swaps or swap positions would need to be counted toward a person's SD or MSP threshold and in addressing the cross-border application of certain Dodd-Frank Act requirements (as discussed below in sections III through VI).

The Commission acknowledges that the information necessary for a swap counterparty to accurately assess whether its counterparty or a specific swap meet one or more of the definitions discussed below may be unavailable, or available only through overly burdensome due diligence. For this reason, the Commission believes that a market participant should generally be permitted to reasonably rely on written counterparty representations in each of these

[63] There were no MSPs registered with the Commission as of the date of the Proposed Rule.

[64] *See* Proposed § 23.23(h).

[65] The Commission notes that, if adopted, the Proposed Rule would also cause the Commission's Title VII requirements addressed in section VI of this release to become ''Addressed Transaction-Level Requirements'' under the terms of CFTC Staff Letter No. 17–36, Extension of No-Action Relief: Transaction-Level Requirements for Non-U.S. Swap Dealers (July 25, 2017), available at *https://www.cftc.gov/csl/17-36/download,* such that relief for such requirements would no longer be available under that letter. The treatment of the Commission's other Title VII Requirements under the letter would not be affected by the finalization of the Proposed Rule.

[66] The Commission notes that it has consulted with the Securities and Exchange Commission (''SEC'') and prudential regulators regarding the Proposed Rule, as required by section 712(a)(1) of the Dodd-Frank Act for the purposes of assuring regulatory consistency and comparability, to the extent possible. Dodd-Frank Act, Public Law 111–203, section 712(a)(1); 15 U.S.C. 8302(a)(1). SEC staff was consulted to increase understanding of each other's regulatory approaches and to harmonize the cross-border approaches of the two agencies to the extent possible, consistent with their respective statutory mandates. As noted in the Entities Rule, the CFTC and SEC intended to address the cross-border application of Title VII in separate releases. *See* Entities Rule, 77 FR at 30628 n.407.

[67] As discussed above, in developing the Proposed Rule, the Commission is guided by principles of international comity, which counsels due regard for the important interests of foreign sovereigns. *See* Restatement.

[68] The terms ''home jurisdiction'' or ''home country'' are used interchangeably in this release and refer to the jurisdiction in which the person or entity is established, including the European Union.

[69] *See supra* section I.C.

respects.[70] Therefore, proposed § 23.23(a) states that a person may rely on a written representation from its counterparty that the counterparty does or does not satisfy the criteria for one or more of the definitions below, unless such person knows or has reason to know that the representation is not accurate. For the purposes of this rule a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate. The Commission notes that this is consistent with: (1) The reliance standard articulated in the Commission's external business conduct rules;[71] (2) the Commission's approach in the Cross-Border Margin Rule;[72] and (3) the reliance standard articulated in the ''U.S. person'' and ''transaction conducted through a foreign branch'' definitions adopted by the SEC in its rule addressing the regulation of cross-border securities-based swap activities (''SEC Cross-Border Rule'').[73]

A. U.S. Person, Non-U.S. Person, and United States

Under the Proposed Rule, a ''U.S. person'' would be defined as set forth below, consistent with the definition of ''U.S. person'' adopted by the SEC in the context of its regulations regarding cross-border securities-based swap activities.[74] The Commission believes that such harmonization is appropriate, given that some firms may register both as SDs with the Commission and as security-based swap dealers with the SEC. The proposed definition of ''U.S. person'' also is consistent with the Commission's statutory mandate under the CEA, and in this regard is largely consistent with the definition of ''U.S. person'' in the Cross-Border Margin Rule:[75]

(1) A natural person resident in the United States;[76]

(2) A partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States;[77]

(3) An account (whether discretionary or non-discretionary) of a U.S. person;[78] or

(4) An estate of a decedent who was a resident of the United States at the time of death.[79]

The Commission believes that this definition offers a clear, objective basis for determining which individuals or entities should be identified as U.S. persons for purposes of the swap requirements addressed by the Proposed Rule. Specifically, the various prongs, as discussed in more detail below, are intended to identify persons whose activities have a significant nexus to the United States by virtue of their organization or domicile in the United States. In addition, harmonizing with the definition in the SEC Cross-Border Rule is not only consistent with section 2(i) of the CEA,[80] but is expected to reduce undue compliance costs for market participants. As discussed below, the Commission is also of the view that the ''U.S. person'' definition in the Cross-Border Margin Rule would largely encompass the same universe of persons as the definition used in the SEC Cross-Border Rule and the Proposed Rule.[81]

Proposed § 23.23(a)(22)(i) identifies certain persons as a ''U.S. person'' by virtue of their domicile or organization within the United States. The Commission has traditionally looked to where a legal entity is organized or incorporated (or in the case of a natural person, where he or she resides) to determine whether it is a U.S. person.[82] In the Commission's view, these persons—by virtue of their decision to organize or locate in the United States and because they are likely to have significant financial and legal relationships in the United States—are appropriately included within the definition of ''U.S. person.''

More specifically, proposed §§ 23.23(a)(22)(i)(*1*) and (*2*) generally incorporate a ''territorial'' concept of a U.S. person. That is, these are natural persons and legal entities that are physically located or incorporated within U.S. territory, and thus are subject to the Commission's jurisdiction. Further, the Commission would generally consider swap activities where such persons are counterparties, as a class and in the aggregate, as satisfying the ''direct and significant'' test under CEA section 2(i). Consistent with the ''U.S. person'' definition in the Cross-Border Margin Rule[83] and the SEC Cross-Border Rule,[84] the definition encompasses both foreign and domestic branches of an entity. As discussed below, a branch does not have a legal identity apart from its principal entity.

In addition, the Commission is of the view that proposed § 23.23(a)(22)(i)(*2*) subsumes the pension fund prong of the ''U.S. person'' definition in the Cross-Border Margin Rule.[85] Specifically, § 23.23(a)(22)(i)(*2*) would also include in the definition of the term ''U.S. person'' pension plans for the employees, officers, or principals of a legal entity described in § 23.23(a)(22)(i)(*2*). Although the SEC Cross-Border Rule directly addresses pension funds only in the context of international financial institutions, discussed below, the Commission believes it is important to clarify that pension funds in other contexts could meet the requirements of proposed § 23.23(a)(22)(i)(*2*).

Finally, the Commission is of the view that proposed § 23.23(a)(22)(i)(*2*) subsumes the trust prong of the ''U.S. person'' definition in the Cross-Border

[70] *See* Cross-Border Margin Rule, 81 FR at 34827; Guidance, 78 FR at 45315.

[71] *See* 17 CFR 23.402(d).

[72] *See* Cross-Border Margin Rule, 81 FR at 34827.

[73] *See* 17 CFR 240.3a71–3(a)(3)(ii) & (4)(iv); Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities; Republication, 79 FR 47278, 47313 (Aug. 12, 2014).

[74] *See* 17 CFR 240.3a71–3(a)(4). *See also* SEC Cross-Border Rule, 79 FR at 47303–13.

[75] *See* 17 CFR 23.160(a)(10). *See also* Cross-Border Margin Rule, 81 FR at 34821–24.

[76] Proposed § 23.23(a)(22)(i)(*1*).

[77] Proposed § 23.23(a)(22)(i)(*2*).

[78] Proposed § 23.23(a)(22)(i)(*3*).

[79] Proposed § 23.23(a)(22)(i)(*4*).

[80] Harmonizing the Commission's definition of ''U.S. person'' with the definition in the SEC Cross-Border Rule also is consistent with the dictate in section 712(a)(7) of the Dodd-Frank Act that the CFTC and SEC ''treat functionally or economically similar'' SDs, MSPs, security-based swap dealers, and major security-based swap participants ''in a similar manner.'' Dodd Frank Act, Public Law 111–203, section 712(a)(7)(A); 15 U.S.C. 8307(a)(7)(A).

[81] *See* Cross-Border Margin Rule, 81 FR at 34824 (''The Commission notes that, as discussed in the proposed rule, the Final Rule defines 'U.S. person' in a manner that is substantially similar to the definition used by the SEC in the context of cross-border regulation of security-based swaps.'') As noted below, the Commission also requests comment on whether it should instead adopt the ''U.S. person'' definition in the Cross-Border Margin Rule.

[82] *See id.* at 34823. *See also* 17 CFR 4.7(a)(1)(iv) (defining ''Non-United States person'' for purposes of part 4 of the Commission regulations relating to commodity pool operators).

[83] *See* 17 CFR 23.160(a)(10)(iii) (U.S. person includes a corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of entity similar to any of the foregoing (other than an entity described in paragraph (a)(10)(iv) or (v) of this section) (a legal entity), in each case that is organized or incorporated under the laws of the United States or that has its principal place of business in the United States, *including any branch of such legal entity*) (emphasis added).

[84] *See* SEC Cross-Border Rule, 79 FR at 47308 (''[T]he final definition determines a legal person's status at the entity level and thus applies to the entire legal person, including any foreign operations that are part of the U.S. legal person. Consistent with this approach, a foreign branch, agency, or office of a U.S. person is treated as part of a U.S. person, as it lacks the legal independence to be considered a non-U.S. person for purposes of Title VII even if its head office is physically located within the United States.'').

[85] *See* 17 CFR 23.160(a)(10)(iv).

Margin Rule.[86] With respect to trusts addressed in proposed § 23.23(a)(22)(i)(*2*), the Commission expects that its approach would be consistent with the manner in which trusts are treated for other purposes under the law. The Commission has considered that each trust is governed by the laws of a particular jurisdiction, which may depend on steps taken when the trust was created or other circumstances surrounding the trust. The Commission believes that if a trust is governed by U.S. law (*i.e.,* the law of a state or other jurisdiction in the United States), then it would generally be reasonable to treat the trust as a U.S. person for purposes of the Proposed Rule. Another relevant element in this regard would be whether a court within the United States is able to exercise primary supervision over the administration of the trust. The Commission expects that this aspect of the definition would generally align the treatment of the trust for purposes of the Proposed Rule with how the trust is treated for other legal purposes. For example, the Commission expects that if a person could bring suit against the trustee for breach of fiduciary duty in a U.S. court (and, as noted above, the trust is governed by U.S. law), then treating the trust as a U.S. person would generally be consistent with its treatment for other purposes.

As noted in the Cross-Border Margin Rule,[87] and consistent with the SEC[88] definition of ''U.S. person,'' proposed § 23.23(a)(22)(ii) provides that the principal place of business means the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. With the exception of externally managed entities, as discussed below, the Commission is of the view that for most entities, the location of these officers, partners, or managers generally would correspond to the location of the person's headquarters or main office. However, the Commission believes that a definition that focuses exclusively on whether a legal person is organized, incorporated, or established in the United States could encourage some entities to move their place of incorporation to a non-U.S. jurisdiction to avoid complying with the relevant Dodd-Frank Act requirements, while maintaining their principal place of business—and therefore, risks arising from their swap transactions—in the United States. Moreover, a ''U.S. person'' definition that does not include a ''principal place of business'' element could result in certain entities falling outside the scope of the relevant Dodd-Frank Act-related requirements, even though the nature of their legal and financial relationships in the United States is, as a general matter, indistinguishable from that of entities incorporated, organized, or established in the United States. Therefore, the Commission is of the view that it is appropriate to treat such entities as U.S. persons for purposes of the Proposed Rule.[89]

However, determining the principal place of business of a collective investment vehicle (''CIV''), such as an investment fund or commodity pool, may require consideration of additional factors beyond those applicable to operating companies. The Commission is of the view that with respect to an externally managed investment vehicle, this location is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle.[90] This interpretation is consistent with the Supreme Court's decision in *Hertz Corp.* v. *Friend,* which described a corporation's principal place of business, for purposes of diversity jurisdiction, as the ''place where the corporation's high level officers direct, control, and coordinate the corporation's activities.'' [91] In the case of a CIV, the senior personnel that direct, control, and coordinate a CIV's activities are generally not the named directors or officers of the CIV, but rather persons employed by the CIV's investment advisor or promoter, or in the case of a commodity pool, its commodity pool operator. Therefore, consistent with the SEC Cross-Border Rule,[92] when a primary manager is responsible for directing, controlling, and coordinating the overall activity of a CIV, the CIV's principal place of business under the proposed rule would be the location from which the manager carries out those responsibilities.

The Commission notes that under the Cross-Border Margin Rule,[93] the Commission would generally consider the principal place of business of a CIV to be in the United States if the senior personnel responsible for either: (1) The formation and promotion of the CIV; or (2) the implementation of the CIV's investment strategy are located in the United States, depending on the facts and circumstances that are relevant to determining the center of direction, control, and coordination of the CIV. Although the second prong of that discussion is consistent with the approach discussed above, the Commission does not believe that activities such as formation of the CIV, absent an ongoing role by the person performing those activities in directing, controlling, and coordinating the investment activities of the CIV, generally will be as indicative of activities, financial and legal relationships, and risks within the United States of the type that Title VII is intended to address as the location of a CIV manager.

With respect to proposed § 23.23(a)(22)(i)(*4*), the Commission believes that the swaps of a decedent's estate should generally be treated the same as the swaps entered into by the decedent during their life.[94] If the decedent was a party to any swaps at the time of death, then those swaps should generally continue to be treated in the same way after the decedent's death, at which time the swaps would most likely pass to the decedent's estate. Also, the Commission expects that this prong will be predictable and straightforward to apply for natural persons planning for how their swaps will be treated after death, for executors and administrators of estates, and for the swap counterparties to natural persons and estates.

Proposed § 23.23(a)(22)(i)(*3*) is intended to ensure that persons described in prongs (*1*), (*2*), and (*4*) of the definition would be treated as U.S. persons even if they use discretionary or non-discretionary accounts to enter into swaps, irrespective of whether the person at which the account is held or maintained is a U.S. person. Consistent with the Cross-Border Margin Rule, the Commission is of the view that this prong would apply for individual or joint accounts.[95]

Unlike the Cross-Border Margin Rule, the proposed definition of ''U.S. person'' would not include certain legal entities that are owned by one or more U.S. person(s) and for which such person(s) bear unlimited responsibility for the obligations and liabilities of the legal entity (''unlimited U.S. responsibility prong'').[96] This prong was

[86] *See* 17 CFR 23.160(a)(10)(v).

[87] Cross-Border Margin Rule, 81 FR at 34823.

[88] 17 CFR 240.3a71–3(a)(4)(ii).

[89] *See* SEC Cross-Border Rule, 79 FR at 47309.

[90] Proposed § 23.23(a)(22)(ii).

[91] *See* 559 U.S. 77, 80 (2010); Cross-Border Margin Rule, 81 FR at 34823.

[92] *See* SEC Cross-Border Rule, 79 FR at 47310–11.

[93] *See* Cross-Border Margin Rule, 81 FR at 34823. This is also generally consistent with the views expressed in the Guidance. *See* Guidance, 78 FR at 45309–12.

[94] The Commission expects that relatively few estates would enter into swaps, and those that do would likely do so for hedging purposes.

[95] *See* 17 CFR 23.160(a)(10)(vii).

[96] *See* 17 CFR 23.160(a)(10)(vi); Cross-Border Margin Rule, 81 FR at 34823–24. The Guidance

designed to capture persons that could give rise to risk to the U.S. financial system in the same manner as with non-U.S. persons whose swap transactions are subject to explicit financial support arrangements from U.S. persons. Rather than including this prong in its ''U.S. person'' definition, the SEC took the view that when a non-U.S. person's counterparty has recourse to a U.S. person for the performance of the non-U.S. person's obligations under a security-based swap by virtue of the U.S. person's unlimited responsibility for the non-U.S. person, the non-U.S. person would be required to include the security-based swap in its security-based swap dealer (if it is a dealing security-based swap) and major security-based swap participant threshold calculations as a guarantee.[97] However, as discussed in the Cross-Border Margin Rule, the Commission does not view the unlimited U.S. responsibility prong as equivalent to a U.S. guarantee because a guarantee does not necessarily provide for unlimited responsibility for the obligations and liabilities of the guaranteed entity in the same sense that the owner of an unlimited liability corporation bears such unlimited liability.[98]

The Commission is declining at this time to revisit its interpretation of ''guarantee,'' discussed below, and is not including an ''unlimited U.S. responsibility prong'' in the ''U.S. person'' definition in the Proposed Rule. The Commission is of the view that the corporate structure that this prong is designed to capture is not one that is commonly in use in the marketplace. As noted below, the Commission requests comments on whether this understanding is correct, and if not, whether the Commission should add this prong to the proposed ''U.S. person'' definition or reassess its proposed interpretation of a ''guarantee.'' In addition, the Commission notes that the treatment of the unlimited U.S. liability prong in the Proposed Rule would not impact an entity's obligations with respect to the Cross-Border Margin Rule. To the extent that entities are considered U.S. persons for purposes of the Cross-Border Margin Rule as a result of the unlimited U.S. liability prong, the Commission believes that the different purpose of the registration-related rules justifies this potentially different treatment.

The proposed ''U.S. person'' definition is generally consistent with the ''U.S. person'' interpretation set forth in the Guidance, with certain exceptions.[99] As noted above,[100] the Cross-Border Margin Rule and the Guidance incorporated a version of the unlimited U.S. responsibility prong in the U.S. person definition. In addition, consistent with the definition of ''U.S. person'' in the Cross-Border Margin Rule [101] and the SEC Cross-Border Rule,[102] the proposed definition does not include a commodity pool, pooled account, investment fund, or other CIV that is majority-owned by one or more U.S. persons.[103] Similar to the SEC, the Commission is of the view that including majority-owned CIVs within the definition of ''U.S. person'' for the purposes of the Proposed Rule would be likely to cause more CIVs to incur additional programmatic costs associated with the relevant Title VII requirements and ongoing assessments, while not significantly increasing programmatic benefits given that the composition of a CIV's beneficial owners is not likely to have significant bearing on the degree of risk that the CIV's swap activity poses to the U.S. financial system.[104] Although many of these CIVs have U.S. participants that could be adversely impacted in the event of a counterparty default, systemic risk concerns are mitigated to the extent these collective investment vehicles would be subject to margin requirements in foreign jurisdictions. In addition, the exposure of participants to losses in CIVs is typically limited to their investment amount, and it is unlikely that a participant in a CIV would make counterparties whole in the event of a default.[105] Further, the Commission continues to believe that identifying and tracking a CIV's beneficial ownership may pose a significant challenge in certain circumstances (*e.g.,* fund-of-funds or master-feeder structures).[106] Therefore, although the U.S. participants in such CIVs may be adversely impacted in the event of a counterparty default, the Commission believes that, on balance, the majority-ownership test should not be included in the proposed definition of U.S. person. Note that a CIV fitting within the majority U.S. ownership prong may also be a U.S. person within the scope of § 23.23(a)(22)(i)(*2*) of the Proposed Rule (entities organized or having a principal place of business in the United States). As the Commission clarified in the Cross-Border Margin Rule, whether a pool, fund, or other CIV is publicly offered only to non-U.S. persons and not offered to U.S. persons would not be relevant in determining whether it falls within the scope of the proposed U.S. person definition.[107]

Unlike the non-exhaustive ''U.S. person'' definition provided in the Guidance, the proposed definition of ''U.S. person'' is limited to persons enumerated in the rule, consistent with the Cross-Border Margin Rule and the SEC Cross-Border Rule.[108] The Commission believes that the proposed prongs discussed above would capture those persons with sufficient jurisdictional nexus to the financial system and commerce in the United States that they should be categorized as ''U.S. persons'' pursuant to the Proposed Rule.

Further, in consideration of the discretionary and appropriate exercise of international comity-based doctrines, proposed § 23.23(a)(22)(iii) states that the term ''U.S. person'' would not include international financial institutions, as defined below. Specifically, consistent with the SEC's definition,[109] the term U.S. person would not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies, and pension plans. The Commission believes that although foreign entities are not necessarily immune from U.S. jurisdiction for commercial activities undertaken with

included a similar concept in the definition of the term ''U.S. person.'' However, the definition contained in the Guidance would generally characterize a legal entity as a U.S. person if the entity were ''directly or indirectly majority-owned'' by one or more persons falling within the term ''U.S. person'' and such U.S. person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity. *See* Guidance, 78 FR at 45312–13 (discussing the unlimited U.S. responsibility prong for purposes of the Guidance).

[97] *See* SEC Cross-Border Rule, 79 FR at 47308 n.255, 47316–17.

[98] *See* Cross-Border Margin Rule, 81 FR at 34823 n.60.

[99] *See* Guidance, 78 FR at 45308–17 (setting forth the interpretation of ''U.S. person'' for purposes of the Guidance).

[100] *See supra* note 96.

[101] *See* Cross-Border Margin Rule, 81 FR at 34824.

[102] *See* SEC Cross-Border Rule, 79 FR at 47311, 47337.

[103] *See* Guidance, 78 FR at 45313–14 (discussing the U.S. majority-ownership prong for purposes of the Guidance and interpreting ''majority-owned'' in this context to mean the beneficial ownership of more than 50 percent of the equity or voting interests in the collective investment vehicle).

[104] *See* SEC Cross-Border Rule, 79 FR at 47337.

[105] *See id.* at 47311.

[106] *See* Cross-Border Margin Rule, 81 FR at 34824.

[107] *See id.* at 81 FR at 34824 n.62.

[108] *See* Cross-Border Margin Rule, 81 FR at 34824; Guidance, 78 FR at 45316 (discussing the inclusion of the prefatory phrase ''include, but not be limited to'' in the interpretation of ''U.S. person'' in the Guidance).

[109] 17 CFR 240.3a71–3(a)(4)(iii).

U.S. counterparties or in U.S. markets, the sovereign or international status of such international financial institutions that themselves participate in the swap markets in a commercial manner is relevant in determining whether such entities should be treated as U.S. persons, regardless of whether any of the prongs of the proposed definition would apply.[110] There is nothing in the text or history of the swap-related provisions of Title VII to suggest that Congress intended to deviate from the traditions of the international system by including such international financial institutions within the definitions of the term ''U.S. person.'' [111]

Consistent with the Entities Rule and the Guidance, the Commission is of the view that the term ''international financial institutions'' includes the ''international financial institutions'' that are defined in 22 U.S.C. 262r(c)(2) and institutions defined as ''multilateral development banks'' in the European Union's regulation on ''OTC derivatives, central counterparties and trade repositories.'' [112] Reference to 22 U.S.C. 262r(c)(2) and the European Union definition is consistent with Commission precedent in the Entities Rule.[113] The Commission continues to believe that both of those definitions identify many of the entities for which discretionary and appropriate exercise of international comity-based doctrines is appropriate with respect to the ''U.S. person'' definition.[114] The Commission is of the view that this prong would also include institutions identified in CFTC Staff Letters 17–34 [115] and 18–13.[116] In CFTC Staff Letter 17–34, Commission staff provided relief from CFTC margin requirements to swaps between SDs and the European Stability Mechanism (''ESM''),[117] and in CFTC Staff Letter 18–13, Commission staff identified the North American Development Bank (''NADB'') as an additional entity that should be considered an international financial institution for purposes of applying the SD and MSP definitions.[118] Interpreting the definition to include the two entities identified in CFTC Staff Letters 17–34 and 18–13 is consistent with the discretionary and appropriate exercise of international comity because the status of both entities is similar to that of the other international financial institutions identified in the Entities Rule. Consistent with the SEC definition of ''U.S. person,'' the Proposed Rule lists specific international financial institutions but also provides a catch-all for ''any other similar international organizations, their agencies, and pension plans.'' The Commission believes that the catch-all provision would extend to any of the specific entities discussed above that are not explicitly listed in the Proposed Rule.

As described above, the Commission is of the view that the proposed ''U.S. person'' definition is largely similar to the definition in the Cross-Border Margin Rule. Specifically, the Commission believes that any person designated as a ''U.S. person'' under the Proposed Rule would also be designated as such under the Cross-Border Margin Rule. Therefore, the Commission believes any inconsistencies do not raise significant concerns regarding the practical application of the ''U.S. person'' definitions. Further, the Commission believes that having a definition that is harmonized with the SEC allows for more efficient application of the definitions by market participants, including entities that may engage in dealing activity with respect to both swaps and security-based swaps. Therefore, the Commission may also consider amending the ''U.S. person'' definition in the Cross-Border Margin Rule in the future. However, to provide certainty to market participants, proposed § 23.23(a)(22)(iv) would permit reliance, until December 31, 2025, on any U.S. person-related representations that were obtained to comply with the Cross-Border Margin Rule. This time-limited relief is appropriate so that market participants do not have to immediately obtain new representations from their counterparties. The Commission also believes that any person designated as a ''U.S. person'' under the Proposed Rule would also be a ''U.S. person'' under the Guidance definition, since the Proposed Rule's definition is narrower in scope. Therefore, the Commission is of the view that market participants would also be able to rely on representations previously obtained using the ''U.S. person'' definition in the Guidance.

The term ''non-U.S. person'' would be defined to mean any person that is not a U.S. person.[119] Further, the Proposed Rule would define ''United States'' and ''U.S.'' as the United States of America,

[110] *See, e.g.,* Entities Rule, 77 FR at 30692–93 (discussing the application of the ''swap dealer'' and ''major swap participant'' definitions to foreign governments, foreign central banks, and international financial institutions). The Commission also notes that a similar approach was taken in the Guidance. Guidance, 78 FR at 45353 n.531 (''Where the counterparty to a non-U.S. swap dealer or non-U.S. MSP is an international financial institution such as the World Bank, the Commission also generally would not expect the parties to the swap to comply with the Category A Transaction-Level Requirements, even if the principal place of business of the international financial institution were located in the United States. . . . Even though some or all of these international financial institutions may have their principal place of business in the United States, the Commission would generally not consider the application of the Category A Transaction-Level Requirements to be warranted, for the reasons of the traditions of the international system discussed in the [Entities Rule].'').

[111] To the contrary, section 752(a) of the Dodd-Frank Act requires the CFTC to consult and coordinate with other regulators on the establishment of consistent international standards with respect to the regulation (including fees) of swaps and swap entities.

[112] Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC Derivative Transactions, Central Counterparties and Trade Repositories, Article 1(5(a)) (July 4, 2012), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648*. Article 1(5(a)) references Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC, available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0048*.

[113] Entities Rule, 77 FR at 30692, n.1180. Additionally, the Commission notes that the Guidance referenced the Entities Rule's interpretation as well. Guidance, 78 FR at 45353 n.531.

[114] The definitions overlap but together include the following: The International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, Bank for Economic Cooperation and Development in the Middle East and North Africa, Inter-American Investment Corporation, Council of Europe Development Bank, Nordic Investment Bank, Caribbean Development Bank, European Investment Bank and European Investment Fund. Note that the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, and the Multilateral Investment Guarantee Agency are parts of the World Bank Group.

[115] *See* CFTC Staff Letter No. 17–34, Commission Regulations 23.150–159, 161: No-Action Position with Respect to Uncleared Swaps with the European Stability Mechanism (Jul, 24, 2017), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/17-34.pdf*. *See also* CFTC Staff Letter No. 19–22, Commission Regulations 23.150–159, 23.161: Revised No-Action Position with Respect to Uncleared Swaps with the European Stability Mechanism (Oct. 16, 2019), available at *https://www.cftc.gov/csl/19-22/download*.

[116] *See* CFTC Staff Letter No. 18–13, No-Action Position: Relief for Certain Non-U.S. Persons from Including Swaps with International Financial Institutions in Determining Swap Dealer and Major Swap Participant Status (May 16, 2018), available at *https://www.cftc.gov/sites/default/files/csl/pdfs/18/18-13.pdf*.

[117] *See* CFTC Staff Letter No. 17–34. In addition, in October 2019, the Commission approved a proposal to exclude ESM from the definition of ''financial end user'' in § 23.151, which, if adopted, would have the effect of excluding swaps between certain SDs and ESM from the Commission's uncleared swap margin requirements. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 56392 (Oct. 22, 2019).

[118] *See* CFTC Staff Letter 18–13. *See also* CFTC Staff Letter 17–59 (Nov. 17, 2017) (providing no-action relief to NADB from the swap clearing requirement of section 2(h)(1) of the CEA), available at *https://www.cftc.gov/idc/groups/public/%40lrlettergeneral/documents/letter/17-59.pdf*.

[119] Proposed § 23.23(a)(9).

its territories and possessions, any State of the United States, and the District of Columbia.[120]

B. Guarantee

Under the Proposed Rule, consistent with the Cross-Border Margin Rule,[121] a ''guarantee'' would mean an arrangement, pursuant to which one party to a swap has rights of recourse against a guarantor, with respect to its counterparty's obligations under the swap.[122] For these purposes, a party to a swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the swap. Also, the term ''guarantee'' would encompass any arrangement pursuant to which the guarantor itself has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty's obligations under the swap.

Consistent with the Cross-Border Margin Rule, the proposed term ''guarantee'' would apply regardless of whether such right of recourse is conditioned upon the non-U.S. person's insolvency or failure to meet its obligations under the relevant swap, and regardless of whether the counterparty seeking to enforce the guarantee is required to make a demand for payment or performance from the non-U.S. person before proceeding against the U.S. guarantor.[123] The terms of the guarantee need not necessarily be included within the swap documentation or even otherwise reduced to writing (so long as legally enforceable rights are created under the laws of the relevant jurisdiction), provided that a swap counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the U.S. person in connection with the non-U.S. person's obligations under the swap. For purposes of the Proposed Rule, the Commission would generally consider swap activities involving guarantees from U.S. persons to satisfy the ''direct and significant'' test under CEA section 2(i).

The proposed term ''guarantee'' would also encompass any arrangement pursuant to which the counterparty to the swap has rights of recourse, regardless of the form of the arrangement, against at least one U.S. person (either individually, jointly, and/or severally with others) for the non-U.S. person's obligations under the swap.[124] This addresses concerns that swaps could be structured such that they would not have to count toward a non-U.S. person's de minimis threshold calculation. For example, consider a swap between two non-U.S. persons (''Party A'' and ''Party B''), where Party B's obligations to Party A under the swap are guaranteed by a non-U.S. affiliate (''Party C''), and where Party C's obligations under the guarantee are further guaranteed by a U.S. parent entity (''Parent D''). The proposed definition of ''guarantee'' would deem a guarantee to exist between Party B and Parent D with respect to Party B's obligations under the swap with Party A.[125]

Further, the Commission's proposed definition of guarantee would not be affected by whether the U.S. guarantor is an affiliate of the non-U.S. person because, in each case, regardless of affiliation, the swap counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the U.S. person in connection with the non-U.S. person's obligations.

The Commission also notes that the proposed ''guarantee'' definition would not apply when a non-U.S. person has a right to be compensated by a U.S. person with respect to the non-U.S. person's own obligations under the swap. For example, consider a swap between two non-U.S. persons (''Party E'' and ''Party F''), where Party E enters into a back-to-back swap with a U.S. person (''Party G''), or enters into an agreement with Party G to be compensated for any payments made by Party E under the swap in return for passing along any payments received. In such an arrangement, a guarantee would not exist because Party F would not have a right to collect payments from Party G with respect to Party E's obligations under the swap (assuming no other agreements exist).

As with the Cross-Border Margin Rule, the definition of ''guarantee'' in the Proposed Rule is narrower in scope than the one used in the Guidance.[126] Under the Guidance, the Commission advised that it would interpret the term ''guarantee'' generally to include not only traditional guarantees of payment or performance of the related swaps, but also other formal arrangements that, in view of all the facts and circumstances, support the non-U.S. person's ability to pay or perform its swap obligations. The Commission stated that it believed that it was necessary to interpret the term ''guarantee'' to include the different financial arrangements and structures that transfer risk directly back to the United States.[127] The Commission is aware that many other types of financial arrangements or support, other than a guarantee as defined in the Proposed Rule, may be provided by a U.S. person to a non-U.S. person (*e.g.,* keepwells and liquidity puts, certain types of indemnity agreements, master trust agreements, liability or loss transfer or sharing agreements). The Commission understands that these other financial arrangements or support transfer risk directly back to the U.S. financial system, with possible significant adverse effects, in a manner similar to a guarantee with a direct recourse to a U.S. person. However, the Commission believes that a narrower definition of guarantee than that in the Guidance would achieve a more workable framework for non-U.S. persons, particularly because this definition of ''guarantee'' would be consistent with the Cross-Border Margin Rule, and therefore would not require a separate independent assessment, without undermining the protection of U.S. persons and the U.S. financial system. The Commission recognizes that the proposed definition of ''guarantee'' could, if adopted, lead to certain entities counting fewer swaps towards their de minimis threshold as compared to the definition in the Guidance. However, the Commission believes that concerns arising from fewer swaps being counted could be mitigated to the extent such non-U.S. person meets the definition of a ''significant risk subsidiary,'' and thus, as discussed below, would potentially still need to count certain swaps or swap positions toward its SD or MSP registration threshold. In this way, non-U.S. persons receiving support from a U.S. person and representing some measure of material risk to the U.S. financial system would be captured. The Commission thus believes that the Proposed Rule would achieve the dual goals of protecting the U.S. markets

[120] Proposed § 23.23(a)(19).

[121] *See* 17 CFR 23.160(a)(2). However, in contrast with the Cross-Border Margin Rule, the application of the proposed definition of ''guarantee'' would not be limited to uncleared swaps.

[122] Proposed § 23.23(a)(8).

[123] *See* 17 CFR 23.160(a)(2); Cross-Border Margin Rule, 81 FR at 34825.

[124] *See* Cross-Border Margin Rule, 81 FR at 34825.

[125] *See id.* This example is included for illustrative purposes only and is not intended to cover all examples of swaps that could be affected by the Proposed Rule, if adopted.

[126] *See id.* at 34824.

[127] Guidance, 78 FR at 45320.

while promoting a workable cross-border framework.

For discussion purposes in this release, a non-U.S. person would be considered a ''Guaranteed Entity'' with respect to swaps that are guaranteed by a U.S. person. A non-U.S. person may be a Guaranteed Entity with respect to swaps with certain counterparties because the non-U.S. person's swaps with those counterparties are guaranteed, but would not be a Guaranteed Entity with respect to swaps with other counterparties if the non-U.S. person's swaps with the other counterparties are not guaranteed by a U.S. person. In other words, depending on the nature of the trading relationship, a single entity could be a Guaranteed Entity with respect to some of its swaps, but not others. This release uses the term ''Other Non-U.S. Person'' to refer to a non-U.S. person that is neither a Guaranteed Entity nor a significant risk subsidiary. Depending on an entity's corporate structure and financial relationships, a single entity could be both, for example, a Guaranteed Entity and an Other Non-U.S. Person.

C. Significant Risk Subsidiary, Significant Subsidiary, Subsidiary, Parent Entity, and U.S. GAAP

In the Proposed Rule, the Commission is proposing a new category of person termed a significant risk subsidiary (''SRS''). A non-U.S. person would be considered an SRS if: (1) The non-U.S. person is a ''significant subsidiary'' of an ''ultimate U.S. parent entity,'' as those terms are proposed to be defined; (2) the ''ultimate U.S. parent entity'' has more than $50 billion in global consolidated assets, as determined in accordance with U.S. GAAP at the end of the most recently completed fiscal year; and (3) the non-U.S. person is not subject to either: (a) Consolidated supervision and regulation by the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') as a subsidiary of a U.S. bank holding company (''BHC''); or (b) capital standards and oversight by the non-U.S. person's home country regulator that are consistent with the Basel Committee on Banking Supervision's ''International Regulatory Framework for Banks'' (''Basel III'') and margin requirements for uncleared swaps in a jurisdiction for which the Commission has issued a comparability determination (''CFTC Margin Determination'') with respect to uncleared swap margin requirements.[128] If an entity is determined to be an SRS, the Commission proposes to apply certain regulations, including the SD and MSP registration threshold calculations, to the entity in the same manner as a U.S. person.

1. Non-U.S. Persons With U.S. Parent Entities

In addition to the U.S. persons described above in section II.A, the Commission understands that U.S. persons may organize the operations of their businesses through the use of one or more subsidiaries that are organized and operated outside the United States. Through consolidation, non-U.S. subsidiaries of U.S. persons may permit U.S. persons to accrue risk through the swap activities of their non-U.S. subsidiaries that, in aggregate, may have a significant effect on the U.S. financial system. Therefore, the Commission believes that consolidated non-U.S. subsidiaries of U.S. persons may appropriately be subject to Commission regulation due to their direct and significant relationship to their U.S. parent entities. Thus, the Commission believes that consolidated non-U.S. subsidiaries of U.S. parent entities present a greater supervisory interest to the CFTC, relative to Other Non-U.S. Persons. Moreover, because U.S. persons have regulatory obligations under the CEA that Other Non-U.S. Persons may not have, the Commission also believes that consolidated non-U.S. subsidiaries of U.S. parent entities present a greater supervisory interest to the CFTC relative to Other Non-U.S. Persons due to the Commission's interest in preventing the evasion of obligations under the CEA.

Pursuant to the consolidation requirements of U.S. GAAP, the financial statements of a U.S. parent entity reflect the financial position and results of operations of that parent entity, together with the network of branches and subsidiaries in which the U.S. parent entity has a controlling interest, including non-U.S. subsidiaries, which is an indication of connection and potential risk to the U.S. parent entity. Consolidation under U.S. GAAP is predicated on the financial control of the reporting entity. Therefore, an entity within a financial group that is consolidated with its parent entity for accounting purposes in accordance with U.S. GAAP is subject to the financial control of that parent entity. By virtue of consolidation then, a non-U.S. subsidiary's swap activity creates direct risk to the U.S. parent. That is, as a result of consolidation and financial control, the financial position, operating results, and statement of cash flows of a non-U.S. subsidiary are included in the financial statements of its U.S. parent and therefore affect the financial condition, risk profile, and market value of the parent. Because of that relationship, risks taken by a non-U.S. subsidiary can have a direct effect on the U.S. parent entity. Furthermore, a non-U.S. subsidiary's counterparties may generally look to both the subsidiary and its U.S. parent for fulfillment of the subsidiary's obligations under a swap, even without any explicit guarantee. In many cases, the Commission believes that counterparties would not enter into the transaction with the subsidiary (or would not do so on the same terms), and the subsidiary would not be able to engage in a swap business, absent this close relationship with a parent entity. In addition, the Commission notes that a non-U.S. subsidiary may enter into offsetting swaps or other arrangements with its U.S. parent entity or other affiliate(s) to transfer the risks and benefits of swaps with non-U.S. persons to its U.S. affiliates, which could also lead to risk for the U.S. parent entity. Because such swap activities may have a direct impact on the financial position, risk profile, and market value of a U.S. parent entity, they can lead to spill-over effects on the U.S. financial system.

However, the Commission preliminarily believes the principles of international comity counsel against applying its swap regulations to all non-U.S. subsidiaries of U.S. parent entities. Rather, the Commission believes that it is consistent with such principles to apply a risk-based approach to determining which of such entities should be required to comply with the Commission's swap requirements. The Commission believes that its approach in the Proposed Rule makes that determination in a manner that accounts for the risk that non-U.S. subsidiaries may pose to the U.S. financial system and the ability of large global entities to efficiently operate outside the United States.

The Commission's risk-based approach is embodied in the proposed definition of an SRS. SRSs are entities whose obligations under swaps may not be guaranteed by U.S. persons, but which nonetheless raise particular supervisory concerns in the United States due to the possible negative impact on their ultimate U.S. parent entities and thus the U.S. financial system.

2. Preliminary Definitions

For purposes of the SRS definition, the term ''subsidiary'' would mean a subsidiary of a specified person that is an affiliate controlled by such person directly, or indirectly through one or

[128] Proposed § 23.23(a)(11)–(14) and (18).

more intermediaries.[129] For purposes of this definition, an affiliate of, or a person affiliated with, a specific person would be a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. The term ''control,'' including controlling, controlled by, and under common control with, would mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.[130] These proposed definitions of subsidiary and control are substantially similar to the definitions found in SEC regulation S–X. Further, under the Proposed Rule, the term ''parent entity'' would mean any entity in a consolidated group that has one or more subsidiaries in which the entity has a controlling interest, in accordance with U.S. GAAP.[131] U.S. GAAP is defined in the Proposed Rule as U.S. generally accepted accounting principles.[132]

Notably, a U.S. parent entity for purposes of the definition of SRS need not be a non-U.S. subsidiary's ultimate parent entity. The SRS definition would encompass U.S. parent entities that may be intermediate entities in a consolidated corporate family with an ultimate parent entity located outside the U.S. To differentiate between multiple possible U.S. parent entities, the Proposed Rule defines an ''ultimate U.S. parent entity'' for purposes of the significant subsidiary test. A non-U.S. person's ''ultimate U.S. parent entity'' would be the U.S. parent entity that is not a subsidiary of any other U.S. parent entity.[133] Risk of a non-U.S. subsidiary that flows to its U.S. parent entity may not flow back out of the U.S. to a non-U.S. ultimate or intermediate parent entity. Because the risk may ultimately stop in the United States, it is appropriate for the Commission to base its SRS definition on whether a non-U.S. person has any U.S. parent entity, subject to certain risk-based thresholds.

3. Significant Risk Subsidiaries

In addition to the definitions discussed above, whether an entity would be considered an SRS depends on the size of its ultimate U.S. parent entity, the significance of the subsidiary to its ultimate U.S. parent entity, and the regulatory oversight of its ultimate U.S. parent entity or the regulatory oversight of the non-U.S. subsidiary in the jurisdiction in which it is regulated.

Under the Proposed Rule, the ultimate U.S. parent entity must exceed a $50 billion consolidated asset threshold. The Commission is proposing the $50 billion threshold in order to balance the Commission's interest in adequately overseeing those non-U.S. persons that may have a significant impact on their ultimate U.S. parent entity and, by extension, the U.S. financial system, with its interest in avoiding unnecessary burdens on those non-U.S. persons that would not have such an impact. The $50 billion threshold has been used in other contexts as a measure of large, complex institutions that may have systemic impacts on the U.S. financial system. For example, the Financial Stability Oversight Council (''FSOC'') initially used a $50 billion total consolidated assets quantitative test as one threshold to apply to nonbank financial entities when assessing risks to U.S. financial stability.[134] The Commission preliminarily believes that the $50 billion threshold provides an appropriate measure to limit the burden of the SRS definition to only those entities whose ultimate U.S. parent entity may pose a systemic risk to the U.S. financial system.

In addition, before a non-U.S. subsidiary of an ultimate U.S. parent entity that meets the $50 billion consolidated asset threshold would be an SRS, the subsidiary would need to constitute a significant part of its ultimate U.S. parent entity. This concept of a ''significant subsidiary'' borrows from the SEC's definition of ''significant subsidiary'' in Regulation S–X, as well as the Federal Reserve Board in its financial statement filing requirements for foreign subsidiaries of U.S. banking organizations.[135] The Commission believes it is appropriate to focus on only those subsidiaries that are significant to their ultimate U.S. parent entities, in order to capture those subsidiaries that have a significant impact on their large ultimate U.S. parent entities. In order to provide certainty to market participants as to what constitutes a significant subsidiary, the Proposed Rule includes a set of quantitative significance tests. Although not identical, the Commission notes that the SEC includes similar revenue and asset significance tests in its definition of significant subsidiary in Regulation S–X.[136] The Commission believes that, in this case, in order to determine whether a subsidiary meets such significance, it is appropriate to measure the significance of a subsidiary's equity capital, revenue, and assets relative to its ultimate U.S. parent entity.

Under the Proposed Rule, the term ''significant subsidiary'' would mean a subsidiary, including its subsidiaries, where: (1) The three year rolling average of the subsidiary's equity capital is equal to or greater than five percent of the three year rolling average of its ultimate U.S. parent entity's consolidated equity capital, as determined in accordance with U.S. GAAP at the end of the most recently completed fiscal year (the ''equity capital significance test''); (2) the three year rolling average of the subsidiary's revenue is equal to or greater than ten percent of the three year rolling average of its ultimate U.S. parent entity's consolidated revenue, as determined in accordance with U.S. GAAP at the end of the most recently completed fiscal year (the ''revenue significance test''); or (3) the three year rolling average of the subsidiary's assets are equal to or greater than ten percent of the three year rolling average of its ultimate U.S. parent entity's consolidated assets, as determined in accordance with U.S. GAAP at the end of the most recently completed fiscal year (the ''asset significance test''). For the proposed equity capital significance test, equity capital would include perpetual

[129] Proposed § 23.23(a)(14).

[130] Proposed § 23.23(a)(1).

[131] Proposed § 23.23(a)(11).

[132] Proposed § 23.23(a)(21).

[133] Proposed § 23.23(a)(18).

[134] *See* Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, Financial Stability Oversight Council, 77 FR 21637, 21643, 21661 (Apr. 2012). FSOC recently voted to remove the existing stage 1 quantitative metrics that included, among other metrics, the $50 billion threshold, because the metrics generated confusion among firms and members of the public and because they were not compatible with FSOC's new activities based approach to addressing risk to financial stability. *See* Authority to Require Supervision and Regulation of certain Nonbank Financial Companies (Dec. 4, 2019), available at *https://home.treasury.gov/system/files/261/Interpretive-Guidance-on-Nonbank-Financial-Company-Determinations.pdf*. However, the Commission preliminarily believes that the $50 billion total consolidated threshold remains an appropriate and workable measure to identify those ultimate U.S. parent entities that may have a significant impact on the U.S. financial system.

[135] S*ee e.g.,* Instructions for Preparation of Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations FR 2314 and FR 2314S, at GEN–2 (Sept. 2016), available at *https://www.federalreserve.gov/reportforms/forms/FR_2314--FR_2314S20190331_i.pdf* (''FR 2314 and FR 2314S Instructions'') (identifying equity capital significance test applicable to subsidiaries). *See also* SEC rule 210.1–02(w), 17 CFR 210.1–02(w) (identifying asset and income significance tests applicable in definition of significant subsidiaries).

[136] 17 CFR 210.1–02(w)(1)–(3) (setting out a ten percent significance threshold with respect to total assets and income).

preferred stock, common stock, capital surplus, retained earnings, accumulated other comprehensive income and other equity capital components and should be calculated in accordance with U.S. GAAP.

The Proposed Rule would cause an entity to be a significant subsidiary only if it passes at least one of these significance tests. The Commission preliminarily believes that the equity capital test is an appropriate measure of a subsidiary's significance to its ultimate U.S. parent entity and notes its use in the context of financial statement reporting of foreign subsidiaries.[137] The Commission also preliminarily believes that if a subsidiary constitutes more than ten percent of its ultimate U.S. parent entity's assets or revenue, it is of significant importance to its ultimate U.S. parent entity such that swap activity by the subsidiary may have a material impact on its ultimate U.S. parent entity and, consequently, the U.S. financial system. The Commission is proposing to use a three year rolling average throughout its proposed significance tests in order to mitigate the potential for an entity to frequently change from being deemed a significant subsidiary and not being deemed a significant subsidiary based on fluctuations in its share of equity capital, revenue, or assets of its ultimate U.S. parent entity. The Commission preliminarily believes that if a subsidiary satisfies any one of the three significance tests proposed here, then it is of sufficient significance to its ultimate U.S. parent entity, which under proposed § 23.23(a)(12) has consolidated assets of more than $50 billion, to warrant the application of requirements addressed by the Proposed Rule if such subsidiary otherwise meets the definition of SRS.

4. Exclusions From the Definition of SRS

As indicated above, under the Proposed Rule, a non-U.S. person would not be an SRS to the extent the entity is subject to prudential regulation as a subsidiary of a U.S. BHC or is subject to comparable capital and margin standards. An entity that meets either of those two exceptions, in the Commission's preliminary view, would be subject to a level of regulatory oversight that is sufficiently comparable to the Dodd-Frank Act swap regime with respect to prudential oversight. Non-U.S. subsidiaries that are part of BHCs are already subject to consolidated supervision and regulation by the Federal Reserve Board,[138] including with respect to capital and risk management requirements, and therefore their swap activity poses less risk to the financial position and risk profile of the ultimate U.S. parent entity, and thus less risk to the U.S. financial system than the swap activity of a non-U.S. subsidiary of an ultimate U.S. parent entity that is a not a BHC. In this case, the Commission preliminarily believes deference to the foreign regulatory regime would be appropriate because the swap activity is occurring within an organization that is under the umbrella of U.S. prudential regulation with certain regulatory protections already in place.[139]

Similarly, in the case of entities that are subject to capital standards and oversight by their home country regulators that are consistent with Basel III and subject to a CFTC Margin Determination, the Commission preliminarily believes that it is appropriate for the Commission to defer to the home country regulator.[140] For purposes of determining whether proposed § 23.23(a)(12)(ii) would apply, the Commission intends for persons to independently assess whether they reside in a jurisdiction that has capital standards that are consistent with Basel III.[141] In such cases where entities are subject to capital standards and oversight by their home country regulators that are consistent with Basel III and subject to a CFTC Margin Determination, the Commission preliminarily believes that the potential risk that the entity might pose to the U.S. financial system would be adequately addressed through these capital and margin requirements. Further, such an approach is consistent with the Commission's desire to show deference to non-U.S. regulators whose requirements are comparable to the CFTC's requirements. For margin purposes, the Commission has issued a number of determinations that entities can look to in order to determine if they satisfy this aspect of the exception.[142] For capital standards and oversight consistent with Basel III, entities should look to whether the BIS has determined the jurisdiction is in compliance as of the relevant Basel Committee on Banking Supervision deadline set forth in its most recent progress report.[143] The Commission preliminarily believes that it is appropriate to except these entities from the definition of SRS, in large part, because the swaps entered into by such entities are already subject to significant regulation, either by the Federal Reserve Board or by the entity's home country.

As noted above, if a non-U.S. subsidiary of an ultimate U.S. parent entity does not fall into either of the exceptions in proposed §§ 23.23(a)(12)(i)–(ii), the Proposed Rule would classify the subsidiary as a SRS only if its ultimate U.S. parent entity has more than $50 billion in global consolidated assets and if the subsidiary meets the definition of a significant subsidiary, set forth in proposed § 23.23(a)(13).

The Commission is requesting comment below on the proposed definitions discussed in this section.

D. Foreign Branch and Swap Conducted Through a Foreign Branch

Under the Proposed Rule, the term ''foreign branch'' would mean an office of a U.S. person that is a bank that: (1)

[137] FR 2314 and FR 2314S Instructions, at Gen-2.

[138] *See e.g.,* Board of Governors of the Federal Reserve System, Bank Holding Company Supervision Manual, section 2100.0.1 Foreign Operations of U.S. Banking Organizations, available at *https://www.federalreserve.gov/publications/files/bhc.pdf* (''The Federal Reserve has broad discretionary powers to regulate the foreign activities of member banks and bank holding companies (BHCs) so that, in financing U.S. trade and investments abroad, these U.S. banking organizations can be competitive with institutions of the host country without compromising the safety and soundness of their U.S. operations.''); FR 2314 and FR 2314S Instructions, at GEN 2.

[139] Proposed § 23.23(a)(12)(i).

[140] Proposed § 23.23(a)(12)(ii).

[141] Discussion regarding the Basel framework is available at *https://www.bis.org/bcbs/basel3.htm.*

[142] *See* Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 63376 (Sep. 15, 2016); Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 82 FR 48394 (Oct. 13, 2017) (''Margin Comparability Determination for the European Union''); Amendment to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12074 (Apr. 1, 2019); and Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12908 (Apr. 3, 2019). Further, on April 5, 2019, DSIO and the Division of Market Oversight issued a letter jointly to provide time-limited no-action relief in connection with, among other things, the Margin Comparability Determination for the European Union, in order to account for the anticipated withdrawal of the United Kingdom from the European Union. *See* CFTC Staff Letter 19–08, No-Action Relief in Connection With Certain Previously Granted Commission Determinations and Exemptions, in Order to Account for the Anticipated Withdrawal of the United Kingdom From the European Union (Apr. 5, 2019), available at *https://www.cftc.gov/csl/19-08/download.*

[143] The most current report was issued in October 2019. Basel Committee on Banking Supervision, Seventeenth progress report on adoption of the Basel regulatory framework (October 2019), available at *https://www.bis.org/bcbs/publ/d478.pdf.* Current and historical reports are available at *https://www.bis.org/bcbs/implementation/rcap_reports.htm?m=3%7C14%7C656%7C59.*

Is located outside the United States; (2) operates for valid business reasons; (3) maintains accounts independently of the home office and of the accounts of other foreign branches, with the profit or loss accrued at each branch determined as a separate item for each foreign branch; and (4) is engaged in the business of banking or finance and is subject to substantive regulation in banking or financing in the jurisdiction where it is located.[144]

The Commission believes that the factors listed in the proposed definition are appropriate for determining when an entity would be considered a foreign branch for purposes of the Proposed Rule.[145] The requirement that the foreign branch be located outside of the United States is consistent with the stated goal of identifying certain swap activity that is not conducted within the United States. The requirements that the foreign branch maintain accounts independent of the U.S. entity, operate for valid business reasons, and be engaged in the business of banking or finance and be subject to substantive banking or financing regulation in its non-U.S. jurisdiction are also intended to prevent evasion of the Dodd-Frank Act requirements.[146] In particular, these requirements address the concern that an entity would set up operations outside the United States in a jurisdiction without substantive banking or financial regulation to evade Dodd-Frank Act requirements and CFTC regulations.[147] The Commission notes that this proposed definition incorporates concepts from the Federal Reserve Board's Regulation K,[148] the FDIC International Banking Regulation,[149] and the Office of the Comptroller of the Currency's ''foreign branch'' definition.[150]

The proposed definition of ''foreign branch'' is also consistent with the SEC's approach, which, for purposes of security-based swap dealer regulation, defined foreign branch as any branch of a U.S. bank that: (1) Is located outside the United States; (2) operates for valid business reasons; and (3) is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where located.[151] The Commission's intention is to ensure that the definition provides sufficient clarity as to what constitutes a ''foreign branch''—specifically, an office outside of the U.S. that has independent accounts from the home office and other branches—while striving for greater regulatory harmony with the SEC.[152]

The Commission notes that a foreign branch would not include an affiliate of a U.S. bank that is incorporated or organized as a separate legal entity.[153] For similar reasons, the Commission declines in the Proposed Rule to recognize foreign branches of U.S. persons separately from their U.S. principal for purposes of registration.[154] That is, if the foreign branch engages in swap activity in excess of the relevant SD or MSP registration thresholds, as discussed further below, the U.S. person would be required to register, and the registration would encompass the foreign branch. However, upon consideration of principles of international comity and the factors set forth in the Restatement, rather than broadly excluding foreign branches from the U.S. person definition, the Commission is proposing to calibrate the requirements for counting certain swaps entered into through a foreign branch, as described in sections III.B.2 and IV.B.2, and proposing to calibrate the requirements otherwise applicable to foreign branches of a registered U.S. SD, as discussed in section VI. Among the benefits, as discussed below, would be to enable foreign branches of U.S. banks to have greater access to foreign markets.

Under the Proposed Rule, the term ''swap conducted through a foreign branch'' would mean a swap entered into by a foreign branch where: (1) The foreign branch or another foreign branch is the office through which the U.S. person makes and receives payments and deliveries under the swap pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the U.S. person is such foreign branch; (2) the swap is entered into by such foreign branch in its normal course of business; and (3) the swap is reflected in the local accounts of the foreign branch.[155]

The Commission believes that this definition identifies the type of swap activity for which the foreign branch performs key dealing functions outside the United States. Because a foreign branch of a U.S. bank is not a separate legal entity, the first prong of the definition clarifies that the foreign branch must be the office of the U.S. bank through which payments and deliveries under the swap must be made. This approach is consistent with the standard ISDA Master Agreement, which requires that each party specify an ''office'' for each swap, which is where a party ''books'' a swap and/or the office through which the party makes and receives payments and deliveries.[156]

[144] Proposed § 23.23(a)(2).

[145] As discussed below in sections III.B.2 and IV.B.2, the Proposed Rule would not require an Other Non-U.S. Person to count toward its de minimis threshold calculations swaps conducted through a foreign branch of a registered U.S. SD.

[146] The Commission notes that national banks operating foreign branches are required under section 25 of the Federal Reserve Act (''FRA'') to conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and are required at the end of each fiscal period to transfer to its general ledger the profit or loss accrued at each branch as a separate item. 12 U.S.C. 604. The FRA is codified at 12 U.S.C. 221 *et seq.*

[147] As discussed below, the Commission is concerned that the material terms of a swap would be negotiated or agreed to by employees of the U.S. bank that are located in the United States and then be routed to a foreign branch so that the swap would be treated as a swap with the foreign branch for purposes of the SD and MSP registration thresholds or for purposes of certain regulatory requirements applicable to registered SDs or MSPs.

[148] Regulation K is a regulation issued by the Board of Governors of the Federal Reserve (''Federal Reserve Board'') under the authority of the FRA; the Bank Holding Company Act of 1956 (''BHC Act'') (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 (''IBA'') (12 U.S.C. 3101 *et seq.*). Regulation K sets forth rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches to engage in international banking. 12 CFR part 211. Under Regulation K, a ''foreign branch'' is defined as ''an office of an organization (other than a representative office) that is located outside the country in which the organization is legally established and at which a banking or financing business is conducted.'' 12 CFR 211.2(k).

[149] 12 CFR part 347 is a regulation issued by the Federal Deposit Insurance Corporation under the authority of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(2)), which sets forth rules governing the operation of foreign branches of insured state nonmember banks (''FDIC International Banking Regulation''). Under 12 CFR 347.102(j), a ''foreign branch'' is defined as an office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted, but does not include a representative office.

[150] 12 CFR 28.2 (defining ''foreign branch'' as an office of a national bank (other than a representative office) that is located outside the United States at which banking or financing business is conducted).

[151] *See* 17 CFR 240.3a71–3(a)(2).

[152] The Commission also notes that the factors listed in the Proposed Rule are similar to the approach described in the Guidance, which stated that the foreign branch of a U.S. swap entity is an entity that is: (1) Subject to Regulation K or the FDIC International Banking Regulation, or otherwise designated as a ''foreign branch'' by the U.S. bank's primary regulator; (2) maintains accounts independently of the home office and of the accounts of other foreign branches with the profit or loss accrued at each branch determined as a separate item for each foreign branch; and (3) subject to substantive regulation in banking or financing in the jurisdiction where it is located. *See* Guidance, 78 FR at 45329.

[153] This is similar to the approach described in the Guidance. *See* Guidance, 78 FR at 45328–29.

[154] This is similar to the approach described in the Guidance. *See id.* at 45315, 45328–29.

[155] Proposed § 23.23(a)(16).

[156] The ISDA Master Agreement defines ''office'' as a branch or office of a party, which may be such party's head or home office. *See* 2002 ISDA Master Agreement, available at *https://www.isda.org/book/2002-isda-master-agreement-english/library.*

The second prong of the definition (whether the swap is entered into by such foreign branch in the normal course of business) is intended as an anti-evasion measure to prevent a U.S. bank from simply routing swaps for booking in a foreign branch so that the swap would be treated as a swap conducted through a foreign branch for purposes of the SD and MSP registration thresholds or for purposes of certain regulatory requirements applicable to registered SDs or MSPs. To satisfy this prong, it must be the normal course of business for employees located in the branch (or another foreign branch of the U.S. bank) to enter into the type of swap in question. The Commission preliminarily believes that this requirement would not prevent personnel of the U.S. bank located in the U.S. from participating in the negotiation or execution of the swap so long the swaps that are booked in the foreign branch are primarily entered into by personnel located in the branch (or another foreign branch of the U.S. bank).

With respect to the third prong, the Commission believes that where a swap is with the foreign branch of a U.S. bank, it generally would be reflected in the foreign branch's accounts.[157]

E. Swap Entity, U.S. Swap Entity, and Non-U.S. Swap Entity

Under the Proposed Rule, the term ''swap entity'' would mean a person that is registered with the Commission as a SD or MSP pursuant to the CEA.[158] In addition, the Commission is proposing to define ''U.S. swap entity'' as a swap entity that is a U.S. person,[159] and ''non-U.S. swap entity'' as a swap entity that is not a U.S swap entity.[160]

F. U.S. Branch and Swap Conducted Through a U.S. Branch

Under the Proposed Rule, the term ''U.S. branch'' would mean a branch or agency of a non-U.S. banking organization where such branch or agency: (1) Is located in the United States; (2) maintains accounts independently of the home office and other U.S. branches, with the profit or loss accrued at each branch determined as a separate item for each U.S. branch; and (3) engages in the business of banking and is subject to substantive banking regulation in the state or district where located.[161] The term ''swap conducted through a U.S. branch'' would mean a swap entered into by a U.S. branch where: (1) The U.S. branch is the office through which the non-U.S. person makes and receives payments and deliveries under the swap pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the non-U.S. person is such U.S. branch; or (2) the swap is reflected in the local accounts of the U.S. branch.[162]

Similar to how the terms ''foreign branch'' and ''conducted through a foreign branch'' are used under the Proposed Rule to identify swap activity of U.S. entities that is taking place outside the United States and, thus, may be eligible for certain relief from the Commission's requirements under the Proposed Rule, these definitions would be used to identify swap activity that the Commission believes should be considered to take place in the United States and, thus, remain subject to the Commission's requirements addressed in the Proposed Rule, as discussed below with respect to the definitions of ''foreign-based swap'' and ''foreign counterparty.'' In particular, these proposed definitions are intended to address the concern that an entity would operate outside the United States to evade Dodd-Frank Act requirements and CFTC regulations for a swap while still benefiting from the swap taking place in the United States. The Commission preliminarily believes that the requirements listed in the proposed definitions are appropriate to identify swaps of a non-U.S. banking organization operating through a foreign branch in the United States that should remain subject to Commission requirements addressed in the Proposed Rule.

Consistent with the Commission's proposed approach to foreign branches, a U.S. branch of a non-U.S. banking organization would not include a U.S. affiliate of the organization that is incorporated or organized as a separate legal entity. Also consistent with this approach, the Commission declines in the Proposed Rule to recognize U.S. branches of non-U.S. banking organization separately from their non-U.S. principal for purposes of registration.

G. Foreign-Based Swap and Foreign Counterparty

Under the Proposed Rule, the term ''foreign-based swap'' would mean: (1) A swap by a non-U.S. swap entity, except for a swap conducted through a U.S. branch; or (2) a swap conducted through a foreign branch.[163] The term ''foreign counterparty'' would mean: (1) A non-U.S. person, except with respect to a swap conducted through a U.S. branch of that non-U.S. person; or (2) a foreign branch where it enters into a swap in a manner that satisfies the definition of a swap conducted through a foreign branch.[164] Together with the proposed defined terms ''foreign branch,'' ''swap conducted through a foreign branch,'' ''U.S. branch,'' and ''swap conducted through a U.S. branch'' discussed above, these terms would be used to determine which swaps the Commission considers to be foreign swaps of non-U.S. swap entities and foreign branches of U.S. swap entities for which certain relief from Commission requirements would be available under the Proposed Rule, and which swaps should be treated as domestic swaps not eligible for such relief. The Commission is proposing to limit the types of swaps that are eligible for relief, consistent with section 2(i) of the CEA, to address its concern that swaps that demonstrate sufficient indicia of being domestic remain subject to the Commission's requirements addressed by the Proposed Rule, notwithstanding that the swap is entered into by a non-U.S. swap entity or a foreign branch of a U.S. swap entity. Otherwise, the Commission is concerned that an entity or branch might simply be established outside of the United Stated to evade Dodd-Frank Act requirements and CFTC regulations.

As the Commission has previously stated, it has a strong supervisory interest in regulating swap activities that occur in the United States.[165] In addition, consistent with section 2(i) of the CEA, the Commission believes that foreign swaps of non-U.S. swap entities and foreign branches of U.S. swap entities should be eligible for relief from certain of the Commission's requirements. Accordingly, certain portions of the Commission's proposed substituted compliance regime, as well as its proposed exceptions from certain requirements in CFTC regulations (each discussed below in section VI), are

[157] This proposed definition is generally consistent with the definition under the Guidance. *See* Guidance, 78 FR at 45330. However, the Commission notes that the proposed definition of ''foreign branch'' does not include the requirement that the employees negotiating and agreeing to the terms of the swap (or, if the swap is executed electronically, managing the execution of the swap), other than employees with functions that are solely clerical or ministerial, be located in such foreign branch or in another foreign branch of the U.S. bank. The Commission is of the view that, as discussed above, the second prong of the proposed definition addresses this issue.

[158] Proposed § 23.23(a)(15).

[159] Proposed § 23.23(a)(23).

[160] Proposed § 23.23(a)(10).

[161] Proposed § 23.23(a)(20).

[162] Proposed § 23.23(a)(17).

[163] Proposed § 23.23(a)(4).

[164] Proposed § 23.23(a)(3).

[165] *See* Guidance, 78 FR at 45350, n.513.

designed to be limited to certain foreign swaps of non-U.S. swap entities and foreign branches of U.S. swap entities that the Commission believes should be treated as occurring outside the United States. Specifically, these provisions are applicable only to a swap by a non-U.S. swap entity, except for a swap conducted through a U.S. branch, and a swap conducted through a foreign branch such that it would satisfy the definition of a ''foreign-based swap'' above. They are not applicable to swaps of non-U.S. swap entities that are conducted through a U.S. branch of that swap entity, and swaps of foreign branches of U.S. swap entities where the foreign branch does not enter into the swaps in a manner that satisfies the definition of a swap conducted through a foreign branch, because, in the Commission's view, the entrance into a swap by a U.S. swap entity (through its foreign branch) or a U.S. branch of a non-U.S. swap entity under these circumstances, demonstrates sufficient indicia of being a domestic swap to be treated as such for purposes of the Proposed Rule.[166] Similarly, in certain cases, the availability of a proposed exception or substituted compliance for a swap would depend on whether the counterparty to such a swap qualifies as a ''foreign counterparty'' under the Proposed Rule. The Commission is proposing this requirement to ensure that foreign-based swaps of swap entities in which their counterparties demonstrate sufficient indicia of being domestic and, thus, trigger the Commission's supervisory interest in domestic swaps, continue to be subject to the Commission requirements addressed in the Proposed Rule.

The Commission also notes that its approach in the Proposed Rule for U.S. branches of non-U.S. swap entities is parallel to the Commission's approach in the Proposed Rule to provide certain exceptions from Commission requirements or substituted compliance for transactions of foreign branches of U.S. swap entities to take into account the supervisory interest of local regulators, as discussed below in section VI.

H. Request for Comment

The Commission invites comment on all aspects of the Proposed Rule, including each of the definitions discussed above, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to the relevant portions of the Proposed Rule, where applicable.

(1) The ''U.S. person'' definition the Commission is proposing here aligns with the definition of that term adopted by the SEC in the context of its cross-border swap regulations. Should the Commission instead adopt the U.S. person definition used in its Cross-Border Margin Rule? Alternatively, should the Commission instead harmonize the ''U.S. person'' definition in the Proposed Rule to the interpretation of U.S. person included in the Guidance?

(2) Is it appropriate, as proposed, that commodity pools, pooled accounts, investment funds, or other CIVs that are majority-owned by U.S. persons not be included in the proposed definition of ''U.S. person''? Would a majority of such funds or CIVs be subject to margin requirements of foreign jurisdictions? Is it accurate to assume that the exposure of investors to losses in CIVs is generally capped at their investment amount? Does tracking a CIV's beneficial ownership pose challenges in certain circumstances?

(3) When determining the principal place of business for a CIV, should the Commission consider including as a factor whether the senior personnel responsible for the formation and promotion of the CIV are located in the United States, similar to the approach in the Cross-Border Margin Rule?[167]

(4) Should the Commission include an unlimited U.S. responsibility prong in the definition of ''U.S. person''? If not, should the Commission revise its interpretation of ''guarantee'' in a manner consistent with the SEC to ensure that persons that would otherwise be considered U.S. persons pursuant to the unlimited U.S. responsibility prong would nonetheless be considered entities with guarantees from a U.S. person? Are there any persons that would be captured under the unlimited U.S. responsibility prong?

(5) Should the ''U.S. person'' definition include a catch-all provision? What types of entities would be expected to fall under such a provision?

(6) Should the Commission consider providing an exemption from the ''U.S. person'' definition for pension plans organized in the U.S. that are primarily for the benefit of the foreign employees of U.S.-based entities, consistent with the Cross-Border Margin Rule's ''U.S. person'' definition?[168]

(7) Should the catch-all provision for international financial institutions be restricted to organizations in which the U.S. government is a shareholder?

(8) Does the proposed SRS definition appropriately capture persons that raise greater supervisory concerns relative to Other Non-U.S. Persons whose swap obligations are not guaranteed by a U.S. person? If not, how should the definition be revised? Is $50 billion an appropriate threshold to determine when an ultimate U.S. parent entity may have a significant impact on the U.S. financial system?

(9) Should the Commission consider alternative or additional tests for whether a person would be a significant subsidiary or an SRS? Would an alternate approach to the use of a three year rolling average throughout the proposed significance tests more effectively mitigate the risk of an entity frequently varying between being a significant subsidiary and not being a significant subsidiary?

(10) Should the exclusion set out in proposed § 23.23(a)(12)(i) include any entity that is subject to consolidated supervision and regulation by the Federal Reserve Board rather than being limited to subsidiaries of BHCs (for example, intermediate holding companies of foreign banking organizations that are subject to supervision by the Federal Reserve Board)?

(11) Does the proposed definition of ultimate U.S. parent entity adequately account for affiliated entity structures with multiple U.S. parent entities? Are there situations where the proposed ultimate U.S. parent entity definition would result in more than one ultimate U.S. person entity being identified?

(12) Are the proposed tests for compliance with Basel III capital standards and compliance with margin requirements in a comparable jurisdiction appropriate? What are alternative ways for a person to confirm it is compliant with Basel III capital standards?

(13) In the interests of harmonizing with the SEC, should the Commission use the concept of ''conduit affiliate,'' as in 17 CFR 240.3a71–3(a)(1), instead of the concept of SRS?[169] Or should the

[166] The Commission notes that the Guidance took a similar approach with respect to U.S. branches of non-U.S. SDs or MSPs, stating that they would be subject to the transaction-level requirements (discussed in section VI.A below), without substituted compliance. *Id.*

[167] *See* Cross-Border Margin Rule, 81 FR at 34823.

[168] *See* 17 CFR 23.260(a)(10)(iv).

[169] The Commission notes that the Guidance included the concept of a ''conduit affiliate.'' Although the Commission did not define the concept of a ''conduit affiliate'' it did identify certain factors it believed were relevant to the determination of whether an entity would be considered a conduit affiliate of a U.S. person. *See* Guidance, 78 FR at 45359. The Commission, in this Proposed Rule, is not separately including the concept of a ''conduit affiliate'' because the concerns posed by a conduit affiliate are intended

Continued

Commission address both conduit affiliates and SRSs in its cross-border rules?

(14) Should the definition of ''foreign branch'' include the requirement that the branch be ''subject to substantive regulation in banking or financing in the jurisdiction where it is located,'' given that the definition of ''foreign branch'' under Regulation K does not contain such a requirement? Similarly, should the definition of ''U.S. branch'' include the requirement that the branch be ''subject to substantive banking regulation in the state or district where located''?

(15) Should the definitions of ''foreign branch'' and ''swap conducted through a foreign branch'' be further harmonized with the definition of ''foreign branch'' by the SEC in rule 3a71–3(a)(2) under the Exchange Act and the definition of ''transaction conducted through a foreign branch'' by the SEC in rule 3a71–3(a)(3) under the Securities Exchange Act? [170] Should the Commission instead use the definitions of those terms in the Guidance? [171] The Commission proposes that a swap will be deemed to be entered into by such foreign branch in the normal course of business if swaps of the type in question are primarily, but not exclusively, entered into by personnel located in the branch (or another foreign branch of the U.S. bank). Should the Commission instead stipulate that a swap will be considered to be ''entered into by such foreign branch in the normal course of business'' only if personnel located in the U.S. do not participate in the negotiation or execution of such swap? Should the Commission instead take an alternative approach? If so, what should it be?

(16) Should the definitions of ''foreign branch'' and ''U.S. branch'' be restricted to entities engaged in the business of banking and/or finance and subject to substantive regulation in banking and/or finance? If not, what other types of entities should be considered branches?

(17) Are the definitions of ''U.S. branch'' and ''swap conducted through a U.S. branch'' effective to appropriately capture transactions that should be considered to be domestic rather than foreign, such that they are ineligible for certain exceptions from the group B and group C requirements and substituted compliance for the group B requirements (discussed in section VI below)? If not, what changes should be made to the definitions?

(18) Are the definitions of ''foreign-based swap,'' ''foreign branch,'' ''foreign counterparty,'' and ''swap conducted through a foreign branch'' effective to appropriately capture transactions that should be considered to be foreign rather than domestic, such that they are eligible for certain exceptions from the group B and group C requirements and substituted compliance for the group B requirements (discussed in section VI below)? If not, what changes should be made to the definitions?

III. Cross-Border Application of the Swap Dealer Registration Threshold

CEA section 1a(49) defines the term ''swap dealer'' to include any person that: (1) Holds itself out as a dealer in swaps; (2) makes a market in swaps; (3) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (4) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps (collectively referred to as ''swap dealing,'' ''swap dealing activity,'' or ''dealing activity'').[172] The statute also requires the Commission to promulgate regulations to establish factors with respect to the making of a determination to exempt from designation as an SD an entity engaged in a de minimis quantity of swap dealing.[173]

In accordance with CEA section 1a(49), the Commission issued the Entities Rule,[174] which, among other things, further defined the term ''swap dealer'' and excluded from designation as an SD any entity that engages in a de minimis quantity of swap dealing with or on behalf of its customers.[175] Specifically, the definition of ''swap dealer'' in § 1.3 provides that a person shall not be deemed to be an SD as a result of its swap dealing activity involving counterparties unless, during the preceding 12 months, the aggregate gross notional amount of the swap positions connected with those dealing activities exceeds the de minimis threshold.[176] Paragraph (4) of that definition further requires that, in determining whether its swap dealing activity exceeds the de minimis threshold, a person must include the aggregate gross notional value of the swaps connected with the dealing activities of its affiliates under common control.[177] For purposes of the Proposed Rule, the Commission construes ''affiliates under common control'' by reference to the Entities Rule, which defined control as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.[178] Accordingly, any reference in the Proposed Rule to ''affiliates under common control'' with a person would include affiliates that are controlling, controlled by, or under common control with such person.

The Commission is now proposing rules to address how the de minimis threshold should apply to the cross-border swap dealing transactions of U.S. and non-U.S. persons. Specifically, the Proposed Rule identifies when a potential SD's cross-border dealing activities should be included in its de minimis threshold calculation and when they may properly be excluded. As discussed below, whether a potential SD would include a particular swap in its de minimis threshold calculation would depend on how the entity is classified (*e.g.,* U.S. person, SRS, etc.) and, in some cases, the jurisdiction in which a non-U.S. person is regulated.

A. U.S. Persons

Under the Proposed Rule, consistent with the Guidance,[179] a U.S. person would include all of its swap dealing transactions in its de minimis threshold

to be addressed through the proposed definition and treatment of SRSs.

[170] The SEC defined the term ''foreign branch'' in Exchange Act rule 3a71–3(a)(2), 17 CFR 240.3a71–3(a)(2), to mean any branch of a U.S. bank if: (1) The branch is located outside the United States; (2) the branch operates for valid business reasons; and (3) the branch is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where located. The SEC defined the term ''transaction conducted through a foreign branch'' in Exchange Act rule 3a71–3(a)(3), 17 CFR 240.3a71–3(a)(3), to mean a security-based swap transaction that is arranged, negotiated, and executed by a U.S. person through a foreign branch of such U.S. person if: (1) The foreign branch is the counterparty to such security-based swap transaction; and (2) the security-based swap transaction is arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States. *See also* SEC Cross-Border Rule, 79 FR 47278.

[171] *See* Guidance, 78 FR at 45328–31 (discussing that scope of the term ''foreign branch'' and the Commission's consideration of whether a swap with a foreign branch of a U.S. bank by a non-U.S. person should count toward the non-U.S. person's de minimis threshold calculation).

[172] 7 U.S.C. 1a(49)(A). In general, a person that satisfies any one of these prongs is deemed to be engaged in swap dealing activity.

[173] 7 U.S.C. 1a(49)(D).

[174] Entities Rule, 77 FR 30596.

[175] *See* 17 CFR 1.3, Swap dealer, paragraph (4); Entities Rule, 77 FR 30596.

[176] *See* 17 CFR 1.3, Swap dealer, paragraph (4)(i)(A). The de minimis threshold is set at $8 billion, except with regard to swaps with special entities for which the threshold is $25 million. *See* De Minimis Exception to the Swap Dealer Definition, 83 FR 56666 (Nov. 13, 2018).

[177] *See* 17 CFR 1.3, Swap dealer, paragraph (4)(i)(A).

[178] *See* Entities Rule, 77 FR at 30631 n.437.

[179] *See* Guidance, 78 FR at 45326.

calculation without exception.[180] As discussed in section II.A above, the term ''U.S. person'' would encompass a person that, by virtue of being domiciled, organized, or having its principal place of business in the United States, raises the concerns intended to be addressed by the Dodd-Frank Act, regardless of the U.S. person status of its counterparty. In addition, a person's status as a U.S. person would be determined at the entity level and, thus, a U.S. person would include the swap dealing activity of operations that are part of the same legal person, including those of its foreign branches. Therefore, a U.S. person would include in its SD de minimis threshold calculation dealing swaps entered into by a foreign branch of the U.S. person.[181]

B. Non-U.S. Persons

Under the Proposed Rule, whether a non-U.S. person would need to include a swap in its de minimis threshold calculation would depend on the non-U.S. person's status, the status of its counterparty, and, in some cases, the jurisdiction in which the non-U.S. person is regulated. Specifically, the Proposed Rule would require a person that is a Guaranteed Entity or an SRS to count all of its dealing swaps towards the de minimis threshold.[182] In addition, an Other Non-U.S. Person would be required to count dealing swaps with a U.S. person toward its de minimis threshold calculation, except for swaps conducted through a foreign branch of a registered SD.[183] Further, subject to certain exceptions, the Proposed Rule would require an Other Non-U.S. Person to count dealing swaps toward its de minimis threshold calculation if the counterparty to such swaps is a Guaranteed Entity.

1. Swaps by a Significant Risk Subsidiary

Under the Proposed Rule, an SRS would include all of its dealing swaps in its de minimis threshold calculation without exception.[184] As discussed in section II.C above, the proposed definition of SRS encompasses a person that, by virtue of being a significant subsidiary of a U.S. person, and not being subject to prudential supervision as a subsidiary of a BHC or subject to comparable capital and margin rules, raises the concerns intended to be addressed by the Dodd-Frank Act requirements addressed by the Proposed Rule, regardless of the U.S. person status of its counterparty.

The Commission believes that treating an SRS differently from a U.S. person could create a substantial regulatory loophole, incentivizing U.S. persons to conduct their dealing business with non-U.S. persons through significant non-U.S. subsidiaries to avoid application of the Dodd-Frank Act SD requirements. Allowing swaps entered into by SRSs, which have the potential to impact the ultimate U.S. parent entity and U.S. commerce, to be treated differently depending on how the parties structure their transactions could undermine the effectiveness of the Dodd-Frank Act swaps provisions and related Commission regulations addressed by the Proposed Rule. Applying the same standard to similar transactions helps to limit those incentives and regulatory implications.

However, under the Proposed Rule, an Other Non-U.S. Person would not be required to count a dealing swap with an SRS toward its de minimis threshold calculation, unless the SRS was also a Guaranteed Entity (and no exception applied). As noted above, an SRS would be required to count all of its dealing swaps. However, where an Other Non-U.S. Person is entering into a dealing swap with an SRS, requiring the Other Non-U.S. Person to count the swap towards the de minimis threshold could cause the Other Non-U.S. Person to stop engaging in swap activities with the SRS. The Commission believes it is important to ensure that an SRS, particularly a commercial entity, continues to have access to swap liquidity from Other Non-U.S. Persons for hedging or other non-dealing purposes.

In addition, a person's status as an SRS would be determined at the entity level and, thus, an SRS would include the swap dealing activity of operations that are part of the same legal person, including those of its branches. Therefore, an SRS would include in its SD de minimis threshold calculation dealing swaps entered into by a branch of the SRS.

2. Swaps With a U.S. Person

The Proposed Rule would require a non-U.S. person to count all dealing swaps with a counterparty that is a U.S. person toward its de minimis threshold calculation, except for swaps with a counterparty that is a foreign branch of a registered U.S. SD and such swap meets the definition of being ''conducted through a foreign branch'' of such registered SD.[185] Generally, the Commission believes that all potential SDs should include in their de minimis threshold calculations any swap with a U.S. person. As discussed in section II.A, the proposed term ''U.S. person'' encompasses persons that inherently raise the concerns intended to be addressed by the Dodd-Frank Act regardless of the U.S. person status of their counterparty. In the event of a default or insolvency of a non-U.S. SD, the SD's U.S. counterparties could be adversely affected. A credit event, including funding and liquidity problems, downgrades, default, or insolvency at a non-U.S. SD could therefore have a direct adverse impact on its U.S. counterparties, which could in turn create the risk of disruptions to the U.S. financial system.

The Proposed Rule's approach in allowing a non-U.S. person to exclude swaps conducted through a foreign branch of a registered SD from its de minimis threshold calculation is consistent with the Guidance.[186] The Commission's view is that its regulatory interest in these swaps is not sufficient to warrant creating a potential competitive disadvantage for foreign branches of U.S. SDs with respect to their foreign entity competitors by requiring non-U.S. persons to count trades with them toward their de minimis threshold calculations. In this regard, the Commission notes that a swap conducted through a foreign branch of a registered SD would trigger certain Dodd-Frank Act transactional requirements, particularly margin requirements, and, thus, such swap activity would not be conducted outside

[180] Proposed § 23.23(b)(1).

[181] The Commission notes that this approach mirrors the SEC's approach in its cross-border rule. *See* 17 CFR 240.3a71–3(b)(1)(i); SEC Cross-Border Rule, 79 FR at 47302, 47371.

[182] As discussed in section II.B above, for purposes of this release and ease of reading, a non-U.S. person whose obligations under the swaps are subject to a guarantee by a U.S. person is being referred to as a ''Guaranteed Entity.'' A non-U.S. person may be a Guaranteed Entity with respect to swaps with certain counterparties, but not be deemed a Guaranteed Entity with respect to swaps with other counterparties. Also, a non-U.S. person could be a Guaranteed Entity or an Other Non-U.S. Person, depending on the specific swap.

[183] This release uses the phrase ''through a foreign branch'' to describe swaps that are entered into by a foreign branch and which meet the definition of ''swap conducted through a foreign branch.'' As stated, the Commission is proposing that ''swap conducted through a foreign branch'' would mean a swap entered into by a foreign branch where: (1) The foreign branch or another foreign branch is the office through which the U.S. person makes and receives payments and deliveries under the swap pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the U.S. person is such foreign branch; (2) the swap is entered into by such foreign branch in its normal course of business; and (3) the swap is reflected in the local accounts of the foreign branch.

[184] Proposed § 23.23(b)(1).

[185] Proposed § 23.23(b)(2)(i).

[186] *See* Guidance, 78 FR at 45323–24.

the Dodd-Frank Act regime. Moreover, in addition to certain Dodd-Frank Act requirements that would apply to such swaps, other foreign regulatory requirements may also apply similar transactional requirements to the transactions.[187] Accordingly, the Commission believes that it would be appropriate and consistent with section 2(i) of the CEA to allow non-U.S. persons to exclude from their de minimis calculation any swap dealing transactions conducted through a foreign branch of a registered SD. However, this exception would not apply for Guaranteed Entities (discussed below) or SRSs (discussed above), who would have to count all of their dealing swaps.

3. Swaps Subject to a Guarantee

In an approach that is generally consistent with the Guidance,[188] the Proposed Rule would require a non-U.S. person to include in its de minimis threshold calculation swap dealing transactions where its obligations under the swaps are subject to a guarantee by a U.S. person.[189] The Commission believes that this result is appropriate because the swap obligations of a Guaranteed Entity are identical, in relevant aspects, to a swap entered into directly by a U.S. person. As a result of the guarantee, the U.S. guarantor bears risk arising out of the swap as if it had entered into the swap directly. The U.S. guarantor's financial resources in turn enable the Guaranteed Entity to engage in dealing activity, because the Guaranteed Entity's counterparties will look to both the Guaranteed Entity and its U.S. guarantor to ensure performance of the swap. Absent the guarantee from the U.S. person, a counterparty may choose not to enter into the swap or may not do so on the same terms. In this way, the Guaranteed Entity and the U.S. guarantor effectively act together to engage in the dealing activity.[190]

Further, the Commission believes that treating a Guaranteed Entity differently from a U.S. person could create a substantial regulatory loophole, incentivizing U.S. persons to conduct their dealing business with non-U.S. persons through non-U.S. affiliates, with a U.S. guarantee, to avoid application of the Dodd-Frank Act SD requirements. Allowing transactions that have a similar economic reality with respect to U.S. commerce to be treated differently depending on how the parties structure their transactions could undermine the effectiveness of the Dodd-Frank Act swap provisions and related Commission regulations addressed by the Proposed Rule. Applying the same standard to similar transactions helps to limit those incentives and regulatory implications.

The Commission is also proposing that a non-U.S. person must count dealing swaps with a Guaranteed Entity in its SD de minimis threshold calculation, except when: (1) The Guaranteed Entity is registered as an SD; or (2) the Guaranteed Entity's swaps are subject to a guarantee by a U.S. person that is a non-financial entity.[191] The guarantee of a swap is an integral part of the swap and, as discussed above, counterparties may not be willing to enter into a swap with a Guaranteed Entity in the absence of the guarantee. The Commission recognizes that, given the highly integrated corporate structures of global financial enterprises described above, financial groups may elect to conduct their swap dealing activity in a number of different ways, including through a U.S. person or through a non-U.S. affiliate that benefits from a guarantee from a U.S. person. Therefore, in order to avoid creating a regulatory loophole, the Commission believes that swaps of a non-U.S. person with a Guaranteed Entity should receive the same treatment as swaps with a U.S. person. The two exceptions discussed above are intended to address those situations where the risk of the swap between the non-U.S. person and the Guaranteed Entity would be otherwise managed under the Dodd-Frank Act swap regime or is primarily outside the U.S. financial sector.[192]

Where a non-U.S. person (that itself is not a Guaranteed Entity or an SRS) enters into swap dealing transactions with a Guaranteed Entity that is a registered SD, the Commission preliminarily believes it is appropriate to permit the non-U.S. person not to count its dealing transactions with the Guaranteed Entity against the non-U.S. person's de minimis threshold for two principal reasons. First, requiring the non-U.S. person to count such swaps may incentivize them to not engage in dealing activity with Guaranteed Entities, thereby contributing to market fragmentation and competitive disadvantages for entities wishing to access foreign markets. Second, one counterparty to the swap is a registered SD, and therefore is subject to comprehensive swap regulation under the oversight of the Commission.

In addition, a non-U.S. person that is not a Guaranteed Entity or an SRS would not include in its de minimis threshold calculation its swap dealing transactions with a Guaranteed Entity where the Guaranteed Entity is guaranteed by a non-financial entity. In these circumstances, systemic risk to U.S. financial markets is mitigated because the U.S. guarantor is a non-financial entity whose primary business activities are not related to financial products and such activities primarily occur outside the U.S. financial sector.[193] For purposes of the Proposed Rule, the Commission interprets ''non-financial entity'' to mean a counterparty that is not an SD, an MSP, or a financial end-user (as defined in the SD and MSP margin rule in § 23.151).

C. Aggregation Requirement

Paragraph (4) of the SD definition in § 1.3 requires that, in determining whether its swap dealing transactions exceed the de minimis threshold, a person must include the aggregate notional value of any swap dealing transactions entered into by its affiliates under common control.[194] Consistent with CEA section 2(i), the Commission interprets this aggregation requirement in a manner that applies the same aggregation principles to all affiliates in a corporate group, whether they are U.S. or non-U.S. persons. Accordingly, under the Proposed Rule and consistent with the Guidance,[195] a potential SD, whether a U.S. or non-U.S. person, would aggregate all swaps connected with its dealing activity with those of persons controlling, controlled by, or

[187] As noted above in section I.B, significant and substantial progress has been made in the world's primary swaps trading jurisdictions to implement the G20 swaps reform commitments.

[188] The Guidance stated that where a non-U.S. affiliate of a U.S. person has its swap dealing obligations with non-U.S. persons guaranteed by a U.S. person, the guaranteed affiliate generally would be required to count those swap dealing transactions with non-U.S. persons (in addition to its swap dealing transactions with U.S. persons) for purposes of determining whether the affiliate exceeds a de minimis amount of swap dealing activity and must register as an SD. Guidance, 78 FR at 45312–13. As discussed above, the Proposed Rule would not require that the guarantor be an affiliate of the guaranteed person for that person to be a Guaranteed Entity.

[189] Proposed § 23.23(b)(2)(ii).

[190] The Commission notes that this view is consistent with the SEC's approach in its cross-border rule. *See* SEC Cross-Border Rule, 79 FR at 47289.

[191] Proposed § 23.23(b)(2)(iii).

[192] In this regard, the Commission notes that the SEC's cross-border rules do not require a non-U.S. person that is not a conduit affiliate or guaranteed by a U.S. person to count dealing swaps with a guaranteed entity toward its de minimis threshold in any case. Below we solicit comment on whether the CFTC should adopt a similar approach. *See* SEC Cross-Border Rule, 79 FR at 47322.

[193] Moreover, the SRS definition would include those non-financial U.S. parent entities that meet the risk-based thresholds set out above in section II.C.

[194] 17 CFR 1.3, Swap dealer, paragraph (4).

[195] *See* Guidance, 78 FR at 45323.

under common control with [196] the potential SD to the extent that these affiliated persons are themselves required to include those swaps in their own de minimis threshold calculations, unless the affiliated person is itself a registered SD. The Commission notes that its proposed approach would ensure that the aggregate notional value of applicable swap dealing transactions of all such unregistered U.S. and non-U.S. affiliates does not exceed the de minimis level.

Stated in general terms, the Commission's approach allows both U.S. persons and non-U.S. persons in an affiliated group to engage in swap dealing activity up to the de minimis threshold. When the affiliated group meets the de minimis threshold in the aggregate, one or more affiliate(s) (a U.S. affiliate or a non-U.S. affiliate) would have to register as an SD so that the relevant swap dealing activity of the unregistered affiliates remains below the threshold. The Commission recognizes the borderless nature of swap dealing activities, in which a dealer may conduct swap dealing business through its various affiliates in different jurisdictions, and believes that its approach would address the concern that an affiliated group of U.S. and non-U.S. persons engaged in swap dealing transactions with a significant connection to the United States may not be required to register solely because such swap dealing activities are divided among affiliates that all individually fall below the de minimis threshold.

D. Certain Exchange-Traded and Cleared Swaps

The Proposed Rule, in an approach that is generally consistent with the Guidance, would allow a non-U.S. person that is not a Guaranteed Entity or SRS to exclude from its de minimis threshold calculation any swap that it anonymously enters into on a designated contract market (''DCM''), a swap execution facility (''SEF'') that is registered with the Commission or exempted by the Commission from SEF registration pursuant to section 5h(g) of the CEA, or a foreign board of trade (''FBOT'') that is registered with the Commission pursuant to part 48 of its regulations,[197] if such swap is also cleared through a registered or exempt derivatives clearing organization (''DCO'').[198]

When a non-U.S. person enters into a swap that is executed anonymously on a registered or exempt SEF, DCM, or registered FBOT, the Commission recognizes that the non-U.S. person would not have the necessary information about its counterparty to determine whether the swap should be included in its de minimis threshold calculation. The Commission therefore believes that in this case the practical difficulties make it reasonable for the swap to be excluded altogether.[199]

The Proposed Rule is consistent with the Guidance but would expand the exception to include SEFs and DCOs that are exempt from registration under the CEA, and also states that SRSs do not qualify for this exception. The CEA provides that the Commission may grant an exemption from registration if it finds that a foreign SEF or DCO is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the SEF's or DCO's home country.[200] The Commission believes that the policy rationale for providing relief to swaps anonymously executed on a SEF, DCM, or FBOT and then cleared also extends to swaps executed on a foreign SEF and/or cleared through a foreign DCO that has been granted an exemption from registration. As noted, the foreign SEF or DCO would be subject to comparable and comprehensive regulation, as is the case with U.S.-based SEFs and DCMs.[201]

E. Request for Comment

The Commission invites comment on all aspects of the cross-border application of the SD registration threshold described in sections III.A through III.D, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to the relevant portions of the Proposed Rule, where applicable.

(19) Should a non-U.S. person be permitted to exclude from its de minimis threshold calculation swap dealing transactions conducted through a foreign branch of a registered SD?

(20) As discussed in section II.F, under the Proposed Rule, the term ''U.S. branch'' would mean a branch or agency of a non-U.S. banking organization where such branch or agency: (1) Is located in the United States; (2) maintains accounts independently of the home office and other U.S. branches, with the profit or loss accrued at each branch determined as a separate item for each U.S. branch; and (3) engages in the business of banking and is subject to substantive banking regulation in the state or district where located. Given that definition, would it be appropriate to require a U.S. branch to include in its SD de minimis threshold calculation all of its swap dealing transactions, as if they were swaps entered into by a U.S. person? Would it be appropriate to require an Other Non-U.S. Person to include in its SD de minimis threshold calculation dealing swaps conducted through a U.S. branch?

(21) Under the Proposed Rule, an Other Non-U.S. Person would not be required to include its dealing swaps with an SRS or an Other Non-U.S. Person in its SD de minimis threshold. The Commission invites comment as to whether, and in what circumstances, a non-U.S. person should be required to include dealing swaps with a non-U.S. person in its SD de minimis threshold calculation if any of the risk of such swaps is transferred to an affiliated U.S. SD through one or more inter-affiliate swaps, and as to whether it would be too complex or costly to monitor and implement such a rule.[202]

[196] The Commission clarifies that for this purpose, the term ''affiliates under common control'' would include parent companies and subsidiaries.

[197] The Commission would consider the proposed exception described herein also to apply with respect to an FBOT that provides direct access to its order entry and trade matching system from within the U.S. pursuant to no-action relief issued by Commission staff.

[198] Proposed § 23.23(d).

[199] Additionally, as the Commission has clarified in the past, when a non-U.S. person clears a swap through a registered or exempt DCO, such non-U.S. person would not have to include the resulting swap (*i.e.,* the novated swap) in its de minimis threshold calculation. *See, e.g.,* 2016 Proposal, 81 FR at 71957 n.88. A swap that is submitted for clearing is extinguished upon novation and replaced by new swap(s) that result from novation. *See* 17 CFR 39.12(b)(6). *See also* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69361 (Nov. 8, 2011). Where a swap is created by virtue of novation, such swap does not implicate swap dealing, and therefore it would not be appropriate to include such swaps in determining whether a non-U.S. person should register as an SD.

[200] *See* CEA sections 5h for the SEF exemption provision and 5b(h) for the DCO exemption provision.

[201] The Commission recognizes that it recently issued two proposed rulemakings regarding non-U.S. DCOs. One applied to DCOs registered with the Commission. Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations, 84 FR 34819 (proposed July 19, 2019). That proposal, and a second that applied to exempt DCOs, Exemption From Derivatives Clearing Organization Registration, 84 FR 35456 (proposed July 23, 2019), both applied to non-U.S. DCOs that do not pose substantial risk to the U.S. financial system based on metrics set forth therein. The Commission may modify this exception for exchange-traded and cleared swaps as necessary, based on any DCO-related proposed rules that are adopted by the Commission.

[202] The Commission notes that the Commission's final margin rule requires covered swap entities to collect initial margin from certain affiliates that are not subject to comparable initial margin collection requirements on their own outward-facing swaps with financial end-users, which addresses some of the credit risks associated with the outward-facing swaps. *See* 17 CFR 23.159; Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 673–74 (Jan. 6, 2016).

(22) With respect to proposed § 23.23(b)(2)(iii), should the Commission follow the SEC's approach, which does not require a non-U.S. person that is not a conduit affiliate nor guaranteed by a U.S. person to count dealing swaps with a non-U.S. person whose security-based swap transactions are guaranteed by a U.S. person. The SEC noted that ''concerns regarding the risk posed to the United States by such security-based swaps, and regarding the potential use of such guaranteed affiliates to evade the Dodd-Frank Act . . . are addressed by the requirement that guaranteed affiliates count their own dealing activity against the de minimis thresholds when the counterparty has recourse to a U.S. person.'' [203]

IV. Cross-Border Application of the Major Swap Participant Registration Tests

CEA section 1a(33) defines the term ''major swap participant'' to include persons that are not SDs but that nevertheless pose a high degree of risk to the U.S. financial system by virtue of the ''substantial'' nature of their swap positions.[204] In accordance with the Dodd-Frank Act and CEA section 1a(33)(B), the Commission adopted rules further defining ''major swap participant'' and providing that a person would not be deemed an MSP unless its swap positions exceed one of several thresholds.[205] The thresholds were designed to take into account default-related credit risk, the risk of multiple market participants failing close in time, and the risk posed by a market participant's swap positions on an aggregate level.[206] The Commission also adopted interpretive guidance stating that, for purposes of the MSP analysis, an entity's swap positions would be attributable to a parent, other affiliate, or guarantor to the extent that the counterparty has recourse to the parent, other affiliate, or guarantor and the parent or guarantor is not subject to capital regulation by the Commission, SEC, or a prudential regulator (''attribution requirement'').[207]

The Commission is now proposing rules to address the cross-border application of the MSP thresholds to the swap positions of U.S. and non-U.S. persons.[208] Applying CEA section 2(i) and principles of international comity, the Proposed Rule identifies when a potential MSP's cross-border swap positions would apply toward the MSP thresholds and when they may be properly excluded. As discussed below, whether a potential registrant would include a particular swap in its MSP calculation would depend on whether the potential registrant is a U.S. person, a Guaranteed Entity, an SRS, or an Other Non-U.S. Person.[209] The Proposed Rule's approach for the cross-border application of the MSP thresholds is similar to the approach described above for the SD threshold.

A. U.S. Persons

Under the Proposed Rule, all of a U.S. person's swap positions would apply toward the MSP registration thresholds without exception.[210] As discussed in the context of the Proposed Rule's approach to applying the SD de minimis registration threshold, by virtue of it being domiciled or organized in the United States, or the inherent nature of its connection to the United States, all of a U.S. person's activities have a significant nexus to U.S. markets, giving the Commission a particularly strong regulatory interest in its swap activities.[211] Accordingly, the Commission believes that all of a U.S. person's swap positions, regardless of where they occur or the U.S. person status of the counterparty, should apply toward the MSP thresholds.

B. Non-U.S. Persons

Under the Proposed Rule, whether a non-U.S. person would include a swap position in its MSP threshold calculation would depend on its status, the status of its counterparty, or the characteristics of the swap. Specifically, the Proposed Rule would require a person that is a Guaranteed Entity or an SRS to count all of its swap positions. In addition, an Other Non-U.S. Person would be required to count all swap positions with a U.S. person, except for swaps conducted through a foreign branch of a registered SD. Subject to certain exceptions, the Proposed Rule would also require an Other Non-U.S. Person to count all swap positions if the counterparty to such swaps is a Guaranteed Entity.[212]

1. Swaps by a Significant Risk Subsidiary

Under the Proposed Rule, an SRS would include all of its swap positions in its MSP threshold calculation.[213] As discussed in section II.C above, the proposed term SRS encompasses a person that, by virtue of being a significant subsidiary of a U.S. person, and not being subject to prudential supervision as a subsidiary of a BHC or subject to comparable capital and margin rules, raises the concerns intended to be addressed by the Dodd-Frank Act requirements addressed by the Proposed Rule, regardless of the U.S. person status of its counterparty.

The Commission believes that treating an SRS differently from a U.S. person could create a substantial regulatory loophole by incentivizing U.S. persons to conduct their swap business with non-U.S. persons through significant non-U.S. subsidiaries to avoid application of the Dodd-Frank Act MSP requirements. Allowing swaps entered into by SRSs, which have the potential to impact the ultimate U.S. parent entity and U.S. commerce, to be treated differently depending on how the parties structure their transactions could undermine the effectiveness of the Dodd-Frank Act swap provisions and related Commission regulations addressed by the Proposed Rule. Applying the same standard to similar

[203] SEC Cross-Border Rule, 79 FR at 47322.

[204] *See* 7 U.S.C. 1a(33)(A) (defining ''major swap participant'' to mean any person that is not an SD and either (1) maintains a substantial position in swaps for any of the major swap categories, subject to certain exclusions; (2) whose outstanding swaps create substantial counterparty exposure that could have serious effects on the U.S. financial system; or (3) is a highly leveraged financial entity that is not subject to prudential capital requirements and that maintains a substantial position in swaps for any of the major swap categories. *See also* 17 CFR 1.3, Major swap participant, paragraph (1); 156 Cong. Rec. S5907 (daily ed. July 15, 2010) (colloquy between Senators Hagen and Lincoln, discussing how the goal of the major participant definitions was to ''focus on risk factors that contributed to the recent financial crisis, such as excessive leverage, under-collateralization of swap positions, and a lack of information about the aggregate size of positions'').

[205] *See* 17 CFR 1.3, Major swap participant, Substantial counterparty exposure, Substantial position, Financial entity; highly leveraged, Hedging or mitigating commercial risk, and Category of swaps; major swap category. *See also* Entities Rule, 77 FR 30596.

[206] *See* Entities Rule, 77 FR at 30666 (discussing the guiding principles behind the Commission's definition of ''substantial position'' in 17 CFR 1.3); *id.* at 30683 (noting that the Commission's definition of ''substantial counterparty exposure'' in 17 CFR 1.3 is founded on similar principles as its definition of ''substantial position'').

[207] *Id.* at 30689.

[208] Proposed § 23.23(c).

[209] As indicated above, for purposes of the Proposed Rule, an ''Other Non-U.S. Person'' refers to a non-U.S. person that is neither a Guaranteed Entity nor an SRS.

[210] Proposed § 23.23(c)(1).

[211] *See supra* section III.A.

[212] As discussed in sections II.B and III.B above, for purposes of this release and ease of reading, such a non-U.S. person whose obligations under the swaps are subject to a guarantee by a U.S. person is being referred to as a ''Guaranteed Entity.'' Depending on the characteristics of the swap, a non-U.S. person may be a Guaranteed Entity with respect to swaps with certain counterparties, but not be deemed a Guaranteed Entity with respect to swaps with other counterparties.

[213] Proposed § 23.23(c)(1).

swap positions helps to limit those incentives and regulatory implications.

In addition, a person's status as an SRS would be determined at the entity level and, thus, an SRS would include the swap positions that are part of the same legal person, including those of its branches. Therefore, an SRS would include in its MSP threshold calculation swap positions entered into by a branch of the SRS.

2. Swap Positions With a U.S. Person

Under the Proposed Rule, a non-U.S. person would include all of its swap positions with U.S. persons, unless the transaction is a swap conducted through a foreign branch of a registered SD.[214] Generally, the Commission believes that a potential MSP should include in its MSP threshold calculation any swap position with a U.S. person. As discussed above, the term ''U.S. person'' encompasses persons that inherently raise the concerns intended to be addressed by the Dodd-Frank Act, regardless of the U.S. person status of their counterparty. The default or insolvency of the non-U.S. person would have a direct adverse effect on a U.S. person and, by virtue of the U.S. person's significant nexus to the U.S. financial system, potentially could result in adverse effects or disruption to the U.S. financial system as a whole, particularly if the non-U.S. person's swap positions are substantial enough to exceed an MSP registration threshold.

The Proposed Rule's approach in allowing a non-U.S. person to exclude swap positions conducted through a foreign branch of a registered SD is consistent with the approach described in section III.B.2 for cross-border treatment with respect to SDs. A swap conducted through a foreign branch of a registered SD would trigger the Dodd-Frank Act transactional requirements (or comparable requirements) and therefore mitigate concern that this exclusion could be used to engage in swap activities outside the Dodd-Frank Act regime.[215] Accordingly, the Commission believes that it would be appropriate and consistent with section 2(i) to allow a non-U.S. person, that is not a Guaranteed Entity or SRS, to exclude from its MSP threshold calculation any swaps conducted through a foreign branch of a registered SD. The Commission recognizes that the Guidance provides that such swaps would need to be cleared or that the documentation of the swaps would have to require the foreign branch to collect daily variation margin, with no threshold, on its swaps with such non-U.S. person.[216] The Proposed Rule does not include such a requirement given that the foreign branch of the registered SD would nevertheless be required to post and collect margin, as required by the SD margin rules. In addition, a non-U.S. person's swaps conducted through a foreign branch of a registered SD must be addressed in the SD's risk management program. Such program must account for, among other things, overall credit exposures to non-U.S. persons.[217]

3. Swap Positions Subject to a Guarantee

The Proposed Rule would require a non-U.S. person to include in its MSP calculation each swap position with respect to which it is a Guaranteed Entity.[218] As explained in the context of the SD de minimis threshold calculation,[219] the Commission believes that the swap positions of a non-U.S. person whose swap obligations are guaranteed by a U.S. person are identical, in relevant aspects, to those entered into directly by a U.S. person and thus present similar risks to the stability of the U.S. financial system or of U.S. entities. Although the default on that swap may not directly affect the U.S. guarantor on that swap, the default could affect the Guaranteed Entity's ability to meet its other obligations, for which the U.S. guarantor may also be liable. Treating Guaranteed Entities differently from U.S. persons could also create a substantial regulatory loophole, allowing transactions that have a similar connection to or impact on U.S. commerce to be treated differently depending on how the parties are structured and thereby undermining the effectiveness of the Dodd-Frank Act swap provisions and related Commission regulations.

The Commission is also proposing that a non-U.S. person must count swap positions with a Guaranteed Entity counterparty, except when the counterparty is registered as an SD.[220] The Commission notes that the guarantee of a swap is an integral part of the swap and that, as discussed above, counterparties may not be willing to enter into a swap with a Guaranteed Entity in the absence of the guarantee. The Commission also recognizes that, given the highly integrated corporate structures of global financial enterprises, financial groups may elect to conduct their swap activity in a number of different ways, including through a U.S. person or through a non-U.S. affiliate that benefits from a guarantee from a U.S. person. Therefore, in order to avoid creating a substantial regulatory loophole, the Commission believes that swaps of a non-U.S. person with a counterparty whose obligations under the swaps are guaranteed by a U.S. person should receive the same treatment as swaps with a U.S. person.

However, similar to the discussion regarding SDs in section III.B.3, where a non-U.S. person (that itself is not a Guaranteed Entity or an SRS) enters into a swap with a Guaranteed Entity that is a registered SD, it is appropriate to permit the non-U.S. person not to count its swap position with the Guaranteed Entity against the non-U.S. person's MSP thresholds,[221] because one counterparty to the swap is a registered SD subject to comprehensive swap regulation and operating under the oversight of the Commission. For example, the swap position must be addressed in the SD's risk management program and account for, among other things, overall credit exposures to non-U.S. persons.[222] In addition, a non-U.S. person's swaps with a Guaranteed Entity that is an SD would be included in exposure calculations and attributed to the U.S. guarantor for purposes of determining whether the U.S. guarantor's swap exposures are systemically important on a portfolio basis and therefore require the protections provided by MSP registration. Therefore, in these

[214] Proposed § 23.23(c)(2)(i).

[215] The Commission believes that the Dodd-Frank Act-related requirements that the transaction would be subject to as a result of a registered SD being a counterparty would also mitigate concerns that the non-U.S. person would not be subject to CFTC capital rules (when implemented).

[216] *See* Guidance, 78 FR at 45324–25.

[217] *See* 17 CFR 23.600(c)(4)(ii), requiring registered SDs and MSPs to have credit risk policies and procedures that account for daily measurement of overall credit exposure to comply with counterparty credit limits, and monitoring and reporting of violations of counterparty credit limits performed by personnel that are independent of the business trading unit. *See also* 17 CFR 23.600(c)(1)(i), requiring the senior management and the governing body of each SD and MSP to review and approve credit risk tolerance limits for the SD or MSP.

[218] Proposed § 23.23(c)(2)(ii).

[219] *See supra* section III.B.3.

[220] Proposed § 23.23(c)(2)(iii). The Commission notes that the proposed MSP provision does not include a provision for swap positions with non-U.S. persons guaranteed by a non-financial entity, similar to the carve-out in the proposed SD provision. *See* proposed § 23.23(b)(2)(iii)(*2*).

[221] Proposed § 23.23(c)(2)(iii).

[222] *See* 17 CFR 23.600(c)(4)(ii), requiring SDs and MSPs to have credit risk policies and procedures that account for daily measurement of overall credit exposure to comply with counterparty credit limits, and monitoring and reporting of violations of counterparty credit limits performed by personnel that are independent of the business trading unit. *See also* 17 CFR 23.600(c)(1)(i), requiring the senior management and the governing body of each SD and MSP to review and approve credit risk tolerance limits for the SD or MSP.

circumstances, the Commission believes it is not necessary for the non-U.S. person to count such a swap position toward its MSP thresholds.

C. Attribution Requirement

In the Entities Rule, the Commission and the SEC provided a joint interpretation that an entity's swap positions in general would be attributed to a parent, other affiliate, or guarantor for purposes of the MSP analysis to the extent that the counterparties to those positions have recourse to the parent, other affiliate, or guarantor in connection with the position, such that no attribution would be required in the absence of recourse.[223] Even in the presence of recourse, however, the Commissions stated that attribution of a person's swap positions to a parent, other affiliate, or guarantor would not be necessary if the person is already subject to capital regulation by the Commission or the SEC or is a U.S. entity regulated as a bank in the United States (and is therefore subject to capital regulation by a prudential regulator).[224]

The Commission is proposing to address the cross-border application of the attribution requirement in a manner consistent with the Entities Rule and CEA section 2(i) and generally comparable to the approach adopted by the SEC.[225] Specifically, the Commission believes that the swap positions of an entity, whether a U.S. or non-U.S. person, should not be attributed to a parent, other affiliate, or guarantor for purposes of the MSP analysis in the absence of a guarantee. Even in the presence of a guarantee, attribution would not be required if the entity that entered into the swap directly is subject to capital regulation by the Commission or the SEC or is regulated as a bank in the United States.[226]

If a guarantee is present, however, and the entity being guaranteed is not subject to capital regulation (as described above), whether the attribution requirement would apply would depend on the U.S. person status of the person to whom there is recourse under the guarantee (*i.e.,* the U.S. person status of the guarantor). Specifically, a U.S. person guarantor would attribute to itself any swap position of an entity subject to a guarantee, whether a U.S. person or a non-U.S. person, for which the counterparty to the swap has recourse against that U.S. person guarantor. The Commission believes that when a U.S. person acts as a guarantor of a swap position, the guarantee creates risk within the United States of the type that MSP regulation is intended to address, regardless of the U.S. person status of the entity subject to a guarantee or its counterparty.[227]

A non-U.S. person would attribute to itself any swap position of an entity for which the counterparty to the swap has recourse against the non-U.S. person unless all relevant persons (*i.e.,* the non-U.S. person guarantor, the entity whose swap positions are guaranteed, and its counterparty) are non-U.S. persons that are not Guaranteed Entities. In this regard, the Commission believes that when a non-U.S. person provides a guarantee with respect to the swap position of a particular entity, the economic reality of the swap position is substantially identical, in relevant respects, to a position entered into directly by the non-U.S. person.

In addition, the Commission believes that entities subject to a guarantee would be able to enter into significantly more swap positions (and take on significantly more risk) as a result of the guarantee than they would otherwise, amplifying the risk of the non-U.S. person guarantor's inability to carry out its obligations under the guarantee. Given the types of risk that MSP regulation is intended to address, the Commission has a strong regulatory interest in ensuring that the attribution requirement applies to non-U.S. persons that provide guarantees to U.S. persons and Guaranteed Entities. Accordingly, the Commission preliminarily believes that a non-U.S. person should be required to attribute to itself the swap positions of any entity for which it provides a guarantee unless it, the entity subject to the guarantee, and its counterparty are all non-U.S. persons that are not Guaranteed Entities.

D. Certain Exchange-Traded and Cleared Swaps

The Proposed Rule, consistent with its approach for SDs discussed above in section III.D, would allow a non-U.S. person that is not a Guaranteed Entity or an SRS to exclude from its MSP calculation any swap position that it anonymously enters into on a DCM, a registered SEF or a SEF exempted from registration by the Commission pursuant to section 5h(g) of the CEA, or an FBOT registered with the Commission pursuant to part 48 of its regulations,[228] if such swap is also cleared through a registered or exempt DCO.[229]

When a non-U.S. person enters into a swap position that is executed anonymously on a registered or exempt SEF, DCM, or registered FBOT, the Commission recognizes that the non-U.S. person would not have the necessary information about its counterparty to determine whether the swap position should be included in its MSP calculation. The Commission therefore believes that in this case the practical difficulties make it reasonable for the swap position to be excluded altogether.

The Proposed Rule is consistent with the Guidance, but would expand the exception to include SEFs and DCOs that are exempt from registration under the CEA, and also states that SRSs may not qualify for this exception. The CEA provides that the Commission may grant an exemption from registration if it finds that a foreign SEF or DCO is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the SEF or DCO's home country.[230]

E. Request for Comment

The Commission invites comment on all aspects of the proposed cross-border application of the MSP registration threshold calculation described in sections IV.A through IV.D, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to

[223] *See* Entities Rule, 77 FR at 30689 (Stating that ''an entity's swap . . . positions in general would be attributed to a parent, other affiliate or guarantor for purposes of the major participant analysis to the extent that the counterparties to those positions would have recourse to that other entity in connection with the position.'' The Commission stated further that ''entities will be regulated as major participants when they pose a high level of risk in connection with the swap . . . positions they guarantee.'').

[224] *Id.*

[225] *See* SEC Cross-Border Rule, 79 FR at 47346–48.

[226] The Commission further clarifies that the swap positions of an entity that is required to register as an MSP, or whose MSP registration is pending, would not be subject to the attribution requirement.

[227] *See* Entities Rule, 77 FR at 30689 (attribution is intended to reflect the risk posed to the U.S. financial system when a counterparty to a position has recourse against a U.S. person).

[228] The Commission would consider the proposed exception described herein also to apply with respect to an FBOT that provides direct access to its order entry and trade matching system from within the U.S. pursuant to no-action relief issued by Commission staff.

[229] Proposed § 23.23(d).

[230] *See* CEA sections 5h for the SEF exemption provision and 5b(h) for the DCO exemption provision. As discussed, *supra* note 201, the Commission recognizes that it recently issued proposed rulemakings regarding non-U.S. DCOs, and may modify this exception for exchange-traded and cleared swaps as necessary, based on any DCO-related proposed rules that are adopted by the Commission.

the relevant portions of the Proposed Rule, where applicable.

(23) Should the Commission modify its interpretation with regard to the attribution requirement to provide that attribution of a person's swap positions to a parent, other affiliate, or guarantor would not be required if the person is subject to capital standards that are comparable to and as comprehensive as the capital regulations and oversight by the Commission, SEC, or a U.S. prudential regulator? If so, should the home country capital standards be deemed comparable and comprehensive if they are consistent in all respects with Basel III?

(24) Would it be appropriate to require a U.S. branch to include in its MSP threshold calculation all of its swap positions, as if they were swap positions of a U.S. person? Would it be appropriate to require an Other Non-U.S. Person to include in its MSP de minimis threshold calculation swaps conducted through a U.S. branch?

V. ANE Transactions

A. Background and Proposed Approach

The ANE Staff Advisory provided that a non-U.S. SD would generally be required to comply with transaction-level requirements for SDs for ANE Transactions.[231] In the January 2014 ANE Request for Comment, the Commission requested comments on all aspects of the ANE Staff Advisory, including: (1) The scope and meaning of the phrase ''regularly arranging, negotiating, or executing'' and what characteristics or factors distinguish ''core, front-office'' activity from other activities; and (2) whether the Commission should adopt the ANE Staff Advisory as Commission policy, in whole or in part.[232]

The Commission received seventeen comment letters in response to the ANE Request for Comment.[233] Most commenters emphasized that the risk associated with ANE Transactions lies outside the United States[234] and that non-U.S. SDs involve U.S. personnel primarily for the convenience of their global customers.[235] They also characterized the ANE Staff Advisory as impractical or unworkable, describing its key language (''regularly arranging, negotiating, or executing swaps'' and ''performing core, front-office activities'') as vague, open to broad interpretation, and potentially capturing activities that are merely incidental to the swap transaction.[236] They further argued that if the ANE Staff Advisory were adopted as Commission policy, non-U.S. SDs would close U.S. branches and relocate personnel to other countries (or otherwise terminate agency contracts with U.S.-based agents) in order to avoid Dodd-Frank Act swap regulation or having to interpret and apply the ANE Staff Advisory, thereby increasing market fragmentation.[237] Two commenters addressed concerns regarding international comity and inconsistent, conflicting, or duplicative regimes, with one arguing that ''it is of paramount importance to prevent the duplication of applicable rules to derivative transactions, in particular when the transactions have a strong local nature or only remote links with other jurisdictions, in order to support an efficient derivatives market[;]''[238] and the other saying that ''[r]ules should therefore include the possibility to defer to those of the host regulator in most cases.''[239]

A few commenters, however, supported the ANE Staff Advisory.[240] They argued that the Commission has jurisdiction over swap activities occurring in the United States[241] and expressed concern that the Commission's failure to assert such jurisdiction would create a substantial loophole, allowing U.S. financial firms to operate in the United States without Dodd-Frank Act oversight by merely routing swaps through a non-U.S. affiliate.[242] They further argued that arranging, negotiating, or executing swaps are functions normally performed by brokers, traders, and salespersons

[231] *See* ANE Staff Advisory. The ANE Staff Advisory represented the views of DSIO only, and not necessarily those of the Commission or any other office or division thereof. *See also* Guidance, 78 FR at 45333 (providing that the transaction-level requirements include: (1) Required clearing and swap processing; (2) margining (and segregation) for uncleared swaps; (3) mandatory trade execution; (4) swap trading relationship documentation; (5) portfolio reconciliation and compression; (6) real-time public reporting; (7) trade confirmation; (8) daily trading records; and (9) external business conduct standards).

[232] *See* ANE Request for Comment, 79 FR at 1348–49.

[233] Comments were submitted by the following entities: American Bankers Association Securities Association (''ABASA'') (Mar. 10, 2014); Americans for Financial Reform (''AFR'') (Mar. 10, 2014); Barclays Bank PLC (''Barclays'') (Mar. 10, 2014); Chris R. Barnard (Mar. 8, 2014); Better Markets Inc. (''Better Markets'') (Mar. 10, 2014); Coalition for Derivatives End-Users (''Coalition'') (Mar. 10, 2014); Commercial Energy Working Group (Mar. 10, 2014); European Commission (Mar. 10, 2014); European Securities and Markets Authority (''ESMA'') (Mar. 13, 2014); Institute for Agriculture and Trade Policy (''IATP'') (Mar. 10, 2014); Institute of International Bankers (''IIB'') (Mar. 10, 2014); International Swaps and Derivatives Association, Inc. (''ISDA'') (Mar. 7, 2014); Investment Adviser Association (''IAA'') (Mar. 10, 2014); Japan Financial Markets Council (''JFMC'') (Mar. 4, 2014); Japanese Bankers Association (''JBA'') (Mar. 7, 2014); Securities Industry and Financial Markets Association, Futures Industry Association, and Financial Services Roundtable (''SIFMA/FIA/FSR'') (Mar. 10, 2014); Société Générale (''SG'') (Mar. 10, 2014). The associated comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1452&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1_50.* Although the comment file includes records of 22 comments, five were either duplicate submissions or not responsive to the ANE Request for Comment.

[234] *See, e.g.,* Barclays at 3 n.11; IIB at 4–5; ISDA at 6–7; SIFMA/FIA/FSR at 2, A–9–A–10; SG at 2 (adopting the ANE Staff Advisory would extend the Commission's regulations ''to swaps whose risk lies totally offshore'' and that do not pose a high risk to the U.S. financial system).

[235] *See, e.g.,* Coalition at 2 (non-U.S. SDs use U.S. personnel to arrange, negotiate, or execute swaps because they have particular subject matter expertise for or due to the location of their clients across time zone); European Commission at 1; IIB at 7–8 n.18; IAA at 2; ISDA at 4; JFMC at 2–3; SIFMA/FIA/FSR at A–4; SG at 3 (a non-U.S. SD may use salespersons in the United States if the ANE Transaction is linked to a USD instrument).

[236] *See, e.g.,* Barclays at 4–5; European Commission at 3 (whether negotiation of a master agreement by U.S. middle office staff would trigger application of the ANE Staff Advisory is unclear); IAA at 5 (''[T]he terms 'arranging' and 'negotiating' are overly broad and may encompass activities that are incidental to a swap transaction,'' such as providing market or pricing information); SIFMA/FIA/FSR at A–12 (arranging and negotiating trading relationships and legal documentation are ''middle- and back-office operations'' and should not be included); SG at 7–8 (''regularly'' is an arbitrary concept that cannot be made workable, and programming trading systems to interpret ''arranging, negotiating, or executing'' on a trade-by-trade basis would not be feasible).

[237] *See, e.g.,* ABASA at 2 (adopting the ANE Staff Advisory would ''impose unnecessary compliance burdens on swaps market participants, encourage them to re-locate jobs and activities outside the United States to accommodate non-U.S. client demands, and fragment market liquidity''); Coalition at 3 (emphasizing the impact on non-U.S. affiliates of U.S. end users, such as increased hedging costs and reduced access to registered counterparties); IIB at 7–8; ISDA at 4; JFMC at 3; SG at 8–9. *See also* IAA at 3 (expressing concern that non-U.S. clients may avoid hiring U.S. asset managers to avoid application of the ANE Staff Advisory).

[238] *See* ESMA at 1.

[239] *See* European Commission at 1.

[240] *See* AFR; Better Markets; IATP.

[241] *See* AFR at 2 (CEA section 2(i) clearly sets the statutory jurisdiction of CFTC rules to include all activities conducted inside the United States); Better Markets at 3 (the ANE Staff Advisory ''represents the only reasonable interpretation of Congress's mandate to regulate swaps transactions with a 'direct and significant connection with activities in, or effect on, commerce of the United States'''); IATP at 1 (''It should be self-evident that the swap activities in the United States of non-U.S. persons fall under the Commission's jurisdiction.'').

[242] *See* AFR at 3 (failure to adopt the ANE Staff Advisory ''could mean that U.S. firms operating in the U.S. would face different rules for the same transactions as compared to competitor firms also operating in the very same market and location, perhaps literally next door, who had arranged to route transactions through a nominally foreign subsidiary''); Better Markets at 3 (allowing registered SDs to book transactions overseas but otherwise handle the swap inside the United States would ''create a gaping loophole,'' resulting in ''keystroke off-shoring of the bookings, but otherwise the on-shoring of the core activities associated with the transaction'').

and are economically central to the business of swap dealing.[243]

In addition to consideration of the foregoing comments, the Commission also considered a report the U.S. Treasury Department issued in October 2017, which expressed the view that the SEC and the CFTC should ''reconsider the implications'' of applying the Dodd-Frank Act requirements to certain transactions ''merely on the basis that U.S.-located personnel arrange, negotiate, or execute the swap, especially for entities in comparably regulated jurisdictions.'' [244]

Based on the Commission's consideration of its experience under the Guidance, the comments it has received, respect for international comity, and the Commission's desire to focus its authority on potential significant risks to the U.S. financial system, the Commission has determined that ANE Transactions will not be considered a relevant factor for purposes of applying the Proposed Rule. Accordingly, under the Proposed Rule, all foreign-based swaps entered into between a non-U.S. swap entity and a non-U.S. person are treated the same regardless of whether the swap is an ANE Transaction. To the extent the Proposed Rule is finalized, this treatment would effectively supersede the ANE Staff Advisory with respect to the application of the group B and C requirements (discussed below) to ANE Transactions.

With respect to its experience, the Commission notes that the ANE No-Action Relief, which went into effect immediately after issuance of the ANE Staff Advisory, generally relieved non-U.S. swap entities from the obligation to comply with most transaction-level requirements when entering into swaps with most non-U.S. persons.[245] In the intervening period, the Commission has not found a negative impact on either its ability to effectively oversee non-US swap entities, nor the integrity and transparency of U.S. derivatives markets.

In the interest of international comity, under the Proposed Rule, as under the Guidance, swaps between certain non-U.S. persons would qualify for an exception from application of certain CFTC requirements.[246] ANE Transactions also involve swaps between non-U.S. persons, and thus the Commission has considered whether the U.S. aspect of ANE Transactions should override its general view that such transactions should qualify for the same relief. A person that, in connection with its dealing activity, engages in market-facing activity using personnel located in the United States is conducting a substantial aspect of its dealing business in the United States. But, because the transactions involve two non-U.S. persons, and the financial risk of the transactions lies outside the United States, the Commission considers the extent to which the underlying regulatory objectives of the Dodd-Frank Act would be advanced in light of other policy considerations, including undue market distortions and international comity, when making the determination as to whether the Dodd-Frank Act swap requirements should apply to ANE Transactions.

As a preliminary matter, the Commission notes that the consequences of disapplication of the Dodd-Frank Act swap requirements would be mitigated in two respects. First, persons engaging in any aspect of swap transactions within the U.S. remain subject to the CEA and Commission regulations prohibiting the employment, or attempted employment, of manipulative, fraudulent, or deceptive devices, such as section 6(c)(1) of the CEA,[247] and Commission regulation 180.1.[248] The Commission thus would retain anti-fraud and anti-manipulation authority, and would continue to monitor the trading practices of non-U.S. persons that occur within the territory of the United States in order to enforce a high standard of customer protection and market integrity. Even where a swap is entered into by two non-U.S. persons, the United States has a significant interest in deterring fraudulent or manipulative conduct occurring within its borders and cannot be a haven for such activity.

Second, with respect to more specific regulation of swap dealing in accordance with the Commission's swap regime, the Commission notes that, in most cases, non-U.S. persons entering into ANE Transactions would be subject to regulation and oversight in their home jurisdictions similar to the Commission's transaction-level requirements as most of the major swap trading centers have implemented similar risk mitigation requirements.[249]

With respect to market distortion, the Commission gives weight to commenters that argued that application of transaction-level requirements to ANE Transactions would cause non-U.S. SDs to relocate personnel to other countries (or otherwise terminate agency contracts with U.S.-based agents) in order to avoid Dodd-Frank Act swap regulation or having to interpret and apply what the commenters considered a challenging ANE analysis, thereby potentially increasing market fragmentation.[250]

The Commission also gives weight to the regulatory interests of the home jurisdictions of non-U.S. persons engaged in ANE Transactions. Because the risk of the resulting swaps lies in those home countries and not the U.S. financial system, the Commission recognizes that, with the exception of enforcing the prohibition on fraudulent or manipulative conduct taking place in the United States, non-U.S. regulators will have a greater incentive to regulate the swap dealing activities of such non-U.S. persons—such as, for example, with respect to business conduct standards with counterparties, appropriate documentation, and recordkeeping. In these circumstances, where the risk lies outside the U.S. financial system, the Commission recognizes the greater supervisory interest of the authorities in the home jurisdictions of the non-U.S. persons. The Commission is also not aware of any major swap regulatory jurisdiction that applies its regulatory regime to U.S. entities engaging in ANE Transactions within its territory.

In sum, the Commission has determined that the mitigating effect of the anti-fraud and anti-manipulation authority retained by the Commission and the prevalence of applicable regulatory requirements similar to the Commission's own, the likelihood of disruptive avoidance, the Commission's respect for the regulatory interests of the foreign jurisdictions where the actual

[243] *See* AFR at 2–3, 5; Better Markets at 5 (brokers, structurers, traders, and salesmen ''collectively comprise the general understanding of the core front office'').

[244] *See* U.S. Department of Treasury, A Financial System That Creates Economic Opportunities: Capital Markets, at 133–36 (Oct. 2017), available at *https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.*

[245] Specifically, non-U.S. persons that are neither guaranteed nor conduit affiliates, as described in the Guidance.

[246] Consisting of transaction-level requirements under the Guidance and group B and C requirements under the Proposed Rule, as discussed below.

[247] 7 U.S.C. 9(1).

[248] 17 CFR 180.1.

[249] *See* 2019 FSB Progress Report, Table M.

[250] *See, e.g.,* ABASA at 2 (adopting the ANE Staff Advisory would ''impose unnecessary compliance burdens on swaps market participants, encourage them to re-locate jobs and activities outside the United States to accommodate non-U.S. client demands, and fragment market liquidity''); Coalition at 3 (emphasizing the impact on non-U.S. affiliates of U.S. end users, such as increased hedging costs and reduced access to registered counterparties); IIB at 7–8; ISDA at 4; JFMC at 3; SG at 8–9. *See also* IAA at 3 (expressing concern that non-U.S. clients may avoid hiring U.S. asset managers to avoid application of the ANE Staff Advisory).

financial risks of ANE Transactions lie in accordance with the principles of international comity, and the awareness that application of its swap requirements in the ANE context would make the Commission an outlier among the major swap regulatory jurisdictions, outweighs the Commission's regulatory interest in applying its swap requirements to ANE Transactions differently than such are otherwise proposed to be applied to swaps between Other Non-U.S. Persons.

B. Request for Comment

The Commission invites comment on all aspects of the proposed treatment of ANE Transactions described in section V, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to the Proposed Rule, where applicable.

(25) Should the Commission apply certain transaction-level requirements (*e.g.,* § 23.433 (fair dealing)) to SDs and MSPs with respect to ANE Transactions, or are the existing anti-fraud and anti-manipulation powers under the CEA and Commission regulations adequate safeguards to address any wrongdoing arising from ANE Transactions.

(26) Should the Commission consider adopting a territorial approach similar to the SEC, where non-US counterparties engaging in ANE Transactions would count such transactions towards their de minimis thresholds and be subject to certain transaction-level requirements,[251] rather than the proposed comity-based approach of excluding ANE Transactions from the Proposed Rule?

VI. Proposed Exceptions From Group B and Group C Requirements, Substituted Compliance for Group A and Group B Requirements, and Comparability Determinations

Title VII of the Dodd-Frank Act and Commission regulations thereunder establish a broad range of requirements applicable to SDs and MSPs, including requirements regarding risk management and internal and external business conduct. These requirements are designed to reduce systemic risk, increase counterparty protections, and increase market efficiency, orderliness, and transparency.[252] Consistent with the Guidance,[253] SDs and MSPs (whether or not U.S. persons) are subject to all of the Commission regulations described below by virtue of their status as Commission registrants. Put differently, the Commission's view is that if an entity is required to register as an SD or MSP under the Commission's interpretation of section 2(i) of the CEA, then such entity should be subject to these regulations with respect to all of its swap activities. As explained further below, such an approach is necessary because of the important role that the SD and MSP requirements play in the proper operation of a registrant.

However, consistent with section 2(i) of the CEA, in the interest of international comity, and for other reasons discussed in this release, the Commission is proposing exceptions from, and a substituted compliance process for, certain regulations applicable to registered SDs and MSPs, as appropriate.[254] Further, the Proposed Rule would create a framework for comparability determinations that emphasizes a holistic, outcomes-based approach that is grounded in principles of international comity.

A. Classification and Application of Certain Regulatory Requirements—Group A, Group B, and Group C Requirements

The Guidance applied a bifurcated approach to the classification of certain regulatory requirements applicable to SDs and MSPs, based on whether the requirement applies to the firm as a whole (''Entity-Level Requirement'' or ''ELR'') or to the individual swap or trading relationship (''Transaction-Level Requirement'' or ''TLR'').[255]

The Guidance categorized the following regulatory requirements as ELRs: (1) Capital adequacy; (2) chief compliance officer; (3) risk management; (4) swap data recordkeeping; (5) swap data repository (''SDR'') reporting; and (6) large trader reporting.[256] The Guidance further divided ELRs into two subcategories.[257] The first category of ELRs includes: (1) Capital adequacy; (2) chief compliance officer; (3) risk management; and (4) certain swap data recordkeeping requirements [258] (''First Category ELRs'').[259] The second category of ELRs includes: (1) SDR reporting; (2) certain aspects of swap data recordkeeping relating to complaints and marketing and sales materials under §§ 23.201(b)(3) and 23.201(b)(4); and (3) large trader reporting (''Second Category ELRs'').[260]

The Guidance categorized the following regulatory requirements as TLRs: (1) Required clearing and swap processing; (2) margin (and segregation) for uncleared swaps; (3) mandatory trade execution; (4) swap trading relationship documentation; (5) portfolio reconciliation and compression; (6) real-time public reporting; (7) trade confirmation; (8) daily trading records; and (9) external business conduct standards.[261] As with the ELRs, the Guidance similarly subdivided TLRs into two subcategories.[262] The Commission determined that all TLRs, other than external business conduct standards, address risk mitigation and market transparency.[263] Accordingly, under the Guidance, all TLRs except external business conduct standards are classified as ''Category A TLRs,'' whereas external business conduct standards are classified as ''Category B TLRs.'' [264] Under the Guidance, generally, whether a specific Commission requirement applies to a swap entity and a swap and whether substituted compliance is available depends on the classification of the requirement as an ELR or TLR and the sub-classification of each and the type

[251] *See* Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or Security-Based Swap Dealer De Minimis Exception, 81 FR 8598 (Feb. 19, 2016); Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, 84 FR 24206 (May 24, 2019).

[252] *See, e.g.,* Entities Rule, 77 FR at 30629, 30703.

[253] *See* Guidance, 78 FR at 45342. The Commission notes that while the Guidance states that all swap entities (wherever located) are subject to all of the CFTC's Title VII requirements, the Guidance went on to describe how and when the Commission would expect swap entities to comply with specific requirements and when substituted compliance would be available under its non-binding framework.

[254] The Commission intends to separately address the cross-border application of the Title VII requirements addressed in the Guidance that are not discussed in this release (*e.g.,* capital adequacy, clearing and swap processing, mandatory trade execution, swap data repository reporting, large trader reporting, and real-time public reporting). With respect to capital adequacy requirements for SDs and MSPs, the Commission notes that it has proposed but not yet adopted final regulations. *See* the Commission's proposed capital adequacy regulations in Capital Requirements of Swap Dealers and Major Swap Participants, 84 FR 69664 (proposed Dec. 19, 2019); Capital Requirements of Swap Dealers and Major Swap Participants, 81 FR 91252 (proposed Dec. 16, 2016); and Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802 (proposed May 12, 2011).

[255] *See, e.g.,* Guidance, 78 FR at 45331.

[256] *See, e.g., id.*

[257] *See, e.g., id.*

[258] Swap data recordkeeping under 17 CFR 23.201 and 23.203 (except certain aspects of swap data recordkeeping relating to complaints and sales materials).

[259] *See, e.g.,* Guidance, 78 FR at 45331.

[260] *See, e.g., id.*

[261] *See, e.g., id.* at 45333.

[262] *See, e.g., id.*

[263] *See, e.g., id.*

[264] *See, e.g., id.*

of swap entity and, in certain cases, the counterparty to a specific swap.[265]

To avoid confusion that may arise from using the ELR/TLR classification in the Proposed Rule, given that the Proposed Rule does not address the same set of Commission regulations as the Guidance, the Commission is proposing to classify certain of its regulations as group A, group B, and group C requirements for purposes of determining the availability of certain exceptions from, and/or substituted compliance for, such regulations. A description of each of the group A requirements, group B requirements, and group C requirements is below.

1. Group A Requirements

The group A requirements include: (1) Chief compliance officer; (2) risk management; (3) swap data recordkeeping; and (4) antitrust considerations. Specifically, the group A requirements consist of the requirements set forth in §§ 3.3, 23.201, 23.203, 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, 23.607, and 23.609,[266] each discussed below. The Commission believes that these requirements would be impractical to apply only to specific transactions or counterparty relationships, and are most effective when applied consistently across the entire enterprise. They ensure that swap entities implement and maintain a comprehensive and robust system of internal controls to ensure the financial integrity of the firm, and, in turn, the protection of the financial system. Together with other Commission requirements, they constitute an important line of defense against financial, operational, and compliance risks that could lead to a firm's default. Requiring swap entities to rigorously monitor and address the risks they incur as part of their day-to-day businesses lowers the registrants' risk of default—and ultimately protects the public and the financial system. For this reason, the Commission has strong supervisory interests in ensuring that swap entities (whether domestic or foreign) are subject to the group A requirements or comparably rigorous standards.

(i) Chief Compliance Officer

Section 4s(k) of the CEA requires that each SD and MSP designate an individual to serve as its chief compliance officer (''CCO'') and specifies certain duties of the CCO.[267] Pursuant to section 4s(k), the Commission adopted § 3.3,[268] which requires SDs and MSPs to designate a CCO responsible for administering the firm's compliance policies and procedures, reporting directly to the board of directors or a senior officer of the SD or MSP, as well as preparing and filing with the Commission a certified annual report discussing the registrant's compliance policies and activities. The CCO function is an integral element of a firm's risk management and oversight and the Commission's effort to foster a strong culture of compliance within SDs and MSPs.

(ii) Risk Management

Section 4s(j) of the CEA requires each SD and MSP to establish internal policies and procedures designed to, among other things, address risk management, monitor compliance with position limits, prevent conflicts of interest, and promote diligent supervision, as well as maintain business continuity and disaster recovery programs.[269] The Commission implemented these provisions in §§ 23.600, 23.601, 23.602, 23.603, 23.605, and 23.606.[270] The Commission also adopted § 23.609,[271] which requires certain risk management procedures for SDs or MSPs that are clearing members of a DCO.[272] Collectively, these requirements help to establish a comprehensive internal risk management program for SDs and MSPs, which is critical to effective systemic risk management for the overall swap market.

(iii) Swap Data Recordkeeping

CEA section 4s(f)(1)(B) requires SDs and MSPs to keep books and records for all activities related to their swap business.[273] Sections 4s(g)(1) and (4) require SDs and MSPs to maintain trading records for each swap and all related records, as well as a complete audit trail for comprehensive trade reconstructions.[274] Additionally, CEA section 4s(f)(1) requires SDs and MSPs to ''make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of'' the registered SD or MSP.[275] Further, CEA section 4s(h) requires SDs and MSPs to ''conform with such business conduct standards . . . as may be prescribed by the Commission by rule or regulation.'' [276]

Pursuant to these provisions, the Commission promulgated final rules that set forth certain reporting and recordkeeping for SDs and MSPs.[277] Specifically, §§ 23.201 and 23.203 [278] require SDs and MSPs to keep records including complete transaction and position information for all swap activities, including documentation on which trade information is originally recorded. In particular, § 23.201 states that each SD and MSP shall keep full, complete, and systematic records of all activities related to its business as a SD or MSP.[279] Such records must include, among other things, a record of each complaint received by the SD or MSP concerning any partner, member, officer, employee, or agent,[280] as well as all marketing and sales presentations, advertisements, literature, and communications.[281] Commission regulation 23.203 [282] requires, among other things, that records (other than swap data reported in accordance with part 45 of the Commission's regulations) [283] be maintained in accordance with § 1.31.[284] Commission regulation 1.31 requires that records relating to swaps be maintained for specific durations, including that records of swaps be maintained for a minimum of five years and as much as the life of the swap plus five years, and that most records be ''readily accessible'' for the entire record keeping period.[285]

[265] *See, e.g., id.* at 45337–38.

[266] 17 CFR 3.3, 23.201, 23.203, 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, 23.607, and 23.609.

[267] 7 U.S.C. 6s(k).

[268] 17 CFR 3.3. *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012) (''Final SD and MSP Recordkeeping, Reporting, and Duties Rule''). In 2018, the Commission adopted amendments to the CCO requirements. *See* Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, 83 FR 43510 (Aug. 27, 2018).

[269] 7 U.S.C. 6s(j).

[270] 17 CFR 23.600, 23.601, 23.602, 23.603, 23.605, and 23.606. *See* Final SD and MSP Recordkeeping, Reporting, and Duties Rule, 77 FR 20128 (addressing rules related to risk management programs, monitoring of position limits, diligent supervision, business continuity and disaster recovery, conflicts of interest policies and procedures, and general information availability).

[271] 17 CFR 23.609.

[272] *See* Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278 (Apr. 9, 2012).

[273] 7 U.S.C. 6s(f)(1)(B).

[274] 7 U.S.C. 6s(g)(1) and (4).

[275] 7 U.S.C. 6s(f)(1).

[276] 7 U.S.C. 6s(h)(1). *See* 7 U.S.C. 6s(h)(3).

[277] *See* Final SD and MSP Recordkeeping, Reporting, and Duties Rule, 77 FR 20128.

[278] 17 CFR 23.201 and 203.

[279] 17 CFR 23.201(b).

[280] 17 CFR 23.201(b)(3)(i).

[281] 17 CFR 23.201(b)(4).

[282] 17 CFR 23.203.

[283] 17 CFR 45.

[284] 17 CFR 1.31.

[285] 17 CFR 1.31(b).

(iv) Antitrust Considerations

Section 4s(j)(6) of the CEA prohibits an SD or MSP from adopting any process or taking any action that results in any unreasonable restraint of trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the CEA.[286] The Commission promulgated this requirement in § 23.607(a)[287] and also adopted § 23.607(b), which requires SDs and MSPs to adopt policies and procedures to prevent actions that result in unreasonable restraints of trade or impose any material anticompetitive burden on trading or clearing.[288]

2. Group B Requirements

The group B requirements include: (1) Swap trading relationship documentation; (2) portfolio reconciliation and compression; (3) trade confirmation; and (4) daily trading records. Specifically, the group B requirements consist of the requirements set forth in §§ 23.202, 23.501, 23.502, 23.503, and 23.504,[289] each discussed below. The group B requirements relate to risk mitigation and the maintenance of good recordkeeping and business practices.[290] Unlike the group A requirements, the Commission believes that the group B requirements can practically be applied on a bifurcated basis between domestic and foreign transactions or counterparty relationships and, thus, do not need to be applied uniformly across an entire enterprise. This allows the Commission to have greater flexibility with respect to the application of these requirements to non-U.S. swap entities and foreign branches of U.S. swap entities.

(i) Swap Trading Relationship Documentation

CEA section 4s(i) requires each SD and MSP to conform to Commission standards for the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps.[291] Pursuant to section 4s(i), the Commission adopted, among other regulations, § 23.504.[292] Regulation 23.504(a) requires SDs and MSPs to ''establish, maintain and follow written policies and procedures'' to ensure that the SD or MSP executes written swap trading relationship documentation, and § 23.504(c) requires that documentation policies and procedures be audited periodically by an independent auditor to identify material weaknesses.[293] Under § 23.504(b), the swap trading relationship documentation must include, among other things: (1) All terms governing the trading relationship between the SD or MSP and its counterparty; (2) credit support arrangements; (3) investment and re-hypothecation terms for assets used as margin for uncleared swaps; and (4) custodial arrangements.[294] Swap documentation standards facilitate sound risk management and may promote standardization of documents and transactions, which are key conditions for central clearing, and lead to other operational efficiencies, including improved valuation.

(ii) Portfolio Reconciliation and Compression

CEA section 4s(i) directs the Commission to prescribe regulations for the timely and accurate processing and netting of all swaps entered into by SDs and MSPs.[295] Pursuant to CEA section 4s(i), the Commission adopted §§ 23.502 and 23.503,[296] which require SDs and MSPs to perform portfolio reconciliation and compression, respectively, for their swaps.[297] Portfolio reconciliation is a post-execution risk management tool designed to ensure accurate confirmation of a swap's terms and to identify and resolve any discrepancies between counterparties regarding the valuation of the swap. Portfolio compression is a post-trade processing and netting mechanism that is intended to ensure timely, accurate processing and netting of swaps.[298] Further, § 23.503 requires all SDs and MSPs to establish policies and procedures for terminating fully offsetting uncleared swaps, when appropriate, and periodically participating in bilateral and/or multilateral portfolio compression exercises for uncleared swaps with other SDs or MSPs or through a third party.[299] The rule also requires policies and procedures for engaging in such exercises for uncleared swaps with non-SDs and non-MSPs upon request.[300]

(iii) Trade Confirmation

Section 4s(i) of the CEA requires that each SD and MSP must comply with the Commission's regulations prescribing timely and accurate confirmation of swaps.[301] The Commission adopted § 23.501,[302] which requires, among other things, timely and accurate confirmation of swap transactions (which includes execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap) among SDs and MSPs by the end of the first business day following the day of execution.[303] Timely and accurate confirmation of swaps—together with portfolio reconciliation and compression—are important post-trade processing mechanisms for reducing risks and improving operational efficiency.[304]

(iv) Daily Trading Records

Pursuant to CEA section 4s(g),[305] the Commission adopted § 23.202,[306] which requires SDs and MSPs to maintain daily trading records, including records of trade information related to pre-execution, execution, and post-execution data that is needed to conduct a comprehensive and accurate trade reconstruction for each swap. The regulation also requires that records be kept of cash or forward transactions used to hedge, mitigate the risk of, or offset any swap held by the SD or MSP.[307] Accurate and timely records regarding all phases of a swap transaction can serve to greatly enhance a firm's internal supervision, as well as

[286] 7 U.S.C. 6s(j)(6).

[287] 17 CFR 23.607(a).

[288] 17 CFR 23.607(b).

[289] 17 CFR 23.202, 23.501, 23.502, 23.503, and 23.504.

[290] *See, e.g.,* Int'l Org. of Sec. Comm'ns, Risk Mitigation Standards for Non-Centrally Cleared OTC Derivatives, IOSCO Doc. FR01/2015 (Jan. 28, 2015) (''IOSCO Risk Management Standards''), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD469.pdf* (discussing, among other things, the objectives and benefits of trading relationship documentation, trade confirmation, reconciliation, and portfolio compression requirements). In addition, the group B requirements also provide customer protection and market transparency benefits.

[291] 7 U.S.C. 6s(i).

[292] 17 CFR 23.504. *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012) (''Final Confirmation, Risk Mitigation, and Documentation Rules'').

[293] 17 CFR 23.504(a)(2) and (c).

[294] 17 CFR 23.504(b).

[295] 7 U.S.C. 6s(i).

[296] 17 CFR 23.502 and 503. *See* Final Confirmation, Risk Mitigation, and Documentation Rules, 77 FR 55904.

[297] *See* 17 CFR 23.502 and 503.

[298] For example, the reduced transaction count may decrease operational risk as there are fewer trades to maintain, process, and settle.

[299] *See* 17 CFR 23.503(a).

[300] 17 CFR 23.503(b).

[301] 7 U.S.C. 6s(i).

[302] 17 CFR 23.501. *See* Final Confirmation, Risk Mitigation, and Documentation Rules, 77 FR 55904.

[303] 17 CFR 23.501(a)(1).

[304] Additionally, the Commission notes that § 23.504(b)(2) requires that the swap trading relationship documentation of SDs and MSPs must include all confirmations of swap transactions. 17 CFR 23.504(b)(2).

[305] 7 U.S.C. 6s(g).

[306] 17 CFR 23.202. *See* Final SD and MSP Recordkeeping, Reporting, and Duties Rule, 77 FR 20128.

[307] 17 CFR 23.202(b).

the Commission's ability to detect and address market or regulatory abuses or evasion.

3. Group C Requirements

Pursuant to CEA section 4s(h),[308] the Commission adopted external business conduct rules, which establish certain additional business conduct standards governing the conduct of SDs and MSPs in dealing with their swap counterparties.[309] The group C requirements are set forth in §§ 23.400–451.[310] Broadly speaking, these rules are designed to enhance counterparty protections by establishing robust requirements regarding SDs' and MSPs' conduct with their counterparties. Under these rules, SDs and MSPs are required to, among other things, conduct due diligence on their counterparties to verify eligibility to trade (including eligible contract participant status), refrain from engaging in abusive market practices, provide disclosure of material information about the swap to their counterparties, provide a daily mid-market mark for uncleared swaps, and, when recommending a swap to a counterparty, make a determination as to the suitability of the swap for the counterparty based on reasonable diligence concerning the counterparty.

In the Commission's view, the group C requirements focus on customer protection and have a more attenuated link to, and are therefore distinguishable from, systemic and market-oriented protections in the group A and group B requirements. Additionally, as discussed below, the Commission believes that the foreign jurisdictions in which non-U.S. persons and foreign branches of U.S. swap entities are located are likely to have a significant interest in the type of business conduct standards that would be applicable to transactions with such non-U.S. persons and foreign branches within their jurisdiction, and, consistent with section 2(i) of the CEA and in the interest of international comity, it is generally appropriate to defer to such jurisdictions in applying, or not applying, such standards to foreign-based swaps with foreign counterparties.

4. Request for Comment

The Commission invites comment on all aspects of the Proposed Rule, including the classifications of Title VII requirements discussed above, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to the relevant portions of the Proposed Rule, where applicable.

(27) On the classification of group A, group B, and group C requirements, should the Commission use these classifications, revert to the ELR and TLR classifications used in the Guidance, or otherwise classify the relevant Title VII requirements?

(28) To the extent that you agree with the Commission's proposed use of the group A, group B, and group C requirements classification, should any of the requirements be re-classified or removed from such groups? Should requirements not included of any of the groups be added to any of them? If so, which requirements?

B. Proposed Exceptions

Consistent with section 2(i) of the CEA, the Commission is proposing four exceptions from certain Commission regulations for foreign-based swaps in the Proposed Rule.

First, the Commission is proposing an exception from certain group B and C requirements for certain anonymous, exchange-traded, and cleared foreign-based swaps (''Exchange-Traded Exception'').

Second, the Commission is proposing an exception from the group C requirements for certain foreign-based swaps with foreign counterparties (''Foreign Swap Group C Exception'').

Third, the Commission is proposing an exception from the group B requirements for the foreign-based swaps of certain non-U.S. swap entities with certain foreign counterparties (''Non-U.S. Swap Entity Group B Exception'').

Fourth, the Commission is proposing an exception from the group B requirements for certain foreign-based swaps of foreign branches of U.S. swap entities with certain foreign counterparties, subject to certain limitations, including a quarterly cap on the amount of such swaps (''Foreign Branch Group B Exception'').

While these exceptions each have different eligibility requirements discussed below, a common requirement is that they would be available only to foreign-based swaps. As discussed in section II.G above, under the Proposed Rule, a foreign-based swap would mean: (1) A swap by a non-U.S. swap entity, except for a swap conducted through a U.S. branch; or (2) a swap conducted through a foreign branch. Under the Proposed Rule, swaps that do not meet these requirements would be treated as domestic swaps for purposes of applying the group B and group C requirements and, therefore, would not be eligible for the above exceptions.

Pursuant to the Proposed Rule, swap entities that avail themselves of these exceptions for their foreign-based swaps would only be required to comply with the applicable laws of the foreign jurisdiction(s) to which they are subject, rather than the relevant Commission requirements, for such swaps. However, the Commission notes that, notwithstanding these exceptions, swap entities would remain subject to the CEA and Commission regulations not covered by the exceptions, including the prohibition on the employment, or attempted employment, of manipulative and deceptive devices in § 180.1 of the Commission's regulations.[311] In addition, the Commission would expect swap entities to address any significant risk that may arise as a result of the utilization of one or more exceptions in their risk management programs required pursuant to § 23.600.[312]

1. Exchange-Traded Exception

The Commission is proposing that, with respect to its foreign-based swaps, each non-U.S. swap entity and foreign branch of a U.S. swap entity would be excepted from the group B requirements (other than the daily trading records requirements in §§ 23.202(a) through 23.202(a)(1)) [313] and the group C requirements with respect to any swap entered into on a DCM, a registered SEF or a SEF exempted from registration by the Commission pursuant to section 5h(g) of the CEA, or an FBOT registered with the Commission pursuant to part 48 of its regulations [314] where, in each case, the swap is cleared through a registered DCO or a clearing organization that has been exempted from registration by the Commission pursuant to section 5b(h) of the CEA, and the swap entity does not know the identity of the counterparty to the swap prior to execution.[315]

[308] 7 U.S.C. 6s(h).

[309] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734 (Feb. 17, 2012).

[310] 17 CFR 23.400–451.

[311] 17 CFR 180.1.

[312] 17 CFR 23.600.

[313] 17 CFR 23.202(a) through (a)(1).

[314] The Commission would consider the proposed exception described herein also to apply with respect to an FBOT that provides direct access to its order entry and trade matching system from within the U.S. pursuant to no-action relief issued by Commission staff.

[315] Proposed § 23.23(e)(1)(i). This approach is similar to the Guidance. *See* Guidance, 78 FR at 45351–52 and 45360–61. As discussed in the Guidance and below, the Commission recognizes that certain of the group B requirements and group C requirements are not applicable to swaps meeting the requirements of the exception in any event. However, the Commission nonetheless wishes to expressly provide that the swaps described in the exception are excepted from all of the group B and

With respect to the group B trade confirmation requirement, the Commission notes that where a cleared swap is executed anonymously on a DCM or SEF (as discussed above), independent requirements that apply to DCM and SEF transactions pursuant to the Commission's regulations should ensure that these requirements are met.[316] And, for a combination of reasons, including the fact that a registered FBOT is analogous to a DCM and is expected to be subject to comprehensive supervision and regulation in its home country,[317] and the fact that the swap will be cleared, the Commission believes that the Commission's trade confirmation requirements should not apply to foreign-based swaps that meet the requirements of the exception and are traded on registered FBOTs.

Of the remaining group B requirements, the portfolio reconciliation and compression and swap trading relationship documentation requirements would not apply to cleared DCM, SEF, or FBOT transactions described above because the Commission regulations that establish those requirements make clear that they do not apply to cleared transactions.[318] For the last group B requirement—the daily trading records requirement[319]—the Commission believes that, as a matter of international comity and recognizing the supervisory interests of foreign regulators who may have their own trading records requirements, it is appropriate to except such foreign-based swaps from certain of the Commission's daily trading records requirements. However, the Commission believes that the requirements of §§ 23.202(a) through (a)(1) should continue to apply, as it believes that all swap entities should be required to maintain, among other things, sufficient records to conduct a comprehensive and accurate trade reconstruction for each swap. The Commission notes that, in particular, for certain pre-execution trade information under § 23.202(a)(1),[320] the swap entity may be the best, or only, source for such records. For this reason, paragraphs (a) through (a)(1) of § 23.202 are carved out from the group B requirements in the proposed exception.

Additionally, given that this exception is predicated on anonymity, many of the group C requirements would be inapplicable.[321] In the interest of international comity and because the proposed exception requires that the swap be exchange-traded and cleared, the Commission is proposing that foreign-based swaps also be excepted from the remaining group C requirements in these circumstances. The Commission expects that the requirements that the swaps be exchange-traded and cleared will generally limit swaps that benefit from the exception to standardized and commonly-traded, foreign-based swaps, for which the Commission believes application of the remaining group C requirements is not necessary.

2. Foreign Swap Group C Exception

The Commission is also proposing that each non-U.S. swap entity and foreign branch of a U.S. swap entity would be excepted from the group C requirements with respect to its foreign-based swaps with a foreign counterparty.[322] Such swaps would not include as a party a U.S. person (other than a foreign branch where the swap is conducted through such foreign branch) or be conducted through a U.S. branch. Given that the group C requirements are intended to promote counterparty protections in the context of local market sales practices, the Commission recognizes that foreign regulators may have a relatively stronger supervisory interest in regulating such swaps in relation to the group C requirements. Accordingly, the Commission believes that applying the group C requirements to these transactions may not be warranted.[323]

The Commission notes that, just as the Commission has a strong supervisory interest in regulating and enforcing the group C requirements associated with swaps taking place in the United States, foreign regulators would have a similar interest in overseeing sales practices for swaps occurring within their jurisdictions. Further, given the scope of section 2(i) of the CEA with respect to the Commission's regulation of swap activities outside the United States, the Commission believes that imposing its group C requirements on a foreign-based swap between a non-U.S. swap entity or foreign branch of a U.S. swap entity, on

group C requirements, other than §§ 23.302(a) through (a)(1) as discussed below. As discussed, *supra* note 201, the Commission recognizes that it recently issued proposed rulemakings regarding non-U.S. DCOs, and may modify this exception for exchange-traded and cleared swaps as necessary, based on any DCO-related proposed rules that are adopted by the Commission.

[316] *See* 17 CFR 23.501(a)(4)(i) (''Any swap transaction executed on a swap execution facility or designated contract market shall be deemed to satisfy the requirements of this section, provided that the rules of the swap execution facility or designated contract market establish that confirmation of all terms of the transactions shall take place at the same time as execution.''); and 37.6(b) (''A swap execution facility shall provide each counterparty to a transaction that is entered on or pursuant to the rules of the swap execution facility with a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as confirmation of the transaction. The confirmation of all terms shall take place at the same time as execution . . .'').

[317] Pursuant to 17 CFR 48.5(d)(2), in reviewing the registration application of an FBOT, the Commission will consider whether the FBOT and its clearing organization are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which DCMs and DCOs are respectively subject under the Act, Commission regulations, and other applicable United States laws and regulations.

[318] *See* 17 CFR 23.502(d) (''Nothing in this section [portfolio reconciliation] shall apply to a swap that is cleared by a derivatives clearing organization''); 23.503(c) (''Nothing in this section [portfolio compression] shall apply to a swap that is cleared by a derivatives clearing organization.''); and 23.504(a)(1)(iii) (''The requirements of this section [swap trading relationship documentation] shall not apply to . . . [s]waps cleared by a derivatives clearing organization.'').

[319] *See* 17 CFR 23.202.

[320] *See* 17 CFR 23.202(a)(1).

[321] *See* 17 CFR 23.402(b)–(c) (requiring SDs and MSPs to obtain and retain certain information only about each counterparty ''whose identity is known to the SD or MSP prior to the execution of the transaction''); 23.430(e) (not requiring SDs and MSPs to verify counterparty eligibility when a transaction is entered on a DCM or SEF and the SD or MSP does not know the identity of the counterparty prior to execution); 23.431(c) (not requiring disclosure of material information about a swap if initiated on a DCM or SEF and the SD or MSP does not know the identity of the counterparty prior to execution); 23.450(h) (not requiring SDs and MSPs to have a reasonable basis to believe that a Special Entity has a qualified, independent representative if the transaction with the Special Entity is initiated on a DCM or SEF and the SD or MSP does not know the identity of the Special Entity prior to execution); and 23.451(b)(2)(iii) (disapplying the prohibition on entering into swaps with a governmental Special Entity within two years after any contribution to an official of such governmental Special Entity if the swap is initiated on a DCM or SEF and the SD or MSP does not know the identity of the Special Entity prior to execution). Because the Commission believes a registered FBOT is analogous to a DCM for these purposes and is expected to be subject to comprehensive supervision and regulation in its home country, and because a SEF that is exempted from registration by the Commission pursuant to section 5h(g) of the CEA must be subject to supervision and regulation that is comparable to that to which Commission-registered SEFs are subject, the Commission is also proposing that these group C requirements would not be applicable where such a swap is executed anonymously on a registered FBOT, or a SEF that has been exempted from registration with the Commission pursuant to section 5h(g) of the CEA, and cleared.

[322] Proposed § 23.23(e)(1)(ii) This approach is similar to the Guidance. *See* Guidance, 78 FR at 45360–61. As discussed in section II.G, under the Proposed Rule, a foreign counterparty would mean: (1) A non-U.S. person, except with respect to a swap conducted through a U.S. branch of that non-U.S. person; or (2) a foreign branch where it enters into a swap in a manner that satisfies the definition of a swap conducted through a foreign branch.

As used herein, the term swap includes transactions in swaps as well as swaps that are offered but not entered into, as applicable.

[323] The Commission expressed a similar view in the Guidance. *See* Guidance, 78 FR at 45360–61.

one hand, and a foreign counterparty, on the other, is generally not necessary to advance the customer protection goals of the Dodd-Frank Act embodied in the group C requirements.

On the other hand, whenever a swap involves at least one party that is a U.S. person (other than a foreign branch where the swap is conducted through such foreign branch) or is a swap that is conducted through a U.S. branch, the Commission believes it has a strong supervisory interest in regulating and enforcing the group C requirements. A major purpose of Title VII is to control the potential harm to U.S. markets that can arise from risks that are magnified or transferred between parties via swaps. Exercise of U.S. jurisdiction with respect to the group C requirements over such swaps is a reasonable exercise of jurisdiction because of the strong U.S. interest in minimizing the potential risks that may flow to the U.S. economy as a result of such swaps.[324]

3. Non-U.S. Swap Entity Group B Exception

The Commission is also proposing that each non-U.S. swap entity that is an Other Non-U.S. Person would be excepted from the group B requirements with respect to any foreign-based swap with a foreign counterparty that is also an Other Non-U.S. Person.[325] In these circumstances, where no party to the foreign-based swap is a U.S. person, guaranteed by a U.S. person, or an SRS, and, the particular swap is a foreign-based swap, notwithstanding that one or both parties to such swap may be a swap entity, the Commission believes that foreign regulators may have a relatively stronger supervisory interest in regulating such swaps with respect to the subject matter covered by the group B requirements, and that, in the interest of international comity, applying the group B requirements to these foreign-based swaps is not warranted.[326]

4. Foreign Branch Group B Exception

The Commission is also proposing that each foreign branch of a U.S. swap entity would be excepted from the group B requirements, with respect to any foreign-based swap with a foreign counterparty that is an Other Non-U.S. Person, subject to certain limitations.[327] Specifically, (1) the exception would not be available with respect to any group B requirement for which substituted compliance (discussed in section VI.C below) is available for the relevant swap; and (2) in any calendar quarter, the aggregate gross notional amount of swaps conducted by a swap entity in reliance on the exception may not exceed five percent of the aggregate gross notional amount of all its swaps in that calendar quarter.[328]

The Commission is proposing the Foreign Branch Group B Exception to allow the foreign branches of U.S. swap entities to continue to access swap markets for which substituted compliance may not be available under limited circumstances.[329] The Commission believes the Foreign Branch Group B Exception is appropriate because U.S. swap entities' activities through foreign branches in these markets, though not significant in volume in many cases, may nevertheless be an integral element of a U.S. swap entity's global business. Additionally, although not the Commission's main purpose, the Commission endeavors to preserve liquidity in the emerging markets in which it expects this exception to be utilized, which may further encourage the global use and development of swap markets. Further, because of the proposed five percent cap on the use of the exception, the Commission preliminarily believes that the swap activity that would be excepted from the group B requirements would not raise significant supervisory concerns.

5. Request for Comment

The Commission invites comment on all aspects of the Proposed Rule, including each of the proposed exceptions discussed above, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to the relevant portions of the Proposed Rule, where applicable.

(29) In light of the Commission's supervisory interests, are the proposed exceptions appropriate? Should they be broadened or narrowed? For example, should the Exchange-Traded Exception be available to swaps other than foreign-based swaps? Should U.S. swap entities (other than their foreign branches) be eligible for any of the exceptions and under what circumstances? Should there be further limitations on the types of exchanges on which swaps eligible for the Exchange-Traded Exception may occur? With respect to foreign-based swaps with foreign branches, should the Foreign Swap Group C Exception be limited to swaps with foreign branches of a swap entity? Should the Non-U.S. Swap Entity Group B Exception and/or Foreign Branch Group B Exception be expanded to apply to foreign-based swaps with foreign counterparties that are foreign branches and/or to SRSs that are commercial entities? Should the Commission increase, decrease, or otherwise change the cap under the Foreign Branch Group B Exception?

(30) With respect to the Non-U.S. Swap Entity Group B Exception, the Commission considered as an alternative allowing for substituted compliance for swaps that would be eligible for the exception. Would allowing for substituted compliance in these circumstances be a better approach than providing the Non-U.S. Swap Entity Group B Exception?

C. Substituted Compliance

Substituted compliance is a fundamental component of the Commission's cross-border framework.[330] It is intended to promote the benefits of integrated global markets by reducing the degree to which market participants will be subject to duplicative regulations. Substituted compliance also fosters international harmonization by encouraging U.S. and foreign regulators to seek to adopt consistent and comparable regulatory regimes that can result in deference to each other's regime.[331] When properly

[324] *See supra* section I.C.2.

[325] Proposed § 23.23(e)(2). This approach is similar to the Guidance; however, the Commission notes that the Proposed Rule limits the non-U.S. swap entities eligible for this exception to those that are Other Non-U.S. Persons, and the Guidance did not contain a similar limitation. See Guidance, 78 FR at 45352–53.

[326] The Commission notes that, generally, it would expect swap entities that rely on this exception to be subject to risk mitigation standards in the foreign jurisdictions in which they reside similar to those included in the Group B Requirements, as most jurisdictions surveyed by the FSB in respect of their swaps trading have implemented such standards. *See* 2019 FSB Progress Report, Table M.

[327] Proposed § 23.23(e)(3). This is similar to a limited exception for transactions by foreign branches in certain specified jurisdictions in the Guidance. *See* Guidance, 78 FR at 45351.

[328] Proposed § 23.23(e)(3)(i) and (ii). For example, if a swap entity were to enter into $10 billion in aggregate gross notional of swaps in a calendar quarter, no more than $500 million in aggregate gross notional of such swaps would be eligible for the Foreign Branch Group B Exception.

[329] As noted above, where substituted compliance is available for a particular group B requirement and swap, the proposed exception would not be available. Proposed § 23.23(e)(3)(i).

[330] For example, in addition to the Guidance, the Commission has provided substituted compliance with respect to foreign futures and options transactions (*see, e.g.,* Foreign Futures and Options Transactions, 67 FR 30785 (May 8, 2002); Foreign Futures and Options Transactions, 71 FR 6759 (Feb. 9, 2006)) and margin for uncleared swaps (*see* Cross-Border Margin Rule, 81 FR 34818).

[331] Substituted compliance, therefore, also is consistent with the directive of Congress in the Dodd-Frank Act that the Commission ''coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation'' of swaps and swap entities. *See* Dodd-Frank Act, Public Law 111–203 section 752(a); 15 U.S.C. 8325.

calibrated, substituted compliance promotes open, transparent, and competitive markets without compromising market integrity. On the other hand, when construed too broadly, substituted compliance could defer important regulatory interests to foreign regulators that have not implemented comparably robust regulatory frameworks.

The Commission believes that in order to achieve the important policy goals of the Dodd-Frank Act, all U.S. swap entities must be fully subject to the Dodd-Frank Act requirements addressed by the Proposed Rule, without regard to whether their counterparty is a U.S. or non-U.S. person.[332] Given that such firms conduct their business within the United States, their activities inherently have a direct and significant connection with activities in, or effect on, U.S. commerce. However, the Commission recognizes that, in certain circumstances, non-U.S. swap entities' activities with non-U.S. persons may have a more attenuated nexus to U.S. commerce. Further, the Commission acknowledges that foreign jurisdictions also have a supervisory interest in such activity. The Commission therefore believes that substituted compliance may be appropriate for non-U.S. swap entities and foreign branches of U.S. swap entities in certain circumstances.

In light of the interconnectedness of the global swap market and consistent with CEA section 2(i) and international comity, the Commission is proposing a substituted compliance regime with respect to the group A and group B requirements that builds upon the Commission's current substituted compliance framework and aims to promote diverse markets without compromising the central tenets of the Dodd-Frank Act. As discussed below, the Proposed Rule outlines the circumstances in which a non-U.S. swap entity or foreign branch of a U.S. swap entity would be permitted to comply with the group A and/or group B requirements by complying with comparable standards in its home jurisdiction.

1. Proposed Substituted Compliance Framework for the Group A Requirements

The group A requirements, which relate to compliance programs, risk management, and swap data recordkeeping, are generally implemented on a firm-wide basis in order to effectively address enterprise risk. Accordingly, it is not practical to limit substituted compliance for the group A requirements to only those transactions involving non-U.S. persons. Further, the Commission recognizes that foreign regulators maintain the primary relationships with, and may have the strongest supervisory interests over, non-U.S. swap entities. Therefore, given that the group A requirements cannot be effectively applied on a fragmented jurisdictional basis, and in furtherance of international comity, the Commission is proposing to permit a non-U.S. swap entity to avail itself of substituted compliance with respect to the group A requirements where the non-U.S swap entity is subject to comparable regulation in its home jurisdiction.[333]

2. Proposed Substituted Compliance Framework for the Group B Requirements

Unlike the group A requirements, the group B requirements, which relate to counterparty relationship documentation, portfolio reconciliation and compression, trade confirmation, and daily trading records, are more closely tied to local market conventions and can be effectively implemented on a transaction-by-transaction or relationship basis. It is therefore practicable to allow substituted compliance for group B requirements for transactions with non-U.S. persons. The Commission also recognizes that foreign regulators may have strong supervisory interests in transactions that take place in their jurisdiction. Accordingly, the Commission is proposing to permit a non-U.S. swap entity or foreign branch of a U.S. swap entity to avail itself of substituted compliance for the group B requirements in certain circumstances, depending on the nature of its counterparty.

As discussed above, the Commission believes that swaps involving U.S. persons are one of the types of swaps that have a direct and significant connection with activities in, or effect on, U.S. commerce. Accordingly, the Proposed Rule would generally not permit substituted compliance for the group B requirements for swaps where one of the counterparties is a U.S. person.[334] However, the Commission recognizes that substituted compliance may be appropriate in certain circumstances for foreign branches of U.S. swap entities. Although foreign branches are fully integrated within U.S. persons, they generally enter into foreign-based swaps. In such cases, the Commission believes it may not be appropriate to impose strict adherence to the Commission's group B requirements, which are tailored to U.S. market practices. The Commission acknowledges that requiring foreign branches of U.S. swap entities to comply with U.S.-based requirements in non-U.S. markets may place them at a competitive disadvantage.

Given that group B requirements can be effectively applied on a transaction-by-transaction basis, and the Commission's interest in promoting international comity and market liquidity, the Commission is proposing to allow a non-U.S. swap entity (unless transacting though a U.S. branch), or a U.S. swap entity transacting through a foreign branch, to avail itself of substituted compliance with respect to the group B requirements for swaps with foreign counterparties.[335]

3. Request for Comment

The Commission invites comment on all aspects of the Proposed Rule, including its proposed approach to substituted compliance for the group A and group B requirements, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to the relevant portions of the Proposed Rule, where applicable.

(31) Should the Commission continue to treat group A requirements differently than group B requirements for purposes of substituted compliance? Should the Commission adopt a universal entity-wide or transaction-by-transaction approach?

(32) Should the Commission expand or narrow the availability of substituted compliance for swaps involving U.S. persons?

(33) Is it practicable for non-U.S. swap entities to utilize substituted compliance for transactions with non-U.S. persons?[336]

[332] As further explained below, the Commission is proposing limited substituted compliance for swaps conducted through a foreign branch with foreign counterparties.

[333] Proposed § 23.23(f)(1). This approach is consistent with the Guidance. *See* Guidance, 78 FR at 45338.

[334] As further explained below, the Commission is proposing a limited exception for swaps conducted through a foreign branch with foreign counterparties.

[335] Proposed § 23.23(f)(2). This approach is consistent with the Guidance. The Commission is proposing to limit the availability of substituted compliance to swaps conducted through a foreign branch of a U.S. swap entity as an anti-evasion measure to prevent U.S. swap entities from simply booking trades in a foreign branch to avoid the group B requirements.

[336] The Commission notes that while the Guidance stated that all swap entities (wherever located) are subject to all of the CFTC's Title VII requirements, the Guidance went on to describe how and when the Commission would expect swap entities to comply with specific ELRs and TLRs,

Continued

(34) Given that the Guidance did not apply the group B requirements to swaps between certain non-U.S. persons, should the Commission consider a phase-in period for the application of the group B requirements for swaps between SDs that are Guaranteed Entities or SRSs with counterparties that are Other Non-U.S. Persons where substituted compliance is not currently available?

(35) To what extent do foreign branches of U.S. swap entities enter into swaps with U.S. persons or affiliates of U.S. persons?

(36) Should the Commission treat foreign branches differently than the rest of the U.S. swap entity for purposes of substituted compliance?

(37) How did/does the approach to substituted compliance in the Guidance positively and negatively impact market practices? Please provide any data in support of your comment.

D. Comparability Determinations

The Commission is proposing to implement a process pursuant to which it would, in connection with certain requirements addressed by the Proposed Rule, conduct comparability determinations regarding a foreign jurisdiction's regulation of swap entities. The proposed approach builds upon the Commission's existing substituted compliance regime and aims to promote international comity and market liquidity without compromising the Commission's interests in reducing systemic risk, increasing market transparency, enhancing market integrity, and promoting counterparty protections. Specifically, the Proposed Rule outlines procedures for initiating comparability determinations, including eligibility and submission requirements, with respect to certain requirements addressed by the Proposed Rule. The Proposed Rule would establish a standard of review that the Commission would apply to such comparability determinations that emphasizes a holistic, outcomes-based approach. The Proposed Rule, if adopted, is not intended to have any impact on the effectiveness of any existing Commission comparability determinations that were issued consistent with the Guidance, which would remain effective pursuant to their terms.[337]

As discussed above, the Commission is proposing to permit a non-U.S. swap entity or foreign branch of a U.S. swap entity to comply with a foreign jurisdiction's swap standards in lieu of the Commission's corresponding requirements in certain cases, provided that the Commission determines that such foreign standards are comparable to the Commission's requirements. All swap entities, regardless of whether they rely on such a comparability determination, would remain subject to the Commission's examination and enforcement authority.[338] Accordingly, if a swap entity fails to comply with a foreign jurisdiction's relevant standards, or the terms of the applicable comparability determination, the Commission could initiate an action for a violation of the Commission's corresponding requirements.

1. Standard of Review

The Commission is proposing to establish a standard of review pursuant to which the Commission would determine whether a foreign jurisdiction's regulatory standards are comparable to the group A and group B requirements. The Commission is proposing a flexible outcomes-based approach that emphasizes comparable regulatory outcomes over identical regulatory approaches.[339] The Commission has published numerous comparability determinations consistent with the Guidance and pursuant to the Cross-Border Margin Rule.[340] In doing so, the Commission has developed a deeper understanding of the nuances in comparing foreign jurisdictions' regulatory approaches with that of the Commission. Specifically, the Commission has identified several circumstances in which a foreign jurisdiction may achieve comparable regulatory outcomes to those of the CFTC, notwithstanding certain differences in regulatory or supervisory structures. For example, in certain jurisdictions, the Commission has found comparability with respect to certain Commission requirements based on a combination of robust prudential supervision coupled with supervisory guidelines to achieve comparable regulatory outcomes as the Commission requirements.[341] Therefore, the Commission believes it is necessary to adopt a flexible approach to substituted compliance that would enable it to address a broad range of regulatory approaches.

While the Commission has historically taken a similar outcomes-based approach to comparability determinations, the Proposed Rule would allow the Commission to take an even more holistic view of a foreign jurisdiction's regulatory regime. Specifically, the Proposed Rule would allow the Commission to consider all relevant elements of a foreign jurisdiction's regulatory regime, thereby allowing the Commission to tailor its assessment to a broad range of foreign regulatory approaches.[342] Accordingly, pursuant to the Proposed Rule, a foreign jurisdiction's regulatory regime would not need to be identical to the relevant Commission requirements, so long as both regulatory frameworks are comparable in terms of holistic outcome. Under the Proposed Rule, in assessing comparability, the Commission may consider any factor it deems appropriate, which may include: (1) The scope and objectives of the relevant foreign jurisdiction's regulatory standards; (2) whether, despite differences, a foreign jurisdiction's regulatory standards achieve comparable regulatory outcomes to the Commission's corresponding requirements; (3) the ability of the relevant regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's regulatory standards; and (4) whether the relevant foreign

and when substituted compliance would be available.

[337] *See, e.g.,* Comparability Determination for Australia: Certain Entity-Level Requirements, 78 FR 78864 (Dec. 27, 2013); Comparability Determination for Canada: Certain Entity-Level Requirements, 78 FR 78839 (Dec. 27, 2013); Comparability Determination for the European Union: Certain Entity-Level Requirements, 78 FR 78923 (Dec. 27, 2013); Comparability Determination for Hong Kong: Certain Entity-Level Requirements, 78 FR 78852 (Dec. 27, 2013); Comparability Determination for Japan: Certain Entity-Level Requirements, 78 FR 78910 (Dec. 27, 2013); Comparability Determination for Switzerland: Certain Entity-Level Requirements, 78 FR 78899 (Dec. 27, 2013); Comparability Determination for the European Union: Certain Transaction-Level Requirements, 78 FR 78878 (Dec. 27, 2013); and Comparability Determination for Japan: Certain Transaction-Level Requirements, 78 FR 78890 (Dec. 27, 2013).

[338] Proposed § 23.23(g)(5). The Commission notes that the National Futures Association (''NFA'') has certain delegated authority with respect to SDs and MSPs. Additionally, all registered SDs and MSPs are required to be members of the NFA and are subject to examination by the NFA.

[339] This is similar to the Commission's approach in the Guidance (*see* Guidance, 78 FR at 45342–43) and the Cross-Border Margin Rule (*see* Cross-Border Margin Rule, 81 FR at 34846).

[340] *See e.g., supra* notes 142 and 337.

[341] *See, e.g.,* Comparability Determination for Canada: Certain Entity-Level Requirements, 78 FR 78839 (Dec. 27, 2013); Amendment to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12074 (Apr. 1, 2019).

[342] Under the Proposed Rule, the Commission would consider all relevant elements of a foreign jurisdiction's regulatory regime; however, the fact that a foreign regulatory regime may not address one of more of such elements would not preclude a finding of comparability by the Commission. Also, in making a comparability determination, the Commission would have the flexibility to weigh more heavily elements it deems to be more critical than others and less heavily those that it deems to be less critical.

jurisdiction's regulatory authorities have entered into a memorandum of understanding or similar cooperative arrangement with the Commission regarding the oversight of swap entities.[343] The Proposed Rule would also enable the Commission to consider other relevant factors, including whether a foreign regulatory authority has issued a reciprocal comparability determination with respect to the Commission's corresponding regulatory requirements. Further, given that some foreign jurisdictions may implement prudential supervisory guidelines in the regulation of swaps, the Proposed Rule would allow the Commission to base comparability on a foreign jurisdiction's regulatory standards, rather than regulatory requirements.

Although, when assessed against the relevant Commission requirements, the Commission may find comparability with respect to some, but not all, of a foreign jurisdiction's regulatory standards, it may also make a holistic finding of comparability that considers the broader context of a foreign jurisdiction's related regulatory standards. Accordingly, under the Proposed Rule, a comparability determination need not contain a standalone assessment of comparability for each relevant regulatory requirement, so long as it clearly indicates the scope of regulatory requirements that are covered by the determination. Further, the Commission may impose any terms and conditions on a comparability determination that it deems appropriate.[344]

2. Eligibility Requirements

Under the Proposed Rule, the Commission could undertake a comparability determination on its own initiative in furtherance of international comity.[345] In such cases, the Commission expects that it would nonetheless engage with the relevant foreign regulator and/or regulated entities to develop a fulsome understanding of the relevant foreign regulatory regime. Alternatively, certain outside parties would also be eligible to request a comparability determination from the Commission with respect to some or all of the group A and group B requirements. Under the Proposed Rule, a comparability determination could be requested by: (1) Swap entities that are eligible for substituted compliance; (2) trade associations whose members are such swap entities; or (3) foreign regulatory authorities that have direct supervisory authority over such swap entities and are responsible for administering the relevant swap standards in the foreign jurisdiction.[346]

3. Submission Requirements

In connection with a comparability determination with respect to some or all of the group A and group B requirements, applicants would be required to furnish certain information to the Commission that provides a comprehensive understanding of the foreign jurisdiction's relevant swap standards, including how they might differ from the corresponding requirements in the CEA and Commission regulations.[347] Further, applicants would be expected to provide an explanation as to how any such differences may nonetheless achieve comparable outcomes to the Commission's attendant regulatory requirements.[348]

4. Request for Comment

The Commission invites comment on all aspects of the Proposed Rule, including its proposed approach to comparability determinations, and specifically requests comments on the following questions. Please explain your responses and provide alternatives to the relevant portions of the Proposed Rule, where applicable.

(38) Please provide comments regarding the Commission's proposal regarding its standard of review for comparability determinations. Should the Commission limit the factors it may consider when issuing a comparability determination?

(39) Should comparability determinations contain an element-by-element assessment of comparability?

(40) How should the Commission address inconsistencies or conflicts between U.S. and non-U.S. regulatory standards?

(41) How have the Commission's approaches to comparability determinations in the Guidance and the Cross-Border Margin rule positively and negatively impacted market practices? Please provide any data in support of your comment.

VII. Recordkeeping

Under the Proposed Rule, a SD or MSP would be required to create a record of its compliance with all provisions of the Proposed Rule, and retain those records in accordance with § 23.203.[349] Registrants' records are a fundamental element of an entity's compliance program, as well as the Commission's oversight function. Accordingly, such records should be sufficiently detailed to allow compliance officers and regulators to assess compliance with the Proposed Rule.

VIII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[350] The Commission previously established definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[351] The Proposed Rule addresses when U.S. persons and non-U.S. persons would be required to include their cross-border swap dealing transactions or swap positions in their SD or MSP registration threshold calculations, respectively,[352] and the extent to which SDs or MSPs would be required to comply with certain of the Commission's regulations in connection with their cross-border swap transactions or swap positions.[353]

The Commission previously determined that SDs and MSPs are not small entities for purposes of the RFA.[354] The Commission believes, based on its information about the swap market and its market participants, that: (1) The types of entities that may engage in more than a de minimis amount of swap dealing activity such that they would be required to register as an SD—which generally would be large financial institutions or other large entities—would not be ''small entities'' for purposes of the RFA, and (2) the types of entities that may have swap positions such that they would be required to register as an MSP would not be ''small entities'' for purposes of the RFA. Thus, to the extent such entities are large financial institutions or other large entities that would be required to register as SDs or MSPs with the Commission by virtue of their cross-

[343] Proposed § 23.23(g)(4).

[344] Proposed § 23.23(g)(6).

[345] Proposed § 23.23(g)(1).

[346] Proposed § 23.23(g)(2).

[347] Proposed § 23.23(g)(3).

[348] Proposed § 23.23(g)(3)(iii).

[349] Proposed § 23.23(h).

[350] *See* 5 U.S.C. 601 *et seq.*

[351] *See* 47 FR 18618 (Apr. 30, 1982) (finding that DCMs, FCMs, commodity pool operators and large traders are not small entities for RFA purposes).

[352] Proposed § 23.23(b)–(d).

[353] Proposed § 23.23(e).

[354] *See* Entities Rule, 77 FR at 30701; Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (noting that like FCMs, SDs will be subject to minimum capital requirements, and are expected to be comprised of large firms, and that MSPs should not be considered to be small entities for essentially the same reasons that it previously had determined large traders not to be small entities).

border swap dealing transactions and swap positions, they would not be considered small entities.[355]

To the extent that there are any affected small entities under the Proposed Rule, they would need to assess how they are classified under the Proposed Rule (*i.e.,* U.S. person, SRS, Guaranteed Entity, and Other Non-U.S. Person) and monitor their swap activities in order to determine whether they are required to register as an SD under the Proposed Rule. The Commission believes that, if the Proposed Rule is adopted, market participants would only incur incremental costs, which are expected to be small, in modifying their existing systems and policies and procedures resulting from changes to the status quo made by the Proposed Rule.[356]

Accordingly, for the foregoing reasons, the Commission finds that there will not be a substantial number of small entities impacted by the Proposed Rule. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The Commission invites comment on the impact of the Proposed Rule on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [357] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Proposed Rule provides for the cross-border application of the SD and MSP registration thresholds and the group A, group B, and group C requirements.

Proposed §§ 23.23(b) and (c), which address the cross-border application of the SD and MSP registration thresholds, respectively, potentially could lead to non-U.S. persons that are currently not registered as SDs or MSPs to exceed the relevant registration thresholds, therefore requiring the non-U.S. persons to register as SDs or MSPs. However, the Commission preliminarily believes that, if adopted, the Proposed Rule will not result in any new registered SDs or MSPs or the deregistration of registered SDs,[358] and therefore, it does not believe an amendment to any existing collection of information is necessary as a result of proposed §§ 23.23(b) and (c). Specifically, the Commission does not believe the Proposed Rule, if adopted, would change the number of respondents under the existing collection of information, ''Registration of Swap Dealers and Major Swap Participants,'' Office of Management and Budget (''OMB'') Control No. 3038–0072.

Similarly, proposed § 23.23(h) contains collection of information requirements within the meaning of the PRA as it would require that swap entities create a record of their compliance with § 23.23 and retain records in accordance with § 23.203; however, the Commission believes that records suitable to demonstrate compliance are already required to be created and maintained under the collections related to the Commission's swap entity registration, group B, and group C requirements. Specifically, existing collections of information, ''Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants,'' OMB Control No. 3038–0068; ''Registration of Swap Dealers and Major Swap Participants,'' OMB Control No. 3038–0072; ''Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards with Counterparties,'' OMB Control No. 3038–0079; ''Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,'' OMB Control No. 3038–0083; ''Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Participants,'' OMB Control No. 3038–0087; and ''Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,'' OMB Control No. 3038–0088 relate to these requirements.[359] Accordingly, the Commission is not submitting to OMB an information collection request to create a new information collection in relation to proposed § 23.23(h).

Proposed § 23.23(g) would result in collection of information requirements within the meaning of the PRA, as discussed below. The Proposed Rule contains collections of information for which the Commission has not previously received control numbers from the Office of Management and Budget (''OMB''). If adopted, responses to this collection of information would be required to obtain or retain benefits. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission has submitted to OMB an information collection request to create a new information collection under OMB control number 3038–0072 (Registration of Swap Dealers and Major Swap Participants) for the collections contained in the Proposed Rule.

As discussed in section VI.C above, the Commission is proposing to permit a non-U.S. swap entity or foreign branch of a U.S. swap entity to comply with a foreign jurisdiction's swap standards in lieu of the Commission's corresponding group A and group B requirements in certain cases, provided that the Commission determines that such foreign standards are comparable to the Commission's requirements. Proposed § 23.23(g) would implement a process pursuant to which the Commission would conduct these comparability determinations, including outlining procedures for initiating such determinations. As discussed in section VI.D above, a comparability determination could be requested by swap entities that are eligible for substituted compliance, their trade associations, and foreign regulatory authorities meeting certain requirements.[360] Applicants seeking a comparability determination would be required to furnish certain information to the Commission that provides a comprehensive explanation of the foreign jurisdiction's relevant swap standards, including how they might

[355] The SBA's Small Business Size Regulations, codified at 13 CFR 121.201, identifies (through North American Industry Classification System codes) a small business size standard of $38.5 million or less in annual receipts for Sector 52, Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities. Entities that would be affected by the Proposed Rule are generally large financial institutions or other large entities that would be required to include their cross-border dealing transactions or swap positions toward the SD and MSP registration thresholds, respectively, as specified in the Proposed Rule.

[356] The Proposed Rule addresses the cross-border application of the registration and certain other regulations. The Proposed Rule would not change such regulations.

[357] 44 U.S.C. 3501 *et seq.*

[358] There are not currently any registered MSPs.

[359] To the extent a swap entity avails itself of an exception from a group B or group C requirement under the Proposed Rule and, thus, is no longer required to comply with the relevant group B and/or group C requirements and related paperwork burdens, the Commission expects the paperwork burden related to that exception would be less than that of the corresponding requirement(s). However, in an effort to be conservative, because the Commission does not know how many swap entities will choose to avail themselves of the exceptions and for how many foreign-based swaps, the Commission is not changing the burden of its related collections to reflect the availability of such exceptions.

[360] Proposed § 23.23(g)(2).

differ from the corresponding requirements in the CEA and Commission regulations and how, notwithstanding such differences, the foreign jurisdiction's swap standards achieve comparable outcomes to those of the Commission.[361] The information collection would be necessary for the Commission to consider whether the foreign jurisdiction's relevant swap standards are comparable to the Commission's requirements.

Though under the Proposed Rule many entities would be eligible to request a comparability determination,[362] the Commission expects to receive far fewer requests because once a comparability determination is made for a jurisdiction it would apply for all entities or transactions in that jurisdiction to the extent provided in the Commission's determination. Further, the Commission has already issued comparability determinations under the Guidance for certain of the Commission's requirements for Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland,[363] and the effectiveness of those determinations would not be affected by the Proposed Rule. Nevertheless, in an effort to be conservative in its estimate for purposes of the PRA, the Commission estimates that, if the Proposed Rule is adopted, it will receive a request for a comparability determination in relation to five (5) jurisdictions per year. Further, based on the Commission's experience in issuing comparability determinations, the Commission estimates that each request would impose an average of 40 burden hours, for an aggregate estimated hour burden of 200 hours. Accordingly, the proposed changes would result in an increase to the current burden estimates of OMB control number 3038–0072 by 5 in the number of submissions and 200 burden hours.

The frequency of responses and total new burden associated with OMB control number 3038–0072, in the aggregate, reflecting the new burden associated with all the amendments proposed by the rulemaking and current burden not affected by this rulemaking,[364] is as follows:

Estimated annual number of respondents: 770.

Estimated aggregate annual burden hours per respondent: 1.13 hours.

Estimated aggregate annual burden hours for all respondents: 872.

Frequency of responses: As needed.

Information Collection Comments. The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above, including, without limitation, the Commission's discussion of the estimated burden of the collection of information requirements in § 23.23(h). Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566, or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

C. Cost-Benefit Considerations

As detailed above, the Commission is proposing rules that would define certain key terms for purposes of certain Dodd-Frank Act swap provisions and address the cross-border application of the SD and MSP registration thresholds and the Commission's group A, group B, and group C requirements.

The baseline against which the costs and benefits of the Proposed Rule are considered is, in principle, current law: In other words, applicable Dodd-Frank Act swap provisions in the CEA and regulations promulgated by the Commission to date, as made applicable to cross-border transactions by Congress in CEA section 2(i), in the absence of a Commission rule establishing more precisely the application of that provision in particular situations. However, in practice, use of this baseline poses important challenges, for a number of reasons.

First, there are intrinsic difficulties in sorting out costs and benefits of the Proposed Rule from costs and benefits intrinsic to the application of Dodd-Frank Act requirements to cross-border transactions directly pursuant to section 2(i), given that statute sets forth general principles for the cross-border application of Dodd-Frank Act swap requirements but does not attempt to address particular business situations in detail.

Second, the Guidance established a general, non-binding framework for the cross-border application of many substantive Dodd-Frank Act requirements. In doing so, the Guidance considered, among other factors, the regulatory objectives of the Dodd-Frank Act and principles of international comity. As is apparent from the text of the Proposed Rule and the discussion in this preamble, the Proposed Rule is in certain respects consistent with the Guidance. The Commission understands that, while the Guidance is non-binding, many market participants have developed policies and practices that take into account the views expressed therein. At the same time, some market participants may currently apply CEA section 2(i), the regulatory objectives of the Dodd-Frank Act, and principles of international comity in ways that vary from the Guidance, for example because of circumstances not contemplated by the general, non-binding framework in the Guidance.

Third, in addition to the Guidance, the Commission has issued comparability determinations finding that certain provisions of the laws and regulations of other jurisdictions are comparable in outcome to certain requirements under the CEA and regulations thereunder.[365] In general,

[361] Proposed § 23.23(g)(3).

[362] Currently, there are approximately 107 swap entities provisionally registered with the Commission, many of which may be eligible to apply for a comparability determination as a non-U.S. swap entity or a foreign branch. Additionally, a trade association, whose members include swap entities, and certain foreign regulators may also apply for a comparability determination.

[363] *See supra* note 142 and 337.

[364] The numbers below reflect the current burden for two separate information collections that are not affected by this rulemaking.

[365] *See supra* notes 142 and 337.

under these determinations, a market participant that complies with the specified provisions of the other jurisdiction would also be deemed to be in compliance with Commission regulations, subject to certain conditions.[366]

Fourth, the Commission staff has issued several interpretive and no-action letters that are relevant to cross-border issues.[367] As with the Guidance, the Commission recognizes that many market participants have relied on these staff letters in framing their business practices.

Fifth, as noted above, the international regulatory landscape is far different now than it was when the Dodd-Frank Act was enacted in 2010.[368] Even in 2013, when the CFTC published the Guidance, very few jurisdictions had made significant progress in implementing the global swap reforms that were agreed to by the G20 leaders at the Pittsburgh G20 Summit. Today, however, as a result of cumulative implementation efforts by regulators throughout the world, significant and substantial progress has been made in the world's primary swap trading jurisdictions to implement the G20 commitments. For these reasons, the actual costs and benefits of the Proposed Rule that would be experienced by a particular market participant may vary depending on the jurisdictions in which the market participant is active and when the market participant took steps to comply with various legal requirements.

Because of these complicating factors, as well as limitations on available information, the Commission believes that a direct comparison of the costs and benefits of the Proposed Rule with those of a hypothetical cross-border regime based directly on section 2(i)—while theoretically the ideal approach—is infeasible in practice. As a further complication, the Commission recognizes that the Proposed Rule's costs and benefits would exist, regardless of whether a market participant: (1) First realized some of those costs and benefits when it conformed its business practices to provisions of the Guidance or Commission staff action that would now become binding legal requirements under the Proposed Rule; (2) does so now for the first time; or (3) did so in stages as international requirements evolved.

In light of these considerations, the Commission will consider costs and benefits by focusing primarily on two types of information and analysis.

First, the Commission will compare the Proposed Rule with current business practice, on the understanding that many market participants are now conducting business taking into account the Guidance, applicable CFTC staff letters, and existing comparability determinations. This approach will, for example, compare expected costs and benefits of conducting business under the Proposed Rule with those of conducting business in conformance with analogous provisions of the Guidance. In effect, this inquiry will examine *new* costs and benefits that would result from the Proposed Rule for market participants that are currently following the relevant Dodd-Frank Act swap provisions and regulations thereunder, the Guidance, the comparability determinations, and applicable staff letters. This is referred to as ''Baseline A.''

Second, to the extent feasible, the Commission will consider relevant information on costs and benefits that industry has incurred *to date* in complying with the Dodd-Frank Act in cross-border transactions of the type that would be affected by the Proposed Rule. In light of the overlap in the subjects addressed by the Guidance and the Proposed Rule, this will include consideration of costs and benefits that have been generated where market participants have chosen to conform their business practices to the Guidance in areas relevant to the Proposed Rule. This second form of inquiry is, to some extent, over inclusive in that it is likely to capture some costs and benefits that flow directly from Congress's enactment of section 2(i) of the CEA or that otherwise are not strictly attributable to the Proposed Rule. However, since a theoretically perfect baseline for consideration of costs and benefits does not appear feasible, this second form of inquiry will help ensure that costs and benefits of the Proposed Rules are considered as fully as possible. This is referred to as ''Baseline B.''

The Commission invites comments regarding all aspects of the baselines applied in this consideration of costs and benefits. In particular, the Commission would like commenters to address any variances or different circumstances they have experienced that affect the baseline for those commenters. Please be as specific as possible and include quantitative information where available.

The costs associated with the key elements of the Commission's proposed cross-border approach to the SD and MSP registration thresholds—requiring market participants to classify themselves as U.S. persons, Guaranteed Entities, or SRSs [369] and to apply the rules accordingly—fall into a few categories. Market participants would incur costs determining which category of market participant they and their counterparties fall into (''assessment costs''), tracking their swap activities or positions to determine whether they should be included in their registration threshold calculations (''monitoring costs''), and, to the degree that their activities or positions exceed the relevant threshold, registering with the Commission as an SD or MSP (''registration costs'').

Entities required to register as SDs or MSPs as a result of the Proposed Rule would also incur costs associated with complying with the relevant Dodd-Frank Act requirements applicable to registrants, such as the capital (when promulgated), margin, and business conduct requirements (''programmatic costs'').[370] While only new registrants would be assuming these programmatic costs for the first time, the obligations of entities that are already registered as SDs may also change in the future as an indirect consequence of the Proposed Rule.

In developing the Proposed Rule, the Commission took into account the potential for creating or accentuating competitive disparities between market participants, which could contribute to market deficiencies, including market fragmentation or decreased liquidity, as more fully discussed below. Notably, competitive disparities may arise between U.S.-based financial groups and non-U.S. based financial groups as a result of differences in how the SD and MSP registration thresholds apply to the various classifications of market participants. For instance, an SRS must count all dealing swaps toward its SD de minimis calculation. Therefore, SRSs would be more likely to trigger the SD registration threshold relative to Other Non-U.S. Persons, and may therefore be at a competitive disadvantage compared

[366] *See id.*

[367] *See, e.g.,* CFTC Letter No. 13–64, No-Action Relief: Certain Swaps by Non-U.S. Persons that are Not Guaranteed or Conduit Affiliates of a U.S. Person Not to be Considered in Calculating Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception (Oct. 17, 2013), available at *https://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-64.pdf;* ANE Staff Advisory; ANE No-Action Relief; and CFTC Staff Letter No. 18–13.

[368] *See supra* section I.B.

[369] Proposed § 23.23(a).

[370] The Commission's discussion of programmatic costs and registration costs does not address MSPs. No entities are currently registered as MSPs, and the Commission does not expect that this status quo would change as a result of the Proposed Rule being adopted given the general similarities between the Proposed Rule's approach to the MSP registration threshold calculations and the Guidance.

to Other Non-U.S. Persons when trading with non-U.S. persons, as non-U.S. persons may prefer to trade with non-registrants in order to avoid application of the Dodd-Frank Act swap regime.[371] On the other hand, the Commission notes that certain counterparties may prefer to enter into swaps with SDs and MSPs that are subject to the robust requirements of the Dodd-Frank Act.

Other factors also create inherent challenges associated with attempting to assess costs and benefits of the Proposed Rule. To avoid the prospect of being regulated as an SD or MSP, or otherwise falling within the Dodd-Frank Act swap regime, some market participants may restructure their businesses or take other steps (*e.g.,* limiting their counterparties to Other Non-U.S. Persons) to avoid exceeding the relevant registration thresholds. The degree of comparability between the approaches adopted by the Commission and foreign jurisdictions and the potential availability of substituted compliance, whereby a market participant may comply with certain Dodd-Frank Act SD or MSP requirements by complying with a comparable requirement of a foreign financial regulator, may also affect the competitive impact of the Proposed Rule. The Commission expects that such impacts would be mitigated as the Commission continues to work with foreign and domestic regulators to achieve international harmonization and cooperation.

In the sections that follow, the Commission discusses the costs and benefits associated with the Proposed Rule.[372] Section 1 begins by addressing the assessment costs associated with the Proposed Rule, which derive in part from the defined terms used in the Proposed Rule (*e.g.,* the proposed definitions of ''U.S. person,'' ''significant risk subsidiary,'' and ''guarantee''). Sections 2 and 3 consider the costs and benefits associated with the Proposed Rule's determinations regarding how each classification of market participants apply to the SD and MSP registration thresholds, respectively. Sections 4, 5, and 6 address the monitoring, registration, and programmatic costs associated with the proposed cross-border approach to the SD (and, as appropriate, MSP) registration thresholds, respectively. Section 7 addresses the costs and benefits associated with the Proposed Rule's exceptions from, and available substituted compliance for, the group A, group B, and group C requirements, as well as comparability determinations. Section 8 addresses the costs associated with the Proposed Rule's recordkeeping requirements. Section 9 discusses the factors established in section 15(a) of the CEA.

The Commission invites comment regarding the nature and extent of any costs and benefits that could result from adoption of the Proposed Rule and, to the extent they can be quantified, monetary and other estimates thereof.

1. Assessment Costs

As discussed above, in applying the proposed cross-border approach to the SD and MSP registration thresholds, market participants would be required to first classify themselves as a U.S. person, an SRS, a Guaranteed Entity, or an Other Non-U.S. Person.

With respect to Baseline A, the Commission expects that the costs to affected market participants of assessing which classification they fall into would generally be small and incremental. In most cases, the Commission believes an entity will have performed an initial determination or assessment of its status under either the Cross-Border Margin Rule (which uses substantially similar definitions of ''U.S. person'' and ''guarantee'') or the Guidance (which interprets ''U.S. person'' in a manner that is similar but not identical to the proposed definition of ''U.S. person''). Additionally, the Proposed Rule would allow market participants to rely on representations from their counterparties with regard to their classifications.[373] However, the Commission acknowledges that swap entities would have to modify their existing operations to accommodate the new concept of an SRS. Specifically, market participants would need to determine whether they or their counterparties qualify as SRSs. Further, in order to rely on certain exclusions outlined in the Proposed Rule, swap entities would need to obtain annual representations regarding a counterparty's status as an SRS.

With respect to Baseline B, wherein only certain market participants would have previously determined their status under the similar, but not identical, Cross-Border Margin Rule (and not the Guidance), the Commission believes that their assessment costs would nonetheless be small as a result of the Proposed Rule's reliance on clear, objective definitions of the terms ''U.S. person,'' ''substantial risk subsidiary,'' and ''guarantee.'' Further, with respect to the determination of whether a market participant falls within the ''significant risk subsidiary'' definition,[374] the Commission believes that assessment costs would be small as the definition relies, in part, on a familiar consolidation test already used by affected market participants in preparing their financial statements under U.S. GAAP. Further, the Commission notes that only those market participants with an ultimate U.S. parent entity that has more than $50 billion in global consolidated assets and that do not fall into one of the exceptions in proposed § 23.23(a)(12)(i) or (ii) would need to consider if they are an SRS.

Additionally, the Proposed Rule relies on the definition of ''guarantee'' provided in the Cross-Border Margin Rule, which is limited to arrangements in which one party to a swap has rights of recourse against a guarantor with respect to its counterparty's obligations under the swap.[375] Although non-U.S. persons would need to know whether they are Guaranteed Entities with respect to the relevant swap on a swap-by-swap basis for purposes of the SD and MSP registration calculations, the Commission believes that this information would already be known by non-U.S. persons.[376] Accordingly, with respect to both baselines, the Commission believes that the costs associated with assessing whether an entity or its counterparty is a Guaranteed Entity would be small and incremental.

[371] Dodd-Frank Act swap requirements may impose significant direct costs on participants falling within the SD or MSP definitions that are not borne by other market participants, including costs related to capital and margin requirements and business conduct requirements. To the extent that foreign jurisdictions adopt comparable requirements, these costs would be mitigated.

[372] The Commission endeavors to assess the expected costs and benefits of proposed rules in quantitative terms where possible. Where estimation or quantification is not feasible, the Commission provides its discussion in qualitative terms. Given a general lack of relevant data, the Commission's analysis in the Proposed Rule is generally provided in qualitative terms.

[373] The Commission believes that these assessment costs for the most part have already been incurred by potential SDs and MSPs as a result of adopting policies and procedures under the Guidance and Cross-Border Margin Rule (which had similar classifications), both of which permitted counterparty representations. *See* Guidance, 78 FR at 45315; Cross-Border Margin Rule, 81 FR at 34827.

[374] The ''substantial risk subsidiary'' definition is discussed further in section II.C.

[375] *See supra* section II.B.

[376] Because a guarantee has a significant effect on pricing terms and on recourse in the event of a counterparty default, the Commission believes that the guarantee would already be in existence and that a non-U.S. person therefore would have knowledge of its existence before entering into a swap.

2. Cross-Border Application of the SD Registration Threshold

(i) U.S. Persons, Guaranteed Entities, and SRSs

Under the Proposed Rule, a U.S. person would include all of its swap dealing transactions in its de minimis calculation, without exception.[377] As discussed above, that would include any swap dealing transactions conducted through a U.S. person's foreign branch, as such swaps are directly attributed to, and therefore impact, the U.S. person. Given that this requirement mirrors the Guidance in this respect, the Commission believes that the Proposed Rule would have a minimal impact on the status quo with regard to the number of registered or potential U.S. SDs, as measured against Baseline A.[378] With respect to Baseline B, all U.S. persons would have included all of their transactions in its de minimis calculation, even absent the Guidance, pursuant to paragraph (4) of the SD definition.[379] However, the Commission acknowledges that, absent the Guidance, some U.S. persons may not have interpreted CEA section 2(i) to require them to include swap dealing transactions conducted through their foreign branches in their de minimis calculation. Accordingly, with respect to Baseline B, the Commission expects that some U.S. persons may incur some incremental costs as a result of having to count swaps conducted through their foreign branches.

The Proposed Rule would also require Guaranteed Entities to include all of their dealing transactions in their de minimis threshold calculation without exception.[380] This approach, which recognizes that a Guaranteed Entity's swap dealing transactions may have the same potential to impact the U.S. financial system as a U.S. person's dealing transactions, closely parallels the approach taken in the Guidance with respect to the treatment of the swaps of ''guaranteed affiliates.''[381] Given that the Proposed Rule would establish a more limited definition of ''guarantee'' as compared to the Guidance, and a similar definition of guarantee as compared to the Cross-Border Margin Rule, the Commission does not expect that the Proposed Rule would cause more Guaranteed Entities to register with the Commission. Accordingly, the Commission believes that, in this respect, any increase in costs associated with the Proposed Rule, with respect to Baselines A and B, would be small.

Under the Proposed Rule, an SRS would include all swap dealing transactions in its de minimis threshold calculation.[382] Given that the concept of an SRS was not included in the Guidance or the Cross-Border Margin Rule, the Commission believes that this aspect of the Proposed Rule would have a similar impact on market participants when measured against Baseline A and Baseline B. Under the Guidance, an SRS would likely have been categorized as either a conduit affiliate (which would have been required to count all dealing swaps towards its de minimis threshold calculation) or an Other Non-U.S. Person (which would have been required to count only a subset of its dealing swaps towards its de minimis threshold calculation). Accordingly, under the Proposed Rule, there may be some SRSs that would have to count more swaps towards their de minimis threshold calculation than would have been required under the Guidance.

However, as noted in sections II.C and III.B, the Commission believes that it would be appropriate to distinguish SRSs from Other Non-U.S. Persons in determining the cross-border application of the SD de minimis threshold to such entities. As discussed above, SRS, as a class of entities, presents a greater supervisory interest to the CFTC relative to an Other Non-U.S. Person, due to the nature and extent of the their relationships with their ultimate U.S. parent entities. Of the 60 non-U.S. SDs that were provisionally registered with the Commission as of December 2019, the Commission believes that few, if any, would be classified as SRSs pursuant to the Proposed Rule. With respect to Baseline A, the Commission notes that any potential SRSs would have likely classified themselves as conduit affiliates or Other Non-U.S. Persons pursuant to the Guidance. Accordingly, some may incur incremental costs associated with assessing and implementing the additional counting requirements for SRSs. With respect to Baseline B, the Commission believes that most potential SRSs would have interpreted section 2(i) to require them to count their dealing swaps with U.S. persons, but acknowledges that some may not have interpreted section 2(i) so as to require them to count swaps with non-U.S. persons toward their de minimis calculation. Accordingly, such non-U.S. persons would incur the incremental costs of associated with the additional SRS counting requirements contained in the Proposed Rule. The Commission believes that the proposed SRS de minimis calculation requirements would prevent regulatory arbitrage by ensuring that certain entities do not simply book swaps through a non-U.S. affiliate to avoid CFTC registration. Accordingly, the Commission believes that such provisions would benefit the swap market by ensuring that the Dodd-Frank Act swap provisions addressed by the Proposed Rule are applied specifically to entities whose activities, in the aggregate, have a direct and significant connection to, and impact on, U.S. commerce.

(ii) Other Non-U.S. Persons

Under the Proposed Rule, non-U.S. persons that are neither Guaranteed Entities nor SRSs would be required to include in their de minimis threshold calculations swap dealing activities with U.S. persons (other than swaps conducted through a foreign branch of a registered SD) and certain swaps with Guaranteed Entities.[383] The Proposed Rule would not, however, require Other Non-U.S. Persons to include swap dealing transactions with SRSs or Other Non-U.S. Persons. Additionally, Other Non-U.S. Persons would not be required to include in their de minimis calculation any transaction that is executed anonymously on a DCM, registered or exempt SEF, or registered FBOT, and cleared.

The Commission believes that requiring all non-U.S. persons to

[377] Proposed § 23.23(b)(1).

[378] The Commission is not estimating the number of new U.S. SDs, as the methodology for including swaps in a U.S. person's SD registration calculation does not diverge from the approach included in the Guidance (*i.e.,* a U.S. person must include all of its swap dealing transactions in its de minimis threshold calculation). Further, the Commission does not expect a change in the number of SDs would result from the Proposed Rule's definition of U.S. person and therefore assumes that no additional entities would register as U.S. SDs, and no existing SD registrants would deregister as a result of the Proposed Rule, if adopted.

[379] *See* 17 CFR 1.3, Swap dealer, paragraph (4).

[380] Proposed § 23.23(b)(2)(ii).

[381] While the Proposed Rule and the Guidance treat swaps involving Guaranteed Entities in a similar manner, they have different definitions of the term ''guarantee.'' Under the Guidance, a ''guaranteed affiliate'' would generally include all swap dealing activities in its de minimis threshold calculation without exception. The Guidance interpreted ''guarantee'' to generally include ''not only traditional guarantees of payment or performance of the related swaps, but also other formal arrangements that, in view of all the facts and circumstances, support the non-U.S. person's ability to pay or perform its swap obligations with respect to its swaps.'' *See* Guidance, 78 FR at 45320. In contrast, the term ''guarantee'' in the Proposed Rule has the same meaning as defined in § 23.160(a)(2) (cross-border application of the Commission's margin requirements for uncleared swaps), except that application of the proposed definition of ''guarantee'' would not be limited to uncleared swaps. *See supra* section II.B.

[382] Proposed § 23.23(b)(1).

[383] Proposed § 23.23(b)(2).

include their swap dealing transactions with U.S. persons in their de minimis calculations is necessary to advance the goals of the Dodd-Frank Act SD registration regime, which focuses on U.S. market participants and the U.S. market. As discussed above, the Commission believes it is appropriate to allow Other Non-U.S. Persons to exclude swaps conducted through a foreign branch of a registered SD because, generally, such swaps would be subject to Dodd-Frank Act transactional requirements and, therefore, would not evade the Dodd-Frank Act regime.

Given that these requirements are consistent with the Guidance in most respects, the Commission believes that the Proposed Rule would have a negligible impact on Other Non-U.S. Persons, as measured against Baseline A. With respect to Baseline B, the Commission believes that most non-U.S. persons would have interpreted CEA section 2(i) to require them to count their dealing swaps with U.S. persons, but acknowledges that some non-U.S. persons may not have interpreted 2(i) so as to require them to count such swaps with non-U.S. persons toward their de minimis calculation. Accordingly, such non-U.S. persons would incur the incremental costs associated with the counting requirements for Other Non-U.S. Persons contained in the Proposed Rule.

The Commission recognizes that the Proposed Rule's cross-border approach to the de minimis threshold calculation could contribute to competitive disparities arising between U.S.-based financial groups and non-U.S. based financial groups. Potential SDs that are U.S. persons, SRSs, or Guaranteed Entities would be required to include all of their swap dealing transactions in their de minimis threshold calculations. In contrast, Other Non-U.S. Persons would be permitted to exclude certain dealing transactions from their de minimis calculations. As a result, Guaranteed Entities and SRSs may be at a competitive disadvantage, as more of their swap activity would apply toward the de minimis threshold (and thereby trigger SD registration) relative to Other Non-U.S. Persons.[384] While the Commission does not believe that any additional Other Non-U.S. Persons would be required to register as a SD under the Proposed Rule, the Commission acknowledges that to the extent that one does, its non-U.S. person counterparties (clients and dealers) may possibly cease transacting with it in order to operate outside the Dodd-Frank Act swap regime.[385] Additionally, unregistered non-U.S. dealers may be able to offer swaps on more favorable terms to non-U.S. persons than their registered competitors because they are not required to incur the costs associated with CFTC registration.[386] As noted above, however, the Commission believes that these competitive disparities would be mitigated to the extent that foreign jurisdictions impose comparable requirements. Given that the Commission has found many foreign jurisdictions comparable with respect to various aspects of the Dodd-Frank Act swap requirements, the Commission believes that such competitive disparities would be negligible.[387] Further, as discussed below, the Commission is proposing to adopt a flexible standard of review for comparability determinations relating to the group B and group C requirements that would be issued pursuant to the Proposed Rule, which would serve to further mitigate any competitive disparities arising out of disparate regulatory regimes. Finally, the Commission reiterates its belief that the cross-border approach to the SD registration threshold taken in the Proposed Rule is appropriately tailored to further the policy objectives of the Dodd-Frank Act while mitigating unnecessary burdens and disruption to market practices to the extent possible.

3. Cross-Border Application of the MSP Registration Thresholds

(i) U.S. Persons, Guaranteed Entities, and SRSs

The Proposed Rule's approach to the cross-border application of the MSP registration threshold closely mirrors the proposed approach for the SD registration threshold. Under the Proposed Rule, a U.S. person would include all of its swap positions in its MSP threshold, without exception.[388] As discussed above, that would include any swap conducted through a U.S. person's foreign branch, as such swaps are directly attributed to, and therefore impact, the U.S. person. Given that this requirement is consistent with the Guidance in this respect, the Commission believes that the Proposed Rule would have a minimal impact on the status quo with regard to the number of potential U.S MSPs, as measured against Baseline A. With respect to Baseline B, all of a U.S. person's swap positions would apply toward the MSP threshold calculation, even absent the Guidance, pursuant to paragraph (6) of the MSP definition.[389] However, the Commission acknowledges that, absent the Guidance, some U.S. persons may not have interpreted CEA section 2(i) to require them to include swaps conducted through their foreign branches in their MSP threshold calculation. Accordingly, with respect to Baseline B, the Commission expects that some U.S. persons may incur incremental costs as a result of having to count swaps conducted through their foreign branches.

The Proposed Rule would also require Guaranteed Entities to include all of their swap positions in their MSP threshold calculation without exception.[390] This approach, which recognizes that such swap transactions may have the same potential to impact the U.S. financial system as a U.S. person's swap positions, closely parallels the approach taken in the Guidance with respect to ''conduit affiliates'' and ''guaranteed affiliates.''[391] The Commission believes that few, if any, additional MSPs would qualify as Guaranteed Entities pursuant to the Proposed Rule, as compared to Baseline A. Accordingly, the Commission believes that, in this respect, any increase in costs associated with the Proposed Rule would be small.

Under the Proposed Rule, an SRS would also include all of its swap positions in its MSP threshold calculation.[392] Under the Guidance, an SRS would likely have been categorized as either a conduit affiliate (which would have been required to count all its swap positions towards its MSP threshold calculation) or an Other Non-U.S. Person (which would have been required to count only a subset of its swap positions towards its MSP threshold calculation). Unlike an Other Non-U.S. Person, SRSs would additionally be required to include in

[384] On the other hand, as noted above, the Commission acknowledges that some market participants may prefer to enter into swaps with counterparties that are subject to the swaps provisions adopted pursuant to the Dodd-Frank Act. Further, Guaranteed Entities and SRSs may enjoy other competitive advantages due to the support of their guarantor or ultimate U.S. parent entity.

[385] Additionally, some unregistered dealers may opt to withdraw from the market, thereby contracting the number of dealers competing in the swaps market, which may have an adverse effect on competition and liquidity.

[386] These non-U.S. dealers also may be able to offer swaps on more favorable terms to U.S. persons, giving them a competitive advantage over U.S. competitors with respect to U.S. counterparties.

[387] *See supra* notes 142 and 337.

[388] Proposed § 23.23(c)(1).

[389] 17 CFR 1.3, Major swap participant, paragraph (6).

[390] Proposed § 23.23(c)(2)(ii).

[391] *See* Guidance, 78 FR *at* 45319–20.

[392] Proposed § 23.23(c)(1).

their de minimis calculation any transaction that is executed anonymously on a DCM, registered or exempt SEF, or registered FBOT, and cleared.

As noted in sections II.C and IV.B, the Commission believes that it would be appropriate to distinguish SRSs from Other Non-U.S. Persons in determining the cross-border application of the MSP threshold to such entities, as well as with respect to the Dodd-Frank Act swap provisions addressed by the Proposed Rule more generally. As discussed above, SRSs, as a class of entities, present a greater supervisory interest to the CFTC relative to Other Non-U.S. Persons, due to the nature and extent of the their relationships with their ultimate U.S. parent entities. Therefore, the Commission believes that it is appropriate to require SRSs to include more of their swap positions in their MSP threshold calculation than Other Non-U.S. Persons would. Additionally, allowing an SRS to exclude all of its non-U.S. swap positions from its calculation could incentivize U.S. financial groups to book their non-U.S. positions into a non-U.S. subsidiary to avoid MSP registration requirements. Given that this requirement was not included in the Guidance or the Cross-Border Margin Rule, the Commission believes that this aspect of the Proposed Rule would have a similar impact on market participants when measured against Baseline A and Baseline B. The Commission notes that there are no MSPs registered with the Commission, and expects that few entities would be required to undertake an assessment to determine whether they would qualify as an MSP under the Proposed Rule. Any such entities would likely have classified themselves as Other Non-U.S. Persons pursuant to the Guidance. Accordingly, they may incur incremental costs associated with assessing and implementing the additional counting requirements for SRSs. With respect to Baseline B, the Commission believes that most potential SRSs would have interpreted CEA section 2(i) to require them to count their swap positions with U.S. persons, but acknowledges that some may not have interpreted CEA section 2(i) so as to require them to count swap positions with non-U.S. persons toward their MSP threshold calculation. Accordingly, such SRSs would incur the incremental costs associated with the additional SRS counting requirements contained in the Proposed Rule. The Commission believes that these proposed SRS calculation requirements would mitigate regulatory arbitrage by ensuring that U.S. entities do not simply book swaps through an SRS affiliate to avoid CFTC registration. Accordingly, the Commission believes that such provisions would benefit the swap market by ensuring that the Dodd-Frank Act swap requirements that are addressed by the Proposed Rule are applied to entities whose activities have a direct and significant connection to, and impact on, the U.S. markets.

(ii) Other Non-U.S. Persons

Under the Proposed Rule, Other Non-U.S. Persons would be required to include in their MSP calculations swap positions with U.S. persons (other than swaps conducted through a foreign branch of a registered SD) and certain swaps with Guaranteed Entities.[393] The Proposed Rule would not, however, require Other Non-U.S. Persons to include swap positions with SRSs or Other Non-U.S. Persons. Additionally, Other Non-U.S. Persons would not be required to include in their MSP threshold calculation any transaction that is executed anonymously on a DCM, a registered or exempt SEF, or registered FBOT, and cleared.[394]

Given that these requirements are consistent with the Guidance in most respects, the Commission believes that the Proposed Rule would have a minimal impact on Other Non-U.S. Persons, as measured against Baseline A. With respect to Baseline B, the Commission believes that most non-U.S. persons would have interpreted CEA section 2(i) to require them to count their swap positions with U.S. persons, but acknowledges that some non-U.S. persons may not have interpreted CEA section 2(i) so as to require them to count swaps with non-U.S. persons toward their MSP threshold calculation. Accordingly, such non-U.S. persons would incur the incremental costs of associated with the counting requirements for Other Non-U.S. Persons contained in the Proposed Rule.

The Commission recognizes that the Proposed Rule's cross-border approach to the MSP threshold calculation could contribute to competitive disparities arising between U.S.-based financial groups and non-U.S. based financial groups. Potential MSPs that are U.S. persons, SRSs, or Guaranteed Entities would be required to include all of their swap positions. In contrast, Other Non-U.S. Persons would be permitted to exclude certain swap positions from their MSP threshold calculations. As a result, SRSs and Guaranteed Entities may be at a competitive disadvantage, as more of their swap activity would apply toward the MSP calculation and trigger MSP registration relative to Other Non-U.S. Persons. While the Commission does not believe that any additional Other Non-U.S. Persons would be required to register as an MSP under the Proposed Rule, the Commission acknowledges that to the extent that a currently unregistered non-U.S. person would be required to register as an MSP under the Proposed Rule, its non-U.S. persons may possibly cease transacting with it in order to operate outside the Dodd-Frank Act swap regime.[395] Additionally, unregistered non-U.S. persons may be able to enter into swaps on more favorable terms to non-U.S. persons than their registered competitors because they are not required to incur the costs associated with CFTC registration.[396] As noted above, however, the Commission believes that these competitive disparities would be mitigated to the extent that foreign jurisdictions impose comparable requirements. Further, the Commission reiterates its belief that the cross-border approach to the MSP registration threshold taken in the Proposed Rule aims to further the policy objectives of the Dodd-Frank Act while mitigating unnecessary burdens and disruption to market practices to the extent possible.

4. Monitoring Costs

Under the Proposed Rule, market participants would need to continue to monitor their swap activities in order to determine whether they are, or continue to be, required to register as an SD or MSP. With respect to Baseline A, the Commission believes that market participants have developed policies and practices consistent with the cross-border approach to the SD and MSP registration thresholds expressed in the Guidance. Therefore the Commission believes that market participants would only incur incremental costs in modifying their existing systems and policies and procedures in response to the Proposed Rule (*e.g.,* determining which swap activities or positions would be required to be included in the registration threshold calculations).[397]

[393] Proposed § 23.23(c)(2).

[394] Proposed § 23.23(d).

[395] Additionally, some unregistered swap market participants may opt to withdraw from the market, thereby contracting the number of competitors in the swaps market, which may have an effect on competition and liquidity.

[396] These non-U.S. market participants also may be able to offer swaps on more favorable terms to U.S. persons, giving them a competitive advantage over U.S. competitors with respect to U.S. counterparties.

[397] Although the cross-border approach to the MSP registration threshold calculation in the

For example, the Commission notes that SRSs may have adopted policies and practices in line with the Guidance's approach to non-U.S. persons that are not guaranteed or conduit affiliates and therefore may only be currently counting (or be provisionally registered by virtue of) their swap dealing transactions with U.S. persons, other than foreign branches of U.S. SDs. Although an SRS would be required under the Proposed Rule to include all dealing swaps in its de minimis calculation, the Commission believes that any increase in monitoring costs for SRSs would be negligible, both initially and on an ongoing basis, because they already have systems that track swap dealing transactions with certain counterparties in place, which includes an assessment of their counterparties' status.[398] The Commission expects that any adjustments made to these systems in response to the Proposed Rule would be minor.

With respect to Baseline B, the Commission believes that, absent the Guidance, most market participants would have interpreted CEA section 2(i) to require them, at a minimum, to monitor their swap activities with U.S. persons to determine whether they are, or continue to be, required to register as an SD or MSP. Therefore, the Commission believes that certain market participants may incur incremental costs in modifying their existing systems and policies and procedures in response to the Proposed Rule to monitor their swap activity with non-U.S. persons.

5. Registration Costs

With respect to Baseline A, the Commission believes that few, if any, additional non-U.S. persons would be required to register as a SD pursuant to the Proposed Rule. With respect to Baseline B, the Commission acknowledges that, absent the Guidance, some non-U.S. persons may not have interpreted CEA section 2(i) so as to require them to register with the Commission. Accordingly, a subset of such entities may be required to register with the Commission pursuant to the Proposed Rule, if adopted.

The Commission acknowledges that if a market participant were required to register, it may incur registration costs. The Commission previously estimated registration costs in its rulemaking on registration of SDs;[399] however, the costs that may be incurred should be mitigated to the extent that these new SDs are affiliated with an existing SD, as most of these costs have already been realized by the consolidated group. While the Commission cannot anticipate the extent to which any potential new registrants would be affiliated with existing SDs, it notes that most current registrants are part of a consolidated group. The Commission has not included any discussion of registration costs for MSPs because it believes that few, if any, market participants would be required to register as an MSP under the Proposed Rule, as noted above.

6. Programmatic Costs

With respect to Baseline A, as noted above, the Commission believes that few, if any, additional non-U.S. persons would be required to register as a SD under the Proposed Rule. With respect to Baseline B, the Commission acknowledges that, absent the Guidance, some non-U.S. persons may not have interpreted CEA section 2(i) so as to require them to register with the Commission. Accordingly, a subset of such entities may be required to register with the Commission pursuant to the Proposed Rule, if adopted.

To the extent that the Proposed Rule acts as a ''gating'' rule by affecting which entities engaged in cross-border swap activities must comply with the SD requirements, the Proposed Rule, if adopted, could result in increased costs for particular entities that otherwise would not register as an SD and comply with the swap provisions.[400]

7. Proposed Exceptions From Group B and Group C Requirements, Availability of Substituted Compliance, and Comparability Determinations

As discussed in section VI above, the Commission, consistent with section 2(i) of the CEA, is proposing exceptions from, and substituted compliance for, certain group A, group B, and group C requirements applicable to swap entities, as well as the creation of a framework for comparability determinations.

(i) Exceptions

Specifically, as discussed above in section VI, the Proposed Rule includes: (1) The Exchange-Traded Exception from certain group B and group C requirements for certain anonymously executed, exchange-traded, and cleared foreign-based swaps; (2) the Foreign Swap Group C Exception for certain foreign-based swaps with foreign counterparties; (3) the Non-U.S. Swap Entity Group B Exception for foreign-based swaps of certain non-U.S. swap entities with certain foreign counterparties; and (4) the Foreign Branch Group B Exception for certain foreign-based swaps of foreign branches of U.S. swap entities with certain foreign counterparties.[401]

Under the Proposed Rule, U.S. swap entities (other than their foreign branches) would not be excepted from, or eligible for substituted compliance for, the Commission's group A, group B, and group C requirements. This reflects the Commission's view that these requirements should apply fully to registered SDs and MSPs that are U.S. persons because their swap activities are particularly likely to affect the integrity of the swap market in the United States and raise concerns about the protection of participants in those markets. With respect to both baselines, the Commission does not expect that this would impose any additional costs on market participants given that the Commission's relevant business conduct requirements already apply to U.S. SDs and MSPs pursuant to existing Commission regulations.

Pursuant to the Exchange-Traded Exception, non-U.S. swap entities and foreign branches of non-U.S. swap entities would generally be excluded from the group B and group C requirements with respect to their foreign-based swaps that are anonymously executed, exchange-traded, and cleared.

Further, pursuant to the Foreign Swap Group C Exception, non-U.S. swap entities and foreign branches of U.S. swap entities would be excluded from the group C requirements with respect to their foreign-based swaps with foreign counterparties.

In addition, pursuant to the Non-U.S. Swap Entity Group B Exception, non-U.S. swap entities that are neither SRSs nor Guaranteed Entities would be excepted from the group B requirements with respect to any foreign-based swap with foreign counterparties that are neither SRSs nor Guaranteed Entities.

Proposed Rule is not identical to the approach included in the Guidance (*see supra* section IV.B.2), the Commission believes that any resulting increase in monitoring costs resulting from the Proposed Rule being adopted would be incremental and de minimis.

[398] *See supra* section VIII.C.1, for a discussion of assessment costs.

[399] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR at 2623–25.

[400] As noted above, the Commission believes that, if the Proposed Rule is adopted, few (if any) market participants would be required to register as an MSP under the Proposed Rule, and therefore it has not included a separate discussion of programmatic costs for registered MSPs in this section.

[401] As discussed above, these exceptions are similar to ones provided in the Guidance.

Finally, pursuant to the Foreign Branch Group B Exception, foreign branches of U.S. swap entities would be excepted from the group B requirements, with respect to any foreign-based swap with a foreign counterparty that is an Other Non-U.S. Person, subject to certain limitations. Specifically, the exception would not be available with respect to any group B requirement for which substituted compliance is available for the relevant swap, and in any calendar quarter, the aggregate gross notional amount of swaps conducted by a U.S. swap entity in reliance on the exception may not exceed five percent of the aggregate gross notional amount of all its swaps.

The Commission acknowledges that the group B requirements may apply more broadly to swaps between non-U.S. persons than as contemplated in the Guidance. Specifically, the Proposed Rule would require swap entities that are either Guaranteed Entities or SRSs to comply with the group B requirements for swaps with Other Non-U.S. Persons, whereas the Guidance stated that all non-U.S. swap entities (other than their U.S. branches) were excluded from the group B requirements with respect to swaps with a non-U.S. person that is not a guaranteed or conduit affiliate. However, the Commission believes that the proposed exceptions, coupled with the availability of substituted compliance, would help to alleviate any additional burdens that may arise from such application. Notwithstanding the availability of these exceptions and substituted compliance, the Commission acknowledges that some non-U.S. swap entities may incur costs to the extent that a comparability determination has not yet been issued for certain jurisdictions. Further, the Commission expects that swap entities that avail themselves of the proposed exceptions would be able to reduce their costs of compliance with respect to the excepted requirements (which, to the extent they are similar to requirements in the jurisdiction in which they are based, may be potentially duplicative or conflicting). The Commission notes that swap entities are not required to take any additional action to avail themselves of these exceptions (*e.g.,* notification to the Commission) that would cause them to incur additional costs. The Commission recognizes that the exceptions (and the inherent cost savings) may give certain swap entities a competitive advantage with respect to swaps that meet the requirements of the exception.[402] The Commission nonetheless believes that it is appropriate to tailor the application of the group B and group C requirements in the cross-border context, consistent with section 2(i) of the CEA and international comity principles, so as to except these foreign-based swaps from the relevant requirements. In doing so, the Commission is aiming to reduce market fragmentation which may result by applying certain duplicative swap requirements in non-U.S. markets, which are often subject to robust foreign regulation. The Commission notes that the proposed exceptions are similar to those provided in the Guidance. Therefore, the Commission does not expect such exceptions would have a significant impact on the costs of, and benefits to, swap entities.

(ii) Substituted Compliance

As described in section VI.C, the extent to which substituted compliance is available under the Proposed Rule would depend on the classification of the swap entity or branch and, in certain cases the counterparty, to a particular swap. The Commission recognizes that the decision to offer any substituted compliance carries certain trade-offs. Given the global and highly-interconnected nature of the swap market, where risk is not bound by national borders, market participants are likely to be subject to the regulatory interest of more than one jurisdiction. Allowing compliance with foreign swap requirements as an alternative to compliance with the Commission's requirements can therefore reduce the application of duplicative or conflicting requirements, resulting in lower compliance costs and potentially facilitating a more efficient regulatory framework over time as regulatory regimes compete to have swap transactions occur in their respective jurisdictions. Substituted compliance also helps preserve the benefits of an integrated, global swap market by fostering and advancing efforts among U.S. and foreign regulators to collaborate in establishing robust regulatory standards. If not properly implemented, however, the Commission's swap regime could lose some of its effectiveness. Accordingly, the ultimate costs and benefits of substituted compliance are affected by the standard under which it is granted and the extent to which it is applied. The Commission was mindful of this dynamic in structuring a proposed substituted compliance regime for the group A and group B requirements and believes the Proposed Rule strikes an appropriate balance, enhancing market efficiency and fostering global coordination of these requirements while ensuring that swap entities (wherever located) are subject to comparable regulation.

The Commission also understands that by not offering substituted compliance equally to all swap entities, the Proposed Rule, if adopted, could lead to certain competitive disparities between swap entities. For example, to the extent that a non-U.S. swap entity can rely on substituted compliance that is not available to a U.S. swap entity, it may enjoy certain cost advantages (*e.g.,* avoiding the costs of potentially duplicative or inconsistent regulation). The non-U.S. swap entity may then be able to pass on these cost savings to their counterparties in the form of better pricing or some other benefit. U.S. swap entities, on the other hand, could, depending on the extent to which foreign swap requirements apply, be subject to both U.S. and foreign requirements, and therefore be at a competitive disadvantage. Counterparties may also be incentivized to transact with swap entities that are offered substituted compliance in order to avoid being subject to duplicative or conflicting swap requirements, which could lead to increased market deficiencies.[403]

Nevertheless, the Commission does not believe it is appropriate to make substituted compliance broadly available to all swap entities. As discussed above, the Commission has a strong supervisory interest in the swap activity of all swap entities, including non-U.S. swap entities, by virtue of their registration with the Commission. Further, U.S. swap entities are particularly key swap market participants and their safety and soundness is critical to a well-functioning U.S. swap market and the stability of the U.S. financial system. The Commission believes that losses arising from the default of a U.S. entity are more likely to be borne by other U.S. entities (including parent companies); therefore a U.S. entity's risk to the U.S. financial system is more acute than that of a similarly situated non-U.S. entity. Accordingly, in light of the Commission's supervisory interest in the activities of U.S. persons and its statutory obligation to ensure the safety and soundness of swap entities and the

[402] The degree of competitive disparity will depend on the degree of disparity between the Commission's requirements and that of the relevant foreign jurisdiction.

[403] The Commission recognizes that its proposed framework, if adopted, may impose certain initial operational costs, as in certain cases swap entities will be required to determine the status of their counterparties in order to determine the extent to which substituted compliance is available.

U.S. swap market, the Commission believes that it is generally not appropriate for substituted compliance to be available to U.S. swap entities for purposes of the Proposed Rule. With respect to non-U.S. swap entities, however, the Commission believes that, in the interest of international comity, making substituted compliance broadly available for the requirements discussed in the Proposed Rule is appropriate.

(iii) Comparability Determinations

As noted in section VI.D above, under the Proposed Rule, a comparability determination may be requested by: (1) Eligible swap entities; (2) trade associations whose members are eligible swap entities; or (3) foreign regulatory authorities that have direct supervisory authority over eligible swap entities and are responsible for administering the relevant foreign jurisdiction's swap requirements.[404] Once a comparability determination is made for a jurisdiction, it applies for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission.[405] Accordingly, given that the Proposed Rule would have no impact on any existing comparability determinations, swap entities could continue to rely on such determinations with no impact on the costs or benefits of such reliance. To the extent that an entity wishes to request a new comparability determination pursuant to the Proposed Rule, it would incur costs associated with the preparation and filing of submission requests. However, the Commission anticipates that a person would not elect to incur the costs of submitting a request for a comparability determination unless such costs were exceeded by the cost savings associated with substituted compliance.

The Proposed Rule includes a standard of review that allows for a holistic, outcomes-based approach that enables the Commission to consider any factor it deems relevant in assessing comparability. Further, in determining whether a foreign regulatory requirement is comparable to a corresponding Commission requirement, the Proposed Rule would allow the Commission to consider the broader context of a foreign jurisdiction's related regulatory requirements. Allowing for a comparability determination to be made based on comparable outcomes and objectives, notwithstanding potential differences in foreign jurisdictions' relevant standards, helps to ensure that substituted compliance is made available to the fullest extent possible. While the Commission recognizes that, to the extent that a foreign swap regime is not deemed comparable in all respects, swap entities eligible for substituted compliance may incur costs from being required to comply with more than one set of specified swap requirements, the Commission believes that this approach is preferable to an all-or-nothing approach, in which market participants may be forced to comply with both regimes in their entirety.

8. Recordkeeping

The Proposed Rule would also require swap entities to create and retain records of their compliance with the Proposed Rule. Given that swap entities are already subject to robust recordkeeping requirements, the Commission believes that, if the Proposed Rule is adopted, swap entities would only incur incremental costs, which are expected to be minor, in modifying their existing systems and policies and procedures resulting from changes to the status quo made by the Proposed Rule.

9. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

(i) Protection of Market Participants and the Public

The Commission believes the Proposed Rule would support protection of market participants and the public. By focusing on and capturing swap dealing transactions and swap positions involving U.S. persons, SRSs, and Guaranteed Entities, the Proposed Rule's approach to the cross-border application of the SD and MSP registration threshold calculations would work to ensure that, consistent with CEA section 2(i) and the policy objectives of the Dodd-Frank Act, significant participants in the U.S. market are subject to these requirements. The proposed cross-border approach to the group A, group B, and group C requirements similarly ensures that these requirements would apply to swap activities that are particularly likely to affect the integrity of and raise concerns about the protection of participants in the U.S. market while, consistent with principles of international comity, recognizing the supervisory interests of the relevant foreign jurisdictions in applying their own requirements to transactions involving non-U.S. swap entities and foreign branches of U.S. swap entities with non-U.S. persons and foreign branches of U.S. swap entities.

(ii) Efficiency, Competitiveness, and Financial Integrity of the Markets

To the extent that the Proposed Rule leads additional entities to register as SDs or MSPs, the Commission believes that the Proposed Rule could enhance the financial integrity of the markets by bringing significant U.S. swap market participants under Commission oversight, which may reduce market disruptions and foster confidence and transparency in the U.S. market. The Commission recognizes that, if adopted, the Proposed Rule's cross-border approach to the SD and MSP registration thresholds may create competitive disparities among market participants, based on the degree of their connection to the United States, that could contribute to market deficiencies, including market fragmentation and decreased liquidity, as certain market participants may reduce their exposure to the U.S. market. As a result of reduced liquidity, counterparties may pay higher prices, in terms of bid-ask spreads. Such competitive effects and market deficiencies may, however, be mitigated by global efforts to harmonize approaches to swap regulation and by the large inter-dealer market, which may link the fragmented markets and enhance liquidity in the overall market. The Commission believes that the Proposed Rule's approach is necessary and appropriately tailored to ensure that the purposes of the Dodd-Frank Act swap regime and its registration requirements are advanced while still establishing a workable approach that recognizes foreign regulatory interests and reduces competitive disparities and market deficiencies to the degree possible. The Commission further believes that the Proposed Rule's cross-border approach to the group A, group B, and group C requirements would promote the financial integrity of the markets by fostering transparency and

[404] Proposed § 23.23(g)(2).

[405] Proposed § 23.23(f).

confidence in the major participants in the U.S. swap markets.

(iii) Price Discovery

The Commission recognizes that, if adopted, the Proposed Rule's approach to the cross-border application of the SD and MSP registration thresholds and group A, group B, and group C requirements could also have an effect on liquidity, which may in turn influence price discovery. As liquidity in the swap market is lessened and fewer dealers compete against one another, bid-ask spreads (cost of swap and cost to hedge) may widen and the ability to observe an accurate price of a swap may be hindered. However, as noted above, these negative effects would be mitigated as jurisdictions harmonize their swap initiatives and global financial institutions continue to manage their swap books (*i.e.,* moving risk with little or no cost, across an institution to market centers, where there is the greatest liquidity). The Commission does not believe that, if adopted, the Proposed Rule's approach to the group A, group B, and group C requirements, however, will have a noticeable impact on price discovery.

(iv) Sound Risk Management Practices

The Commission believes that, if adopted, the Proposed Rule's approach could promote the development of sound risk management practices by ensuring that significant participants in the U.S. market are subject to Commission oversight (via registration), including in particular important counterparty disclosure and recordkeeping requirements that will encourage policies and practices that promote fair dealing while discouraging abusive practices in U.S. markets. On the other hand, to the extent that a registered SD or MSP relies on the exceptions proposed in this release, and is located in a jurisdiction that does not have comparable swap requirements, the Proposed Rule could lead to weaker risk management practices for such entities.

(v) Other Public Interest Considerations

The Commission believes that the Proposed Rule is consistent with the principles of international comity.

10. Request for Comment

The Commission invites comment on all aspects of the costs and benefits associated with the Proposed Rule, and specifically requests comments on the following questions. Please explain your responses.

(42) Would additional market participants be required to register as SDs (compared to the status quo) as a result of the Proposed Rule being adopted? If so, please provide an estimate for the number of such market participants. Please include an explanation for the basis of the estimate, and associated costs and benefits of the Proposed Rule's provisions for SDs (including potential SDs).

(43) Would any market participants be required to register as an MSP as a result of the Proposed Rule being adopted? If so, please provide an estimate for the number of such market participants. Please include an explanation for the basis of the estimate, and associated costs and benefits of the Proposed Rule's provisions for potential MSPs.

(44) The Proposed Rule would not provide relief to swap entities that are SRSs or Guaranteed Entities from the group B requirements for transactions facing Other Non-U.S. Persons. Thus, under the Proposed Rule, SRSs and Guaranteed Entities would generally be required to comply with the group B requirements for all of their swaps, rely on existing substituted compliance determinations, or seek additional substituted compliance determinations. Please provide an estimate for the number of swap entities that would be likely to incur compliance costs as a result of this aspect of the Proposed Rule, as well as an estimate of the associated costs and benefits of such provision. To what extent would the proposed availability of substituted compliance in such instances affect these costs and benefits?

(45) The Commission invites information regarding whether and the extent to which specific foreign requirement(s) may affect the costs and benefits of the Proposed Rule, including information identifying the relevant foreign requirement(s) and any monetary or other quantitative estimates of the potential magnitude of those costs and benefits.

(46) Would the proposed recordkeeping provision cause registrants to incur more than a minor incremental cost to implement? If so, please provide an estimate for such costs. Please include an explanation for the basis of the estimate, and associated costs and benefits of the Proposed Rule's recordkeeping provisions.

D. Antitrust Considerations

Section 15(b) of the CEA [406] requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of [the CEA], as well as the policies and purposes of [the CEA], in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of [the CEA].''

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the Proposed Rule implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the Proposed Rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the Proposed Rule is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the Proposed Rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the Proposed Rule.

IX. Preamble Summary Tables

A. Table A—Cross-Border Application of the SD De Minimis Threshold

Table A should be read in conjunction with the text of the Proposed Rule.

[406] 7 U.S.C. 19(b).

Counterparty → / Potential SD ↓		U.S. Person	Non-U.S. Person		
			Guaranteed Entity	SRS	Other Non-U.S. Person
U.S. Person		Include	Include	Include	Include
Non-U.S. Person	Guaranteed Entity	Include	Include	Include	Include
	SRS	Include	Include	Include	Include
	Other Non-U.S. Person[1]	Include[2]	Include[3]	Exclude	Exclude

[1] Would not include swaps entered into anonymously on a DCM, a registered SEF or a SEF exempted from registration, or a registered FBOT and cleared through a registered DCO or a DCO exempted from registration.
[2] Unless the swap is conducted through a foreign branch of a registered SD.
[3] Unless the Guaranteed Entity is registered as an SD, or unless the guarantor is a non-financial entity.

B. Table B—Cross-Border Application of the MSP Threshold

Table B should be read in conjunction with the text of the Proposed Rule.

Counterparty → / Potential MSP ↓		U.S. Person	Non-U.S. Person		
			Guaranteed Entity	SRS	Other Non-U.S. Person
U.S. Person		Include	Include	Include	Include
Non-U.S. Person	Guaranteed Entity	Include	Include	Include	Include
	SRS	Include	Include	Include	Include
	Other Non-U.S. Person[1]	Include[2]	Include[3]	Exclude	Exclude

[1] Would not include swap positions entered into anonymously on a DCM, a registered SEF or a SEF exempted from registration, or a registered FBOT and cleared through a registered DCO or a DCO exempted from registration.
[2] Unless the swap is conducted through a foreign branch of a registered SD.
[3] Unless the Guaranteed Entity is registered as an SD.
Additionally, all swap positions that are subject to recourse should be attributed to the guarantor, whether it is a U.S. person or a non-U.S. person, unless the guarantor, the Guaranteed Entity, and its counterparty are Other Non-U.S. Persons.

C. Table C—Cross-Border Application of the Group B Requirements in Consideration of Related Exceptions and Substituted Compliance

Table C[407] should be read in conjunction with the text of the Proposed Rule.

[407] As discussed in section VI.A.2, the group B requirements are set forth in §§ 23.202, 23.501, 23.502, 23.503, and 23.504 and relate to (1) swap trading relationship documentation; (2) portfolio reconciliation and compression; (3) trade confirmation; and (4) daily trading records. Proposed exceptions from the group B requirements are discussed in section VI.B.1, 3, and 4. Proposed substituted compliance for the group B requirements is discussed in section VI.C.2.

Counterparty → / Swap Entity ↓		U.S. Person		Non-U.S. Person		
		Non-Foreign Branch	Foreign Branch	U.S. Branch	Guaranteed Entity or SRS	Other Non-U.S. Persons
U.S. Swap Entity	Non-Foreign Branch	Yes	Yes	Yes	Yes	Yes
	Foreign Branch	Yes[1]	Yes[1] *Sub. Comp. Available*	Yes[1]	Yes[1] *Sub. Comp. Available*	Yes[1, 2] *Sub. Comp. Available*
Non-U.S. Swap Entity	U.S. Branch	Yes	Yes	Yes	Yes	Yes
	Guaranteed Entity or SRS	Yes[1]	Yes[1] *Sub. Comp. Available*	Yes[1]	Yes[1] *Sub. Comp. Available*	Yes[1] *Sub. Comp. Available*
	Other Non-U.S. Persons	Yes[1]	Yes[1] *Sub. Comp. Available*	Yes[1]	Yes[1] *Sub. Comp. Available*	No

[1] Under the Proposed Rule, the Exchange-Traded Exception would be available from certain group B and C requirements for certain anonymous, exchange-traded, and cleared foreign-based swaps between the listed parties.
[2] Under the Proposed Rule the Foreign Branch Group B Exception would be available from the group B requirements for a foreign branch's foreign-based swaps with a foreign counterparty that is an Other Non-U.S. Person.

D. Table D—Cross-Border Application of the Group C Requirements in Consideration of Related Exceptions

Table D[408] should be read in conjunction with the text of the Proposed Rule.

[408] As discussed in section VI.A.3, the group C requirements are set forth in §§ 23.400–451 and relate to certain business conduct standards governing the conduct of SDs and MSPs in dealing with their swap counterparties. Proposed exceptions from the group C requirements are discussed in section VI.B.1 and 2.

Swap Entity ↓ / Counterparty →		U.S. Person		Non-U.S. Person		
		Non-Foreign Branch	Foreign Branch	U.S. Branch	Guaranteed Entity or SRS	Other Non-U.S. Persons
U.S. Swap Entity	Non-Foreign Branch	Yes	Yes	Yes	Yes	Yes
	Foreign Branch	Yes[1]	No	Yes[1]	No	No
Non-U.S. Swap Entity	U.S. Branch	Yes	Yes	Yes	Yes	Yes
	Guaranteed Entity or SRS	Yes[1]	No	Yes[1]	No	No
	Other Non-U.S. Persons	Yes[1]	No	Yes[1]	No	No

[1] Under the Proposed Rule the Exchange-Traded Exception would be available from certain group B and C requirements for certain anonymous, exchange-traded, and cleared foreign-based swaps between the listed parties.

List of Subjects in 17 CFR Part 23

Business conduct standards, Counterparties, Cross-border, Definitions, De minimis exception, Major swap participants, Swaps, Swap Dealers.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Public Law 111–203, 124 Stat. 1641 (2010).

■ 2. Add § 23.23 to read as follows:

§ 23.23 Cross-border application.

(a) *Definitions.* For purposes of this section the terms below have the following meanings. A person may rely on a written representation from its counterparty that the counterparty does or does not satisfy the criteria for one or more of the definitions below, unless such person knows or has reason to know that the representation is not accurate; for the purposes of this rule a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.

(1) *Control* including the terms controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(2) *Foreign branch* means any office of a U.S. bank that:

(i) Is located outside the United States;

(ii) Operates for valid business reasons;

(iii) Maintains accounts independently of the home office and of the accounts of other foreign branches, with the profit or loss accrued at each branch determined as a separate item for each foreign branch; and

(iv) Is engaged in the business of banking and is subject to substantive regulation in banking or financing in the jurisdiction where it is located.

(3) *Foreign counterparty* means:

(i) A non-U.S. person, except with respect to a swap conducted through a U.S. branch of that non-U.S. person; or

(ii) A foreign branch where it enters into a swap in a manner that satisfies the definition of a swap conducted through a foreign branch.

(4) *Foreign-based swap* means:

(i) A swap by a non-U.S. swap entity, except for a swap conducted through a U.S. branch; or

(ii) A swap conducted through a foreign branch.

(5) *Group A requirements* mean the requirements set forth in §§ 3.3, 23.201, 23.203, 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, 23.607, and 23.609 of this chapter.

(6) *Group B requirements* mean the requirements set forth in §§ 23.202 and 23.501–504.

(7) *Group C requirements* mean the requirements set forth in §§ 23.400–451.

(8) *Guarantee* means an arrangement pursuant to which one party to a swap has rights of recourse against a

guarantor, with respect to its counterparty's obligations under the swap. For these purposes, a party to a swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the swap. In addition, in the case of any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty's obligations under the swap, such arrangement will be deemed a guarantee of the counterparty's obligations under the swap by the other guarantor.

(9) *Non-U.S. person* means any person that is not a U.S. person.

(10) *Non-U.S. swap entity* means a swap entity that is not a U.S. swap entity.

(11) *Parent entity* means any entity in a consolidated group that has one or more subsidiaries in which the entity has a controlling interest, as determined in accordance with U.S. GAAP.

(12) *Significant risk subsidiary* means any non-U.S. significant subsidiary of an ultimate U.S. parent entity where the ultimate U.S. parent entity has more than $50 billion in global consolidated assets, as determined in accordance with U.S. GAAP at the end of the most recently completed fiscal year, but excluding non-U.S. subsidiaries that are:

(i) Subject to consolidated supervision and regulation by the Board of Governors of the Federal Reserve System as a subsidiary of a U.S. bank holding company; or

(ii) Subject to capital standards and oversight by the subsidiary's home country supervisor that are consistent with the Basel Committee on Banking Supervision's ''International Regulatory Framework for Banks'' and subject to margin requirements for uncleared swaps in a jurisdiction for which the Commission has issued a comparability determination.

(13) *Significant subsidiary* means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(i) The three year rolling average of the subsidiary's equity capital is equal to or greater than five percent of the three year rolling average of the ultimate U.S. parent entity's consolidated equity capital, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year;

(ii) The three year rolling average of the subsidiary's total revenue is equal to or greater than ten percent of the three year rolling average of the ultimate U.S. parent entity's total consolidated revenue, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year; or

(iii) The three year rolling average of the subsidiary's total assets is equal to or greater than ten percent of the three year rolling average of the ultimate U.S. parent entity's total consolidated assets, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year.

(14) *Subsidiary* means a subsidiary of a specified person that is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. For purposes of this definition, an affiliate of, or a person affiliated with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(15) *Swap entity* means a person that is registered with the Commission as a swap dealer or major swap participant pursuant to the Act.

(16) *Swap conducted through a foreign branch* means a swap entered into by a foreign branch where:

(i) The foreign branch or another foreign branch is the office through which the U.S. person makes and receives payments and deliveries under the swap pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the U.S. person is such foreign branch;

(ii) The swap is entered into by such foreign branch in its normal course of business; and

(iii) The swap is reflected in the local accounts of the foreign branch.

(17) *Swap conducted through a U.S. branch* means a swap entered into by a U.S. branch where:

(i) The U.S. branch is the office through which the non-U.S. person makes and receives payments and deliveries under the swap pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the non-U.S. person is such U.S. branch; or

(ii) The swap is reflected in the local accounts of the U.S. branch.

(18) *Ultimate U.S. parent entity* means the U.S. parent entity that is not a subsidiary of any other U.S. parent entity.

(19) *United States and U.S.* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(20) *U.S. branch* means a branch or agency of a non-U.S. banking organization where such branch or agency:

(i) Is located in the United States;

(ii) Maintains accounts independently of the home office and other U.S. branches, with the profit or loss accrued at each branch determined as a separate item for each U.S. branch; and

(iii) Engages in the business of banking and is subject to substantive banking regulation in the state or district where located.

(21) *U.S. GAAP* means U.S. generally accepted accounting principles.

(22) *U.S. person:* (i) Except as provided in paragraph (a)(22)(iii) of this section, U.S. person means any person that is:

(A) A natural person resident in the United States;

(B) A partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States;

(C) An account (whether discretionary or non-discretionary) of a U.S. person; or

(D) An estate of a decedent who was a resident of the United States at the time of death.

(ii) For purposes of this section, principal place of business means the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. With respect to an externally managed investment vehicle, this location is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle.

(iii) The term U.S. person does not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans.

(iv) Notwithstanding paragraph (a)(22)(i) of this section, until December 31, 2025, a person may continue to classify counterparties as U.S. persons based on representations that were previously made pursuant to the ''U.S. person'' definition in § 23.160(a)(10).

(23) *U.S. swap entity* means a swap entity that is a U.S. person.

(b) *Cross-border application of de minimis registration threshold calculation.* For purposes of determining whether an entity engages in more than a de minimis quantity of swap dealing activity under paragraph (4)(i) of the swap dealer definition in § 1.3 of this chapter, a person shall include the following swaps (subject to paragraph (6) of the swap dealer definition in § 1.3 of this chapter):

(1) If such person is a U.S. person or a significant risk subsidiary, all swaps connected with the dealing activity in which such person engages.

(2) If such person is a non-U.S. person (other than a significant risk subsidiary), all of the following swaps connected with the dealing activity in which such person engages:

(i) Swaps with a counterparty that is a U.S. person, other than swaps conducted through a foreign branch of a registered swap dealer.

(ii) Swaps where the obligations of such person under the swaps are subject to a guarantee by a U.S. person.

(iii) Swaps with a counterparty that is a non-U.S. person where the counterparty's obligations under the swaps are subject to a guarantee by a U.S. person, except when:

(A) The counterparty is registered as a swap dealer; or

(B) The counterparty's swaps are subject to a guarantee by a U.S. person that is a non-financial entity.

(c) *Application of major swap participant tests in the cross-border context.* For purposes of determining a person's status as a major swap participant, as defined in § 1.3 of this chapter, a person shall include the following swap positions:

(1) If such person is a U.S. person or a significant risk subsidiary, all swap positions that are entered into by the person.

(2) If such person is a non-U.S. person (other than a significant risk subsidiary), all of the following swap positions of such person:

(i) Swap positions where the counterparty is a U.S. person, other than swaps conducted through a foreign branch of a registered swap dealer.

(ii) Swap positions where the obligations of such person under the swaps are subject to a guarantee by a U.S. person.

(iii) Swap positions with a counterparty that is a non-U.S. person where the counterparty's obligations under the swaps are subject to a guarantee by a U.S. person, except when the counterparty is registered as a swap dealer.

(d) Notwithstanding any other provision of § 23.23, for purposes of determining whether a non-U.S. person (other than a significant risk subsidiary or a non-U.S. person whose performance under the swap is subject to a guarantee by a U.S. person) engages in more than a de minimis quantity of swap dealing activity under paragraph (4)(i) of the swap dealer definition in § 1.3 of this chapter or for determining the non-U.S. person's status as a major swap participant as defined in § 1.3 of this chapter, such non-U.S. person does not need to count any swaps or swap positions, as applicable, that are entered into by such non-U.S. person on a designated contract market, a registered swap execution facility or a swap execution facility exempted from registration by the Commission pursuant to section 5h(g) of the Act, or a registered foreign board of trade, and cleared through a registered derivatives clearing organization or a clearing organization that has been exempted from registration by the Commission pursuant to section 5b(h) of the Act, where the non-U.S. person does not know the identity of the counterparty to the swap prior to execution.

(e) *Exceptions from certain swap requirements for certain foreign-based swaps.* (1) With respect to its foreign-based swaps, each non-U.S. swap entity and foreign branch of a U.S. swap entity shall be excepted from:

(i) The group B requirements (other than §§ 23.202(a) through 23.202(a)(1)) and the group C requirements with respect to any swap (i) entered into on a designated contract market, a registered swap execution facility or a swap execution facility exempted from registration by the Commission pursuant to section 5h(g) of the Act, or a registered foreign board of trade; (ii) cleared through a registered derivatives clearing organization or a clearing organization that has been exempted from registration by the Commission pursuant to section 5b(h) of the Act; and (iii) where the swap entity does not know the identity of the counterparty to the swap prior to execution; and

(ii) The group C requirements with respect to any swap with a foreign counterparty.

(2) With respect to its foreign-based swaps, each non-U.S. swap entity that is neither a significant risk subsidiary nor a person whose performance under the swap is subject to a guarantee by a U.S. person shall be excepted from the group B requirements with respect to any swap with a foreign counterparty (other than a foreign branch) that is neither a significant risk subsidiary nor a person whose performance under the swap is subject to a guarantee by a U.S. person.

(3) With respect to its foreign-based swaps, each foreign branch of a U.S. swap entity shall be excepted from the group B requirements with respect to any swap with a foreign counterparty (other than a foreign branch) that is neither a significant risk subsidiary nor a person whose performance under the swap is subject to a guarantee by a U.S. person, provided that:

(i) This exception shall not be available with respect to any group B requirement for a swap that is eligible for substituted compliance for such group B requirement pursuant to a comparability determination issued by the Commission prior to the execution of the swap; and

(ii) In any calendar quarter, the aggregate gross notional amount of swaps conducted by a swap entity in reliance on this exception shall not exceed five percent of the aggregate gross notional amount of all its swaps.

(f) *Substituted Compliance.* (1) A non-U.S. swap entity may satisfy any applicable group A requirement by complying with the corresponding requirement of a foreign jurisdiction for which the Commission has issued a comparability determination under paragraph (g) of this section; and

(2) With respect to its foreign-based swaps, a non-U.S. swap entity or foreign branch of a U.S. swap entity may satisfy any applicable group B requirement for a swap with a foreign counterparty by complying with the corresponding requirement of a foreign jurisdiction for which the Commission has issued a comparability determination under paragraph (g) of this section.

(g) *Comparability determinations.* (1) The Commission may issue comparability determinations under this section on its own initiative.

(2) *Eligibility requirements.* The following persons may, either individually or collectively, request a comparability determination with respect to some or all of the group A requirements and group B requirements:

(i) A swap entity that is eligible, in whole or in part, for substituted compliance under this section or a trade association or other similar group on behalf of its members who are such swap entities; or

(ii) A foreign regulatory authority that has direct supervisory authority over one or more swap entities subject to the group A requirements and/or group B requirements and that is responsible for administering the relevant foreign jurisdiction's swap standards.

(3) *Submission requirements.* Persons requesting a comparability determination pursuant to this section

shall electronically provide the Commission:

(i) A description of the objectives of the relevant foreign jurisdiction's standards and the products and entities subject to such standards;

(ii) A description of how the relevant foreign jurisdiction's standards address, at minimum, each element of the Commission's corresponding requirements. Such description should identify the specific legal and regulatory provisions that correspond to each element and, if necessary, whether the relevant foreign jurisdiction's standards do not address a particular element;

(iii) A description of the differences between the relevant foreign jurisdiction's standards and the Commission's corresponding requirements, and an explanation regarding how such differing approaches achieve comparable outcomes;

(iv) A description of the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's standards. Such description should discuss the powers of the foreign regulatory authority or authorities to supervise, investigate, and discipline entities for compliance with the standards and the ongoing efforts of the regulatory authority or authorities to detect and deter violations of, and ensure compliance with, the standards;

(v) Copies of the foreign jurisdiction's relevant standards (including an English translation of any foreign language document); and

(vi) Any other information and documentation that the Commission deems appropriate.

(4) *Standard of review.* The Commission may issue a comparability determination pursuant to this section to the extent that it determines that some or all of the relevant foreign jurisdiction's standards are comparable to the Commission's corresponding requirements, after taking into account such factors as the Commission determines are appropriate, which may include:

(i) The scope and objectives of the relevant foreign jurisdiction's standards;

(ii) Whether the relevant foreign jurisdiction's standards achieve comparable outcomes to the Commission's corresponding requirements;

(iii) The ability of the relevant regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's standards; and

(iv) Whether the relevant regulatory authority or authorities has entered into a memorandum of understanding or other arrangement with the Commission addressing information sharing, oversight, examination, and supervision of swap entities relying on such comparability determination.

(5) *Reliance.* Any swap entity that, in accordance with a comparability determination issued under this section, complies with a foreign jurisdiction's standards, would be deemed to be in compliance with the Commission's corresponding requirements. Accordingly, if a swap entity has failed to comply with the foreign jurisdiction's standards or a comparability determination, the Commission may initiate an action for a violation of the Commission's corresponding requirements. All swap entities, regardless of whether they rely on a comparability determination, remain subject to the Commission's examination and enforcement authority.

(6) *Discretion and Conditions.* The Commission may issue or decline to issue comparability determinations under this section in its sole discretion. In issuing such a comparability determination, the Commission may impose any terms and conditions it deems appropriate.

(7) *Modifications.* The Commission reserves the right to further condition, modify, suspend, terminate or otherwise restrict a comparability determination issued under this section in the Commission's discretion.

(8) *Delegation of authority.* The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight, or such other employee or employees as the Director may designate from time to time, the authority to request information and/or documentation in connection with the Commission's issuance of a comparability determination under this section.

(h) *Records.* Swap dealers and major swap participants shall create a record of their compliance with this section and shall retain records in accordance with § 23.203 of this chapter.

* * * * *

Issued in Washington, DC, on December 20, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz and Stump voted in the affirmative. Commissioners Behnam and Berkovitz voted in the negative.

Appendix 2—Supporting Statement of Chairman Heath Tarbert

I am pleased to support the Commission's proposed rule on the cross-border application of registration thresholds and certain requirements for swap dealers and major swap participants. It is critical that the CFTC finalize a sensible cross-border registration rule in 2020, as we approach the 10-year anniversary of the Dodd-Frank Act.

Need for Rule-Based Finality

Since 2013, market participants have been relying on cross-border ''interpretive guidance,'' [1] which was published outside the standard rulemaking process under the Administrative Procedure Act (APA).[2] Although this policy statement has had a sweeping impact on participants in the global swaps market, it is technically not enforceable. Market participants largely follow the 2013 Guidance, but they are not legally required to do so.[3] Over the intervening years, a patchwork of staff advisories and no-action letters has supplemented the 2013 Guidance. With almost seven years of experience, it is high time for the Commission to bring finality to the issues the 2013 Guidance and its progeny address.

We call this a ''cross-border'' proposal, and in certain respects it is. For example, the proposed rule addresses when non-U.S. persons must count dealing swaps with U.S. persons, including foreign branches of American banks, toward the *de minimis* threshold in our swap dealer definition. More fundamentally, however, the proposed rule answers a basic question: What swap dealing activity *outside* the United States should trigger CFTC registration and other requirements?

[1] Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013) (''2013 Guidance''), *http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-17958a.pdf.*

[2] 5 U.S.C. 551 *et seq.*

[3] As then Commissioner Scott O'Malia pointed out regarding the 2013 Guidance: ''Legally binding regulations that impose new obligations on affected parties—'legislative rules'—must conform to the APA.'' Appendix 3—Dissenting Statement of Commissioner Scott D. O'Malia, 2013 Guidance at 45372 (citing *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302–03 (1979) (agency rulemaking with the force and effect of law must be promulgated pursuant to the procedural requirements of the APA)).

Congressional Mandate

To answer this question, we must turn to section 2(i) of the Commodity Exchange Act (''CEA''), a provision Congress added in Title VII of the Dodd-Frank Act.[4] Section 2(i) provides that the CEA does not apply to swaps activities outside the United States except in two circumstances: (1) Where activities have a ''direct and significant connection with activities in, or effect on, commerce of the United States'' or (2) where they run afoul of the Commission's rules or regulations that prevent evasion of Title VII.[5] Section 2(i) evidences Congress's clear intent for the U.S. swaps regulatory regime to stop at the water's edge, except where foreign activities either are closely and meaningfully related to U.S. markets or are vehicles to evade our laws and regulations.

I believe the proposed rule before us today is a levelheaded approach to the exterritorial application of our swap dealer registration regime and related requirements. The proposed rule would fully implement the congressional mandate in section 2(i). At the same time, it acknowledges the important role played by the CFTC's domestic and international counterparts in regulating what is a global swaps market. In short, the proposal employs neither a full-throated ''intergalactic commerce clause''[6] nor an isolationist mentality. It is thoughtful and balanced.

Guiding Principles for Regulating Foreign Activities

For my part, I am guided by three additional principles in considering the extent to which the CFTC should make full use of its extraterritorial powers.

(1) Protect the National Interest

An important role of the CFTC is to protect and advance the interests of the United States. In this instance, Congress provided the CFTC with explicit extraterritorial power to safeguard the U.S. financial system where swaps activities are concerned. We need to think continually about the potential outcome for American taxpayers. We cannot have a regulatory framework that incentivizes further bailouts of large financial institutions. We therefore need to ensure that risk created outside the United States does not flow back into our country.

But it is not just any risk outside the United States that we must guard against. Congress made that clear in section 2(i). We must not regulate swaps activities in far flung lands simply to prevent every risk that might have a nexus to the United States. That would be a markedly poor use of American taxpayers' dollars. It would also divert the CFTC from channeling our resources where they matter the most: To our own markets and participants. The proposal therefore focuses on instances when material risks from abroad are most likely to come back to the United States and where no one but the CFTC is responsible for those risks.

Hence, guarantees of offshore swaps by U.S. parent companies are counted toward our registration requirements because that risk is effectively underwritten and borne in the United States. The same is true with the concept of a ''significant risk subsidiary'' (SRS). An SRS is a large non-U.S. subsidiary of a large U.S. company that deals in swaps outside the United States but (1) is not subject to comparable capital and margin requirements in its home country, and (2) is not a subsidiary of a holding company subject to consolidated supervision by an American regulator, namely the Federal Reserve Board. As a consequence, our cross-border rule would require an SRS to register as a swap dealer or major swap participant with the CFTC if the SRS exceeds the same registration thresholds as a U.S. firm operating within the United States. The national interest demands it.[7]

(2) Follow Kant's Categorical Imperative

Rarely does the name of Immanuel Kant, the famous 18th century German philosopher, come up when talking about financial regulation.[8] One of the lasting contributions Kant made to Western thought was his concept of the ''categorical imperative.'' In deducing the laws of ethical behavior, *i.e.,* how people should treat one another, he came up with a simple test: We should act according to the maxim that we wish all other rational people to follow, as if it were a universal law.[9] Kant's categorical imperative is also a good foundation for considering cross-border rulemaking here at the CFTC.

What I take from it is that we should adopt a regulatory regime that we would like all other jurisdictions to follow as if it were a universal law. How does this work? Let me start by explaining how it does not work. If we impose our regulations on non-U.S. persons whenever they have a remote nexus to the United States, then we should be willing for all other jurisdictions to do the same. The end result would be absurdity, with everyone trying to regulate everyone else. And the duplicative and overlapping regulations would inevitably lead to fragmentation in the global swaps market—itself a potential source of systemic risk.[10] Instead, we should adopt a framework that applies CFTC regulations outside the United States only when it addresses one or more important risks to our country.

Furthermore, we should afford comity to other regulators who have adopted comparable regulations, just as we expect them to do for us. This is especially important when we evaluate whether foreign subsidiaries of U.S. parents could pose a significant risk to our financial system. The categorical imperative leads us to an unavoidable result: We should not impose our regulations on the non-U.S. activities of non-U.S. companies in those jurisdictions that have comparable capital and margin requirements to our own.[11] By the same token, when U.S. subsidiaries of foreign companies operate within our borders, we expect them to follow our laws and regulations and not apply rules from their home country.

Charity, it is often said, begins at home. The categorical imperative further compels us to avoid duplicating the work of other American regulators. If a foreign subsidiary of a U.S. financial institution is subject to consolidated regulation and supervision by the Federal Reserve Board, then we should rely on our domestic counterparts to do their jobs when it is a question of dealing activity outside the United States. The Federal Reserve Board has extensive regulatory and supervisory tools to ensure a financial

[4] 7 U.S.C. 2(i).

[5] *Id.*

[6] *See* Commissioner Jill E. Sommers, Statement of Concurrence: (1) Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, Proposed Interpretive Guidance and Policy Statement; (2) Notice of Proposed Exemptive Order and Request for Comment Regarding Compliance with Certain Swap Regulations (June 29, 2012), available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/sommersstatement062912* (noting that ''staff had been guided by what could only be called the 'Intergalactic Commerce Clause' of the United States Constitution, in that every single swap a U.S. person enters into, no matter what the swap or where it was transacted, was stated to have a direct and significant connection with activities in, or effect on, commerce of the United States'').

[7] The SRS concept has been designed to address a potential situation where a U.S. entity establishes an offshore subsidiary to conduct its swap dealing business without an explicit guarantee on the swaps in order to avoid the Dodd-Frank Act. For example, the U.S.-regulated insurance company American International Group (''AIG'') nearly failed as a result of risk incurred by the London swap trading operations of its subsidiary AIG Financial Products. *See, e.g.,* Congressional Oversight Panel, June Oversight Report, *The AIG Rescue, Its Impact on Markets, and the Government's Exit Strategy* (June 10, 2010), available at: *http://www.gpo.gov/fdsys/pkg/CPRT-111JPRT56698/pdf/CPRT-111JPRT56698.pdf.* If the Commission did not regulate SRS, an AIG-type entity could establish a non-U.S. affiliate to conduct its swaps dealing business, and, so long as it did not explicitly guarantee the swaps, it would avoid application of the Dodd-Frank Act and bring risk created offshore back into the United States without appropriate regulatory safeguards.

[8] Yet even at first glance, derivatives regulation and Kant's philosophy share some strikingly common attributes. Title 17 of the Code of Federal Regulation (CFR) and *The Critique of Pure Reason* (*Kritik der reinen Vernunft*) (1781) are impenetrable to all but a handful of subject matter experts. And scholars spend decades writing and thinking about them, often coming up with more questions than answers.

[9] ''Act only according to that maxim whereby you can, at the same time, will that it should become a universal law.'' Immanuel Kant, *Grounding for the Metaphysics of Morals* (1785) [1993], translated by James W. Ellington (3rd ed.).

[10] *See* FSB Report on Market Fragmentation (June 4, 2019), available at: *https://www.fsb.org/wp-content/uploads/P040619-2.pdf.*

[11] *See, e.g.,* Comments of the European Commission in respect of CFTC Staff Advisory No. 13–69 regarding the applicability of certain CFTC regulations to the activity in the United States of swap dealers and major swap participants established in jurisdictions other than the United States (Mar. 10, 2014), available at: *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59781&SearchText=* (''In order to ensure that cross-border activity is not inhibited by the application of inconsistent, conflicting or duplicative rules, regulators must work together to provide for the application of one set of comparable rules, where our rules achieve the same outcomes. Rules should therefore include the possibility to defer to those of the host regulator in most cases.'').

holding company is prudent in its risk taking at home and abroad.[12] The CFTC does not have similar experience, and therefore should focus on regulating dealing activity within the United States or with U.S. persons.

(3) Pursue SEC Harmonization Where Appropriate

In the jurisdictional fight over swaps, Congress split the baby between the CFTC and the SEC in Title VII of the Dodd-Frank Act.[13] The SEC got jurisdiction over security-based swaps, and we got jurisdiction over all other swaps—the vast majority of the current market.[14] Congress also required both Commissions to consult and coordinate our respective regulatory approaches, and required us to treat economically similar entities or products in a similar manner.[15] Simple enough, right? Wrong.

The CFTC and the SEC could not even agree on a basic concept that is not even particular to financial regulation: Who is a ''U.S. person.'' In what can only be described as a bizarre series of events, the CFTC and the SEC adopted different definitions of ''U.S. person'' in our respective cross-border regimes. I find it surreal that two federal agencies that regulate similar products pursuant to the same title of the same statute—with an explicit mandate to ''consult and coordinate'' with each other—have not agreed until today on how to define ''U.S. person.'' This failure to coordinate has increased operational and compliance costs for market participants.[16] And that is why I am pleased that our proposal uses the same definition of U.S. person that is in the SEC's cross-border rulemaking.

To be sure, as my colleagues have said on several occasions, we should not harmonize with the SEC merely for the sake of harmonization.[17] I agree that we should harmonize only if it is sensible. In the first instance, we must determine whether Congress has explicitly asked us to do something different or implicitly did so by giving us a different statutory mandate. It also requires us to consider whether differences in our respective products or markets warrant a divergent approach. Just as the proposed rule takes steps toward harmonization, it also diverges where appropriate.

The prime example is the approach we have taken with respect to ''ANE Transactions.'' [18] ANE Transactions are swap (or security-based swap) transactions between two non-U.S. persons that are ''arranged, negotiated, or executed'' by their personnel or agents located in the United States, but booked to entities outside America. While some or all of the front-end sales activity takes place in the United States, the financial risk of the transactions resides overseas.

Here, key differences in the markets for swaps and security-based swaps are dispositive. The swaps market is far more global than the security-based swaps market is. While commodities such as gold and oil are traded throughout the world, equity and debt securities trade predominantly in the jurisdictions where they were issued. For this reason, security-based swaps are inextricably tied to the underlying security, and vice versa. This is particularly the case with a single-name credit default swap. The arranging, negotiating, or execution of this kind of security-based swap is typically done in the United States because the underlying reference entity is a U.S. company. Because security-based swaps can affect the price and liquidity of the underlying security, the SEC has a legitimate interest in requiring these transactions to be reported. By contrast, because commodities are traded throughout the world, there is less need for the CFTC to apply its swaps rules to ANE Transactions.[19]

In addition, as noted above, Congress directed the CFTC to regulate foreign swaps activities outside the United States that have a ''direct and significant'' connection to our financial system. Congress did not give a similar mandate to the SEC. As a result of its different mandate, the SEC has not crafted its cross-border rule to extend to an SRS engaged in swap dealing activity offshore that may pose a systemic risk to our financial system. Our proposed rule does, aiming to protect American taxpayers from another Enron conducting its swaps activities through a major foreign subsidiary.[20]

Conclusion

In sum, the proposed rule before us today represents a critical step toward finalizing the regulations Congress asked of us nearly a decade ago. I believe our proposal is also a sensible and principled approach to addressing when foreign transactions should fall within the CFTC's swaps registration and related requirements.

Perhaps President Eisenhower said it best: ''The world must learn to work together, or finally it will not work at all.'' [21] My sincere hope is that our domestic and international counterparts will view this proposal as a concrete step toward working together to provide sound regulation to the global swaps market.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I am very pleased to support today's proposed rule, which, in my view, delineates important boundaries of the Commission's regulation of swaps activity conducted abroad, which would codify elements of the Commission's 2013 interpretive guidance,[1] and make important adjustments with the benefit of six years' additional experience in swaps market oversight.

Direct AND Significant

As I have said before, the foundational principle underlying any CFTC regulation of cross-border swaps activity, and the prism through which all extraterritorial reach by the CFTC must be viewed, is the statutory directive from Congress that the agency may only regulate those activities outside the United States that ''have a direct and

[12] For example, the Federal Reserve Board requires all foreign branches and subsidiaries ''to ensure that their operations conform to high standards of banking and financial prudence.'' 12 CFR 211.13(a)(1). Furthermore, they are subject to examinations on compliance. *See* Bank Holding Company Supervision Manual, Section 3550.0.9 (''The procedures involved in examining foreign subsidiaries of domestic bank holding companies are generally the same as those used in examining domestic subsidiaries engaged in similar activities.'').

[13] This was unfortunately nothing new. On a number of occasions prior to the Dodd-Frank Act, the CFTC and SEC fought over jurisdiction of certain derivative products. *See, e.g., In Board of Trade of the City Of Chicago* v. *Securities and Exchange Commission,* 677 F. 2d 1137 (7th Cir. 1982) (finding that the SEC lacked the authority to approve CBOE to trade options on mortgage-backed securities because the options fell within the CFTC's exclusive jurisdiction).

[14] The swaps market is significantly larger than the security-based swaps market. Aggregating across all major asset classes in the global derivatives market, dominated by interest rates and FX, the ratio exceeds 95% swaps to 5% security-based swaps by notional amount outstanding. This ratio holds even with relatively conservative assumptions like assigning all equity swaps (a small asset class) to the security-based swaps category. *See* Bank for International Settlements, OTC derivatives outstanding (Updated 8 December 2019), available at: *https://www.bis.org/statistics/derstats.htm.*

[15] *See* Section 712(a)(7) of the Dodd-Frank Act.

[16] *See, e.g.,* Futures Industry Association Letter re: Harmonization of SEC and CFTC Regulatory Frameworks (Nov. 29, 2018), available at: *https://fia.org/articles/fia-offers-recommendations-cftc-and-sec-harmonization.*

[17] *See, e.g.,* Dissenting Statement of Commissioner Dan M. Berkovitz, Rulemaking to Provide Exemptive Relief for Family Office CPOs: Customer Protection Should be More Important than Relief for Billionaires (Nov. 25, 2019), available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement112519* (''The Commission eliminates the notice requirement largely on the basis that this will harmonize the Commission's regulations with those of the SEC. Harmonization for harmonization's sake is not a rational basis for agency action.'').

[18] *See* SEC, Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, 84 FR 24206 (May 24, 2019), available at: *https://www.govinfo.gov/content/pkg/FR-2019-05-24/pdf/2019-10016.pdf.*

[19] Under the proposal, persons engaging in any aspect of swap transactions within the United States remain subject to the CEA and Commission regulations prohibiting the employment, or attempted employment, of manipulative, fraudulent, or deceptive devices, such as section 6(c)(1) of the CEA (7 U.S.C. 9(1)) and Commission regulation 180.1 (17 CFR 180.1). The Commission thus would retain anti-fraud and anti-manipulation authority, and would continue to monitor the trading practices of non-U.S. persons that occur within the territory of the United States in order to enforce a high standard of customer protection and market integrity. Even where a swap is entered into by two non-U.S. persons, we have a significant interest in deterring fraudulent or manipulative conduct occurring within our borders, and we cannot let our country be a haven for such activity.

[20] The SEC's cross-border rule would, however, appear to extend to a foreign-to-foreign transaction *not* involving the arranging, negotiation, or execution of the trade in the United States if the transaction involved an SEC-registered broker-dealer.

[21] Transcript of President Dwight D. Eisenhower's Farewell Address (1961), available at: *https://www.ourdocuments.gov/doc.php;?flash=true&doc=90&page=transcript.*

[1] Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

significant connection with activities in, or effect on commerce of, the United States.''[2] Congress deliberately placed a clear and strong limitation on the CFTC's extraterritorial reach, recognizing the need for international comity and deference in a global swaps market.

I believe the proposal strikes a strong balance in interpreting Section 2(i) of the CEA. The proposal before us would interpret this provision in ways that both provide important safeguards to the U.S. financial markets, and avoid duplicative regulation or disadvantaging U.S. commercial and financial institutions acting in foreign markets.

Registration

The proposal would require a foreign institution dealing in swaps to count the notional value of the swaps it executes towards the CFTC's recently finalized $8 billion registration threshold[3] only in certain, enumerated circumstances that clearly concern U.S. institutions and implicate risk to the U.S. financial system when that risk is not otherwise addressed by the Commission or by the banking regulators.[4] I would like to highlight a few of these circumstances.

First, a foreign swap dealing firm would generally be required to count swaps executed opposite a ''*U.S. person.*''[5] I believe the proposed definition of *U.S. person*[6] is an improvement upon the one included in the 2013 guidance.[7] The proposed definition of *U.S. person* is also consistent with the one published by the SEC in connection with that agency's oversight over security-based SDs and MSPs.[8] Only in Washington could two financial regulators have different definitions of a *U.S. Person.* Such a harmonized definition, if finalized, will facilitate compliance with the CFTC's and SEC's swaps regulations by dually registered entities. The proposed definition is largely similar to the definition of *U.S. person* issued by the Commission in 2016 in connection with the rule for cross-border applicability of the margin requirements for uncleared swaps,[9] and more streamlined than the one included with the Commission's 2013 cross-border guidance, for example in the context of investment funds. This will make it easier for market participants readily to determine their status. One element of the definition that I would like to highlight, an element that is consistent with the SEC's rule, is that an investment fund would be considered a *U.S. person* if the fund's primary manager is located in the U.S.[10] (proposed 23.23(a)(22)(ii)).

In addition to counting swaps opposite a *U.S. person,* a foreign firm would also be required to count swaps executed opposite a non-U.S. entity, if that firm's obligations under the swap are ''*guaranteed*'' by a *U.S. person,* or if the counterparty's obligations are U.S.-*guaranteed.*[11] Here too, the proposal provides a simpler, more targeted definition of *guarantee*[12] than the one published in the 2013 guidance,[13] and the definition is consistent with the one included in the Commission's cross-border rule for uncleared swap margining.[14] The definition would include an arrangement under which a party to a swap has rights of recourse against a guarantor, including traditional guarantees of payment or performance, but it would not include other financial arrangements or structures such as ''keepwells and liquidity puts'' or master trust agreements.

Notably, if a non-U.S. firm's obligations to a swap are *guaranteed* by a non-financial U.S. entity (meaning a U.S. commercial end-user), then that swap would be excluded from the foreign dealer's tally towards possible CFTC registration.[15] Commercial end-users typically enter into swaps for hedging purposes, and their swaps generally pose less risk to the financial system than swaps by financial institutions. The fact that a foreign dealer would not be required to count a swap with a U.S.-*guaranteed* commercial end-user towards the dealer's possible CFTC registration may give foreign subsidiaries of U.S. commercial firms a greater choice of swap dealers. This flexibility is consistent with Congress' decision not to apply to commercial end-users either the requirement that certain swaps be cleared at a derivatives clearing organization (DCO) (''*swap clearing requirement*'') or that uncleared swaps be subject to margin requirements.[16]

I would also like to highlight that the proposal properly does not require a foreign dealer to count towards the CFTC's registration threshold a swap opposite a foreign branch of a U.S. institution already registered with the CFTC as an SD.[17] While a U.S. SD of course stands behind a swap executed by its foreign branch, I believe it makes sense for the Commission not to require a foreign dealer to count that swap towards the foreign dealer's tally for possible CFTC registration because the CFTC is already overseeing the U.S. firm, and its swaps, due to the U.S. firm's SD registration.

FCS—Not ''Significant'' on Accounting Consolidation Alone

Today's proposal makes an important, and appropriate, distinction from the Commission's 2016 proposal on the cross-border application of the SD registration threshold and SD business conduct standards.[18] That proposal would have required thousands of non-U.S. firms to count all of their dealing swaps, with U.S. and non-U.S. counterparties alike, towards possible CFTC SD registration. For instance, the 2016 proposed rule would have required every foreign subsidiary of a U.S. firm that, for accounting purposes, consolidates its financial statements into its parent, (referred to as a ''*foreign consolidated subsidiary*'') to count all of its swaps.[19] While an accounting link between a foreign subsidiary and its U.S. parent may have satisfied the ''direct'' connection to U.S. activities under CEA 2(i), an accounting link alone is meaningless in terms of the 2(i) ''significant'' connection to commerce of the U.S.

By contrast, today's proposal creates a sensible ''significance'' test for a foreign subsidiary of a U.S. firm through the classification of a ''*significant risk subsidiary,*'' which would be required to count every dealing swap towards possible CFTC SD registration.[20] The proposed *significant risk subsidiary* class targets only a foreign entity that may present major risk to a large U.S. institution and appropriately scopes out the limits of Section 2(i) of the CEA.[21] Moreover, a *significant risk subsidiary* does not include an entity already subject to supervision either by the Federal Reserve Board or by a foreign banking regulator operating under Basel standards in a jurisdiction that the Commission determined has instituted a margining regime for uncleared swaps that is comparable to the Commission's framework for margining uncleared swaps.[22] This construct makes sense. The Federal Reserve already reviews swaps activity by foreign subsidiaries of bank holding companies.[23] Additionally, the CFTC

[2] Sec. 2(i) of the Commodity Exchange Act (CEA).

[3] CFTC regulation 1.3 (definition of *swap dealer,* paragraph (4)), promulgated by De Minimis Exception to the SD Definition, 83 FR 56666 (Nov. 13, 2018) (final rule).

[4] Proposed CFTC regulation 23.23(b).

[5] Proposed 23.23(b)(1).

[6] Proposed 23.23(a)(22).

[7] Interpretive Guidance, 45,316–317.

[8] Securities and Exchange Act rule 3a71–3(a)(3)(ii) & (4)(iv), promulgated by Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities, 79 FR 47278, 47313 (Aug. 12, 2014).

[9] CFTC regulation 23.160(a)(10), promulgated by Margin Requirements for Uncleared Swaps for SDs and MSPs—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[10] Proposed 23.23(a)(22)(ii).

[11] Proposed 23.23(b)(2)(ii) and (iii).

[12] Proposed 23.23(a)(8).

[13] Interpretive Guidance, 45,318–20.

[14] 23.160(a)(2).

[15] Proposed 23.23(b)(2)(iii)(*2*).

[16] Secs. 2(h)(1) and 4s(e) of the CEA, implemented by parts 50 and 23 subpart E of the Commission's regulations.

[17] Proposed 23.23(b)(2)(i).

[18] Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to SDs and MSPs, 81 FR 71946 (Oct. 18, 2016) (proposed rule).

[19] 2016 proposed regulations 1.3(ggg)(7) and 1.3(aaaaa).

[20] Proposed 23.23(a)(12) and 23.23(b)(1).

[21] In order to be a *significant risk subsidiary,* the U.S. parent must have at least $50 billion in global consolidated assets, and the subsidiary must exceed one of three thresholds (measured according to a percentage of capital, revenue, or assets) as compared to its parent (proposed 23.23(a)(12)–(13)). The proposed definition of ''*significant subsidiary*'' is consistent with the definition of this term included in SEC Regulation S–X (17 CFR 210.1–01(w)).

[22] Proposed 23.23(a)(12)(i)–(ii). To date, the Commission has determined Australia, the E.U., and Japan to have issued margining regimes for uncleared swaps comparable to the Commission's (82 FR 48394 (Oct. 18, 2017 (E.U.); 84 FR 12908 (Apr. 3, 2019) (Australia); and 84 FR 12074 (Apr. 1, 2019) (Japan)).

[23] Federal Reserve Board, Bank Holding Co. Supervision Manual, sec. 2100.0.1 Foreign Operations of U.S. Banking Organizations, available at, *https://www.federalreserve.gov/publications/files/bhc.pdf.*

has already found multiple jurisdictions' uncleared margin regimes comparable to ours. In order to eliminate duplicative regulation, and for the sake of international comity and respect for foreign jurisdictions' sovereignty, it is prudent for the Commission to rely on other authorities, either the Federal Reserve or its counterparts in comparable jurisdictions, to supervise the swaps entered into by non-U.S. subsidiaries of the banks they supervise on a consolidated basis.

By limiting the number of foreign firms registered with the CFTC as SDs, I believe the Commission, together with the National Futures Association (NFA), will best apply the agency's limited resources to the non-U.S. entities outside of the Federal Reserve's purview, especially given that there are already over 100 registered SDs organized in more than 10 countries.[24]

Business Conduct Requirements

In addition to setting boundaries in the area of non-U.S. firms counting swaps towards possible CFTC registration, today's proposal would build on the 2013 guidance by providing certainty regarding when a non-U.S. firm, which is registered with the CFTC as an SD, must comply with the Commission's SD standards. Again, importantly and appropriately out of respect for foreign jurisdictions, the proposal would exempt swaps executed with certain counterparties located abroad and make available compliance with local rules that the CFTC has determined comparable to its own (''substituted compliance'').[25] The proposed rule also sets forth exemptions and substituted compliance for foreign branches of U.S. financial institutions registered as SDs with the CFTC.[26] As in 2013, the Commission believes that certain of the Commission's SD rules, or comparable foreign rules, should apply to every registered SD, including one organized in a foreign jurisdiction, with respect to all of the dealer's swaps, namely requirements concerning: A *Chief Compliance Officer;* a *risk management program,* including *special rules for when the SD is a member of a DCO; addressing conflicts of interest* and *antitrust considerations; recordkeeping; disclosing information to the CFTC and banking regulators;* and *position limits monitoring* (collectively, the ''Group A requirements'').[27] I note that substituted compliance is currently available for particular Group A requirements for SDs established in, and operating out of, Australia, Canada, the E.U., Hong Kong, Japan, and Switzerland.[28]

With regard to other SD requirements, namely *daily trading records, confirmations, documentation,* and *portfolio reconciliation and compression* (collectively, the ''Group B requirements''),[29] today's proposal reasonably exempts foreign firms registered with the Commission as SDs, as well as foreign branches of U.S. registered as SDs, from these requirements for swaps with certain counterparties located outside of the U.S., including those non-U.S. counterparties whose swap obligations are not *guaranteed* by a *U.S. person* and those foreign counterparties not covered by the proposed definition of *significant risk subsidiary.*[30] As with the 2013 guidance, substituted compliance is also available.[31] Finally, under today's proposal, both a non-U.S. firm registered with the Commission as an SD, and the foreign branch of a U.S. firm registered as an SD, would only be required to comply with a set of business conduct requirements, those addressing how registered SDs transact with certain counterparties (collectively, the ''Group C requirements''),[32] for swaps with U.S. counterparties, but not with non-U.S. counterparties.[33]

''ANE''—Eliminating the ''Elevator Test''

Today's proposal makes an important distinction from how the Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) addressed compliance with ''transaction-level requirements'' (referred to in today's proposal as Groups B and C requirements) in 2013. A November 2013 DSIO Advisory[34] suggested that a foreign CFTC-registered SD must comply with CFTC transaction-level requirements even in connection with a swap opposite another non-U.S. person if the SD used personnel located in the U.S. to ''*arrange,*'' ''*negotiate*'' or ''*execute*'' (ANE) the swap. Such a broad, vague, and burdensome application caused such widespread confusion and international condemnation that it was, within 13 days of publishing, placed under no-action relief.[35] That no-action relief exists to this day, having been renewed six times.[36]

Prudently, today's proposal eliminates the ANE standard. I believe the Commission should only consider applying its transaction-level requirements to a foreign registered SD when a swap is executed opposite a U.S. counterparty.[37] The fact that the foreign SD may be using U.S. personnel to support the transaction does not implicate how the swap should be executed with a foreign counterparty. Under the limited extra-territorial jurisdiction Congress gave to the CFTC in overseeing the swaps market, it is appropriate that the Commission refrains from requiring foreign firms to comply with the CFTC's SD transaction-level requirements, or comparable foreign requirements, for swaps where both counterparties are outside of the United States and there is no U.S. nexus.

Enhancing Substituted Compliance

I am pleased that today's proposal codifies a process under which the Commission will issue future substituted compliance determinations.[38] Substituted compliance is the lynchpin of a global swaps market. Said differently, the absence of regulatory deference has been the fracturing sound we hear as the global swaps market fragments. The 11 substituted compliance determinations the Commission has issued to date for registered SDs, concerning business conduct and uncleared swap margining rules, highlight the progress other jurisdictions have made in issuing swaps rules. While not identical, those rulesets largely address the same topics and guard against the same risks. I hope that the Commission will soon be in a position to issue additional comparability determinations, particularly for Group B requirements. Whereas Group A substituted compliance determinations have been issued for six jurisdictions (Australia, Canada, the E.U., Hong Kong, Japan, and Switzerland), Group B substituted compliance determinations have been issued for only two jurisdictions (the E.U. and Japan).

In conclusion, I am pleased that the Commission is making meaningful progress in providing legal certainty to the market with regard to complying with the Dodd-Frank swaps regulations on a cross-border basis. I hope that the Commission will soon propose other cross-border regulations regarding other areas of the CFTC's swap regulations, including the swap clearing requirement, the trade execution requirement,[39] and the swaps reporting requirement.[40]

I would like to thank the staff of DSIO for their efforts on this proposal, as well as a personal thank you to Matt Daigler from the Chairman's office, who worked tirelessly on this proposal and its unpublished predecessor and has held countless conversations with me and my staff on this issue over the past year.

Appendix 4—Dissenting Statement of Commissioner Rostin Behnam

Introduction

I respectfully dissent from the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') notice of proposed rulemaking addressing the cross-border application of the registration

[24] List of SDs available on the CFTC's website at, *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html.*

[25] Proposed 23.23(e)–(f).

[26] *Id.*

[27] CFTC regulations 3.3, 23.201, 23.203, 23.600–607, and 23.609 (referred to by the Proposal as the ''Group A requirements'' (proposed 23.23(a)(5) and 23.23(e)–(f)). ''Entity-level'' comparability determinations, available at, *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[28] ''Entity-level'' comparability determinations, available at, *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[29] CFTC regulations 23.202 and 501–504 (referred to by the Proposal as the ''Group B requirements (proposed 23.23(a)(6)).

[30] Proposed 23.23(e)(2).

[31] Proposed 23.23(f)(2). Currently, substituted compliance for certain Group B requirements is available for SDs organized in the E.U. and in Japan. These comparability determinations are available at, *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[32] CFTC regulations 23.400–451 (referred to by the proposal as the Group C requirements (proposed 23.23.(a)(7)).

[33] Proposed 23.23(e)(1)(ii).

[34] CFTC Staff Advisory 13–69 (Nov. 14, 2013).

[35] CFTC Letter 13–71 (Nov. 26, 2013).

[36] CFTC Letters 14–01, 14–74, 14–140, 15–48, 16–64, and 17–36.

[37] I note that the proposal also appropriately applies the Group B requirements to a swap involving a non-U.S. person that is either U.S.-*guaranteed* or a *significant risk subsidiary* (proposed 23.23.(e)(2)).

[38] Proposed 23.23(f).

[39] Sec. 2(h)(8) of the CEA, implemented by CFTC part 37.

[40] Secs. 2(a)(13) and 21 of the CEA, implemented by CFTC parts 43 and 45.

thresholds and certain requirements applicable to swap dealers (''SDs'') and major swap participants (''MSPs'') (the ''Proposal''). I support the Commission's effort to make good on its commitment to periodically review its approach to evaluating the circumstances under which the swaps provisions of Title VII of the Dodd-Frank Act [1] ought to apply to swap dealing and related activities outside the United States.[2] Indeed, the Guidance currently in place and Section 2(i) of the Commodity Exchange Act (the ''Act'' or ''CEA'') itself provide the Commission the flexibility to evaluate its approach on a case-by-case basis, affording interested and affected parties the opportunity to present facts and circumstances that would inform the Commission's application of the relevant substantive Title VII provisions in each circumstance.[3] Today, the Commission, without adequate explanation of its action, consideration of alternatives, or deference to the wisdom of the United States District Court for the District of Columbia on the matter, is proposing to discard both the existing Guidance and the use of agency guidance and non-binding policy statements altogether in addressing the cross-border reach of its authority in favor of hard and fast rules. I simply do not believe the Commission has made a strong enough case for wholesale abandonment of guidance at this point in the evolution of our global swaps markets, and in light of current events that are already impacting market participants and their view of the future global swaps landscape. As well, I have serious questions and concerns as to what the Commission may give up should the Proposal be codified in its current form.

Whereas the Commission understands the scope of our jurisdictional reach with respect to Title VII, a federal district court has affirmed that understanding, and we have operated within such boundaries—aware of the risks and successfully responding in kind, the Commission is now making a decision based on the most current thinking that we should retreat under a banner of comity and focus only on that which can fit on the head of a pin. Oddly enough, that pin will hold only the giants of the swaps market. Indeed, where our jurisdiction stands on its own, the ability to exercise our authority through adjudication [4] and enforcement has allowed the Commission to articulate policy fluidly, refining our approach as circumstances change without the risk of running afoul of our mandate. Today's Proposal suggests that we can resolve all complexities in one fell swoop if we alter our lens, abandon our longstanding and literal interpretation of CEA section 2(i), and limit ourselves to a purely *risk-based approach.* I cannot support an approach that would limit our jurisdiction and consequently oversight directly in conflict with Congressional intent, and potentially expose the U.S. to systemic risk.

Throughout the preamble, the Proposal evinces a clear understanding that the complexity of swaps markets, transactions, corporate structures and market participants create channels through which swaps-related risks warrant our attention by meeting the jurisdictional nexus described in CEA Section 2(i).[5] However, in many instances, we manage to simply acknowledge the obvious risk and step aside in favor of the easier solution of doing nothing, assuming that the U.S. prudential regulators will act on our behalf, or waving the comity banner. The Proposal provides shorthand rationales for each of its decision points without the support of data or direct experience as if doing so would reveal the vision's vulnerabilities. Perhaps most concerning are the Proposal's contracted definitions of ''U.S. person'' and ''guarantee,'' its introduction of ''substantial risk subsidiaries,'' and its determination that ''ANE'' means something akin to ''absolutely nothing to explain'' regarding our jurisdictional interest—even when activities are occurring within the territorial United States. These represent some notable examples where the Proposal undermines the core protections sought to be addressed by section 2(i), as the Commission has, until now, understood them to be.

My concerns aside for a moment, I am grateful that within the four corners of the document, the requests for comment seek to build consensus and operatively provide the public an option to maintain the status quo with regard to most aspects of the Guidance—albeit without sticking with guidance. While this leads me to more questions as to whether and how the Proposal could go final absent additional intervening process, I am pleased that there is recognition that the public and market participants may have lost their appetite for this brand of rulemaking or perhaps have come to agree with the D.C. District Court that the Commission's decision to issue the Guidance benefits market participants.[6] Further, as the Commission currently engages with our foreign counterparts regarding impending regulatory matters related to Brexit, I hope we are measured in timing and substance on the Proposal.

Before I highlight certain aspects of the Proposal, I want to take a brief moment to acknowledge why—as a general matter—we are here, and why this particular proposal is so important. Without rehashing market realties that led to the economic devastation of 2008, it should never be lost on our collective consciousness that a significant driving force that exacerbated the financial crisis and great recession, at least within the context of the over-the-counter derivatives market, was housed overseas. Although much of the risk completed its journey within the continental U.S., it was conjured up in foreign jurisdictions.[7] But, as we all also know too well, more than 10 years later, despite the products often being constructed, sold, and traded overseas, the highly complex web of relationships between holding companies, subsidiaries, affiliates, and the like, created a perfect storm that brought our financial markets to a near halt, and the global economy to a shudder. Those experiences should always serve as the foundation from which we craft cross-border derivatives policy. Always.

Cutting to the Chase on Codification

Since 2013, when the Commission announced its first cross-border approach in flexible guidance as a non-binding policy statement,[8] the Commission has understood that addressing the complex and dynamic nature of the global swaps market cannot be described in black and white, and that even describing it in shades of gray quickly overwhelms our regulatory sensibilities. Cutting through the haze with bright line rules for identity, ownership, control, and attribution to find comfort in comity seems to be our approach in addressing the nature of risk in the global swaps market. However, Congress has granted the Commission authority without any attendant instruction to engage in rulemaking.[9] Under such circumstances, the Commission must critically evaluate whether a rule-driven application of policy amid a global market that is only growing in size and in its complexity may prove inadequate as we carry out our mandate and protect our domestic interests. It seems in this instance that the Commission is barreling toward hard and fast comprehensive rules without acknowledging the benefits of what we have today.

To be clear, while I support the Commission's efforts to address problems resulting from its current approach to regulating swaps activities in the cross-border context, it is not clear to me at this moment that we have reached a point where codification would provide immediate benefits to either the Commission or the public. While the Guidance is complex, it is difficult to say it is any more complex than the Proposal. The complexity is and will be inherent to whatever action we take as it,

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 section 712(d), 124 Stat. 1376, 1644 (2010) (the ''Dodd-Frank Act'').

[2] *See* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swaps Regulations, 78 FR 45292, 45297 (Jul. 26, 2013) (the ''Guidance'').

[3] *Id.*

[4] *See* 5 U.S.C. 554.

[5] *See, e.g.,* Proposal at I.B., I.C., II.B, II.C., V, and VII.

[6] *See SIFMA* v. *CFTC,* 67 F.Supp.3d 373, 426–427, 429 (D.D.C. 2014) (finding the CFTC's choice to address extraterritorial application of the Title VII Rules incrementally and through the Guidance reasonable, ''particularly, where, as here, 'the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule' and 'the problem may be so specialized and varying in nature as to be impossible to capture within the boundaries of a general rule.' '' (quoting *SEC* v. *Chenery Corp.,* 332 U.S. 194, 202–203, 67 S.Ct. 1760, 90 L.Ed 1995(1947))).

[7] *See* Guidance, 78 FR at 45293–5; *SIFMA* v. *CFTC,* 67 F.Supp.3d at 387–88 (describing the ''several poster children for the 2008 financial crisis'' that demonstrate the impact that overseas over-the-counter derivatives swaps trading can have on a U.S. parent corporation).

[8] *See* Guidance, 78 FR at 45292.

[9] *SIFMA* v. *CFTC,* 67 F.Supp.3d at 423–25, 427 (finding that Section 2(i) operates independently and provides the CFTC with the authority—without implementing regulations—to enforce the Title VII Rules extraterritorially); *See also, Id. at* 427 (''Although many provisions in the Dodd-Frank Act explicitly require implementing regulations, Section 2(i) does not.'').

''merely reflects the complexity of swaps markets, swaps transactions, and the corporate structures of the market participants that the CFTC regulates.'' [10] It is this type of complexity that supported the Commission's initial determination to issue the Guidance, and to my knowledge, such determination has not hindered the Commission's ability to pursue enforcement actions that apply Title VII extraterritorially [11] or to participate in discourse with and decision-making among our fellow international financial regulators.

CEA Section 2(i) Preservation

As recognized by the D.C. District Court, the Title VII statutory and regulatory requirements apply extraterritorially through the independent operation of CEA section 2(i), which the CFTC is charged with enforcing.[12] Congress did not direct—and has not since directed—the Commission to issue rules or even guidance regarding its intended enforcement policies pursuant to CEA section 2(i). To the extent the CFTC interpreted Section 2(i) in the Guidance, an interpretation carried forward in the Proposal, such interpretation is drawn linguistically from the statute; its interpretation has not substantively changed the regulatory reach.[13] Putting aside the anti-evasion prong in CEA section 2(i)(2), it remains that the Commission construes CEA section 2(i) to apply the swaps provisions of the CEA to activities, viewed in the class or aggregate, outside the United States that, meet either of two jurisdictional nexus: (1) A direct and significant effect on U.S. commerce; or (2) a direct and significant connection with activities in U.S. commerce, and through such connection, present the type of risks to the U.S. financial system and markets that Title VII directed the Commission to address.[14] Accordingly, to any extent the Commission is moving away from guidance towards substantive rulemaking, it must preserve that interpretation.

As I read the Proposal—which purports to reflect the Commission's current views [15]—I cannot help but notice that our ''risk-based approach'' seems to focus on individual entities that present a particular category of significant risk—the giants among global swap market participants— and ignores smaller pockets of risk that, in the aggregate, may ultimately raise systemic risk concerns.[16] What is lacking is any discussion of how our laser focus on individual corporate families and their ability to singularly impact systemic risk to the U.S. financial system adequately ensures that we are not disregarding the potential for similar swap dealing activities of groups of market participants, regardless of individual size, and in the aggregate, present a similar risk profile, or at the least a risk profile worth monitoring. Perhaps more troubling, the Proposal is focused largely on the threshold matter of swap dealer registration requirements. However, as the Commission has acknowledged, ''Neither the statutory definition of 'swap dealer' nor the Commission's further definition of that term turns solely on risk to the U.S. financial system.'' [17] And to that end, ''[T]he Commission does not believe that the location of counterparty credit risk associated with a dealing swap—which . . . is easily and often frequently moved across the globe—should be determinative of whether a person's dealing activity falls within the scope of the Dodd-Frank Act.'' [18]

I also cannot help but notice the Proposal seems to frequently reference ''comity'' without providing supporting rationales for deferring to our fellow domestic regulators and foreign counterparts or for providing per se exemptions. I support working closely with foreign regulators to address potential conflicts with respect to each of our respective regulatory regimes, and I believe that our cross-border approach must absolutely align with principles of international comity. But, I do not understand how we can reach regulatory absolutes and conclusions based on comity, absent a finding that the exercise of our authority under CEA section 2(i) would be patently unreasonable under international principles. I believe that substituted compliance is generally the most workable and respectful solution, and I believe we must engage with our fellow global regulators to address matters of risk that may impact each of our jurisdictions regardless of size and nature.

Contraction Justifies Inaction—''U.S. Persons'' and ''Guarantees''

The bulk of the Proposal is dedicated to codifying 23 definitions ''key'' to determining whether certain swaps or swap positions would need to be counted towards a person's SD or MSP threshold and in addressing the cross-border application of the Title VII requirements. While most of the defined terms are familiar from the Guidance, there are some differences that stand out as more than a simple exercise in conformity. For example, the preamble of the Proposal describes the proposed definition of ''U.S. person'' as ''largely consistent with'' and the definition of ''guarantee'' as ''consistent with'' the Commission's Cross-Border Margin Rule.[19] However, both represent a narrowing in scope from the current Guidance, and in turn, may potentially retract our authority under CEA Section 2(i) with respect to swap dealing activities relevant to swap dealer registration and oversight.

With regard to ''U.S. persons,'' the definition harmonizes with the definition adopted by the Securities and Exchange Commission (''SEC'') in the context of its regulations regarding cross-border security-based swap activities, which largely encompasses the same universe of persons as the Commission's Cross-Border Margin Rule. However, among other things, the proposed ''U.S. person'' definition, unlike the Cross Border Margin Rule, would not include certain legal entities that are owned by one or more U.S. person(s) and for which such person(s) bear unlimited responsibility for the obligations and liabilities of the legal entity (''unlimited U.S. responsibility prong'').[20] In support of its decision, the Commission puts forth what almost reads as an incomplete syllogism that fatally fails to address how such relationships may satisfy the jurisdictional nexus laid out in CEA section 2(i). After noting (1) that the SEC does not include an unlimited U.S. responsibility prong because it considers this type of arrangement as a guarantee, and (2) that when considering the issue in the context of the Cross-Border Margin rule, the Commission does not view the unlimited U.S. responsibility prong as equivalent to a U.S. guarantee, the Proposal states that (3) the Commission is not revisiting its interpretation of ''guarantee'' and is not including an unlimited U.S. responsibility prong in the ''U.S. person'' definition because it ''is of the view that the corporate structure that this prong is designed to capture is not one that is commonly used in the marketplace.'' [21]

To be clear, the Guidance includes an unlimited U.S. responsibility prong in its interpretation of ''U.S. persons'' for purposes of applying CEA section 2(i) that is intended to cover entities that are directly or indirectly owned by U.S. person(s) such that the U.S. owner(s) are ultimately liable for the entity's obligations and liabilities.[22] Among other things, where this relationship exists, the Commission's stated view is that, ''[W]here the structure of an entity is such that the U.S. owners are ultimately liable for the entity's obligations and liabilities, the connection to activities in, or effect on, U.S. Commerce would generally satisfy section 2(i) . . . '' [23]

While I am not arguing that the Commission cannot change its views regarding the necessity for including a U.S. responsibility prong in a proposed ''U.S. person'' definition, I do believe that if we do

[10] *Id.* at 419–20 (''Indeed, the complexity of a regulatory issue is one reason an agency might choose to issue a non-binding policy statement rather than a rigid 'hard and fast rule.' '' (citing *SEC* v. *Chenery Corp.,* 332 U.S. 194, 202–203, 67 S.Ct. 1760, 90 L.Ed 1995(1947))).

[11] *See, e.g., SIFMA* v. *CFTC,* 67 F.Supp.3d at 421, (''Indeed, even after promulgating the Cross-Border Action, the CFTC has relied *solely* on its statutory authority in Section 2(i) when bringing enforcement actions that apply to Title VII Rules extraterritorially.'').

[12] *SIFMA* v. *CFTC, supra* note 9.

[13] *SIFMA* v. *CFTC,* 67 F.Supp.3d at 424.

[14] *See* Proposal at C.1.; Guidance, 78 FR at 45292, 45300; see also *SIFMA* v. *CFTC,* 67 F.Supp.3d at 424–5.

[15] Proposal at I.A.

[16] The Commission proposes to limit its supervisory oversight outside the United States, ''*only* as necessary to address risk to the resiliency and integrity of the U.S. financial system.'' Proposal at I.D. (emphasis supplied).

[17] Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 FR 71946, 71952 (Oct. 18, 2016) (''2016 Proposal'').

[18] *Id.*

[19] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[20] Proposal at II.A.

[21] Proposal at II.A.

[22] See Proposal at II.A.; Guidance, 78 FR at 45312–13.

[23] Guidance, 78 FR at 45312.

so, we must articulate a rationale relevant to the particular context at issue and explain why our past reasoning with regard to the jurisdictional nexus is no longer valid.

More concerning, the proposed ''guarantee'' definition is narrower in scope than the one used in the Guidance in that it would not include several different financial arrangements and structures that transfer risk directly back to the United States such as keepwells and liquidity puts, certain types of indemnity agreements, master trust agreements, liability or loss transfer or sharing agreements, etc.[24] While in this instance, the Proposal explains the Commission's rationale for the broader interpretation of ''guarantee'' for purposes of CEA section 2(i) in the Guidance, and admits that the rationale is still valid, it nevertheless chooses to ignore the truth of the matter and focus on what is more ''workable'' for non-U.S. persons.[25] Further concerning, as I will explain shortly, the Proposal puts forth that while the proposed ''guarantee'' definition could lead to entities counting fewer swaps towards their *de minimis* threshold calculation relevant to SD registration as compared to the Guidance, related concerns could be mitigated to the extent such non-U.S. person meets the definition of a ''significant risk subsidiary.'' [26] In this instance, the Commission is simply ignoring its responsibilities under CEA section 2(i) to save non-U.S. persons a little extra work, or as the Proposal might say, ''overly burdensome due diligence.'' [27]

SOS on SRS

The introduction of the ''significant risk subsidiary'' or ''SRS'' is perhaps the most elaborate departure from the Commission's interpretation of CEA section 2(i) and almost seems to be an attempt to ensure that no non-U.S. subsidiary of a U.S. parent entity will ever have to consider its swap dealing activities for purposes of the relevant SD or MSP registration threshold calculations. Save for a single footnote reference to a request for comment and passing references to SRSs likely being classified as conduits in the explanation of Cost-Benefit Considerations, the Proposal does not mention anything regarding the Guidance's concept of a conduit affiliate—despite the fact that the SEC includes the concept of conduit affiliate in its definitions relevant to cross-border security-based swap dealing activity.[28] Rather, instead of elaborating on whether and how the concept of conduit affiliates described in the Guidance failed to achieve its purpose, is no longer relevant, resulted in loss of liquidity, fragmentation, proved unworkable, etc., or should be deleted from all frame of reference in favor of harmonizing with the SEC, the Proposal simply introduces the SRS as a new category of person and walks through an elaborate analysis that really begins where it ends—an exclusion. It is a policy decision of the worst ilk because it masquerades as a solution by diminishing the problem.

SRSs represent a tiny subset of the consolidated non-U.S. subsidiaries of U.S. parent entities that the Commission believes are of supervisory interest in light of their clear potential to permit U.S. persons to accrue risk that, in the aggregate, may have a significant effect on the U.S. financial system or may otherwise be used for evasion.[29] The Proposal's stated rationale for targeting only a subset of non-U.S. subsidiary relationship focuses on comity and the application of a risk-based approach acts like a sieve on CEA section 2(i) such that only the largest entities that themselves as individual entities may pose risk to the financial system. An approach that outright acknowledges the potential for widespread swap activities within the scope of CEA section 2(i), which could ultimately result in significant risk being transferred back to U.S. parent entities, only to be met with a bright line induced shrug by the Commission—is simply untenable.

Rather than rehashing the elements of the SRS definition, I will focus on two aspects that I find most troubling. First is the requirement that the U.S. parent entity meet a $50 billion consolidated asset threshold. This threshold is intended to limit the SRS definition to only those entities whose U.S. parent entity may pose a systemic risk to the U.S. financial system. Foremost, given CEA section 2(i)'s focus on activities in the aggregate, a bright line threshold at the entity level is irrelevant. Not to mention that if Congress had wanted the Commission to focus its cross-border authority on systemically significant entities, it would have used language that was not so embedded in common law [30] or would have articulated that directive clearly in the Dodd-Frank Act.[31]

Second, even if a non-U.S. person met one of three tests for being a significant subsidiary of a U.S. parent with over $50 billion in consolidated assets, it would not be an SRS if it is either subject to prudential regulation as a subsidiary of a U.S. bank holding company or subject to comparable capital and margin standards and oversight by its home country supervisor. While I believe these exclusions are appropriate in the context of the policy the Proposal is putting forward in its vision of the SRS, I am concerned that we are substituting our oversight with that of the Federal Reserve Board, in one instance, on the grounds that being subject to consolidated supervision and regulation by the Federal Reserve Board with respect to capital and risk management requirements provides appropriate regulatory coverage. While I do not disagree with respect to risk management that the Federal Reserve Board provides comparable oversight, finding that comparability satisfies our regulatory oversight concerns in this instance may lead us down a slippery slope in which we find ourselves fighting to maintain our own Congressionally delegated jurisdiction with respect to swaps activities. This fact is only further validated—considering the breadth of the exclusions—by the high likelihood that a non-U.S. subsidiary of a U.S. parent entity with over $50 billion in consolidated assets is a financial entity subject to some form or prudential regulation in its home jurisdiction. Indeed, the Proposal suggests that of the current population of 59 SDs, ''few, if any, would be classified as SRSs.'' [32]

While the concept of an SRS is interesting to me, the Proposal's attempt to draw multiple bright lines in a web of interconnectedness almost ensures that risk will find an alternate route back to the U.S. with potentially disastrous results. Without a better understanding of how the SRS proposal would work in practice and whether it is truly better than the conduit affiliate concept currently outlined in the Guidance and presumably similar to the SEC's own approach, it is difficult to get behind a policy that could most certainly bring risk into the U.S. of the very type CEA Section 2(i) seeks to address.

ANE—Anyone? Anyone?

The issue of how to address the application of certain transaction-level requirements with respect to swap transactions arranged, negotiated, or executed by personnel or agents located in the United States of non-U.S. SDs (whether affiliates or not of a U.S person) with non-U.S. counterparties (''ANE Transactions'') is one aspect of the Commission's cross-border approach that has continually raised concerns and demands greater certainty. First articulated in a 2013 Staff Advisory,[33] the issue boils down to whether transactional requirements apply to ANE swaps, and if so, whether substituted compliance may be available. A 2014 Commission Request for Comment [34] sought to address the complex legal and policy issues raised by the 2013 Staff Advisory. It was followed by the Commission's 2016 Proposal, which among other things, addressed ANE transactions, including the types of activities that would constitute arranging, negotiating, and executing within the context of the 2016 Proposal, and the

[24] Proposal at II.B; *See* Guidance 78 FR at 45320, n. 267.

[25] *Id.*

[26] *Id.*

[27] Proposal at II.

[28] *See* 17 CFR 240.3a71–3(a)(1).

[29] Proposal at II.C.1.

[30] *See, e.g.* Proposal at I.C.1.; Guidance 81 FR at 45298–300; *See SIFMA* v. *CFTC,* 67 F.Supp.3d at 427 (''Congress modeled Section 2(i) on other statutes with extraterritorial reach that operate without implementing regulations.'' (citations omitted); *See* Larry M. Eig, Cong. Research Serv., 97–589, Statutory Interpretation: General Principles and Recent Trends 20 (2014) (Congress is presumed to legislate with knowledge of existing common law.'').

[31] *Id.* at 16–17 (''where Congress includes particular language in one section of a statute but omits it in another . . ., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' (quoting *Atlantic Cleaners & Dyers, Inc.* v. *United States,* 286 U.S. 427, 433 (1933))).

[32] Proposal at VII.C.2.i.

[33] *See* CFTC Staff Advisory No. 13–69, Applicability of Transaction-Level Requirements to Activity in the United States (Nov. 14, 2013), *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-69.pdf.*

[34] *See* Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers located in the United States, 79 FR 1347 (Jan. 8, 2014) (''2014 Request for Comment'').

extent to which the SD registration threshold and external business conduct standards apply with respect to ANE Transactions.[35] Today's Proposal withdraws the 2016 Proposal on grounds that the Commission's views have changed and evolved as a result of market and regulatory developments and ''in the interest of international comity.'' [36]

The proposal sets forth an approach largely based on comments to the 2014 Request for Comment [37] and seemingly in response to a recommendation made in an October 2017 report of the U.S. Treasury Department that both the CFTC and SEC ''reconsider the implications of applying their Title VII rules to transactions between non-U.S. firms or between a non-U.S. firm and a foreign branch or affiliate of a U.S. firm merely on the basis that U.S. located personnel arrange, negotiate, or execute the swap, especially for entities in comparably regulated jurisdictions.'' [38] The proposed approach is simply to ignore ANE Transactions within the scope of the Proposal as irrelevant ''because the transactions involve two non-U.S. counterparties, and the financial risk of the transactions lies outside the United States . . .'' [39] That may be the case in some circumstances; however, casting an overly broad net on a category of activities may run the risk of slippage, and I am concerned we have not given this important element of our cross-border jurisdiction enough thought to warrant such an expeditious solution.

Conclusion

Despite my concerns regarding this Proposal, I look forward to hearing constructive input from market participants and the public. I am encouraged by the balanced nature of the requests for comment, and would like to modestly request that in responding to the Proposal, commenters indicate whether they believe it is appropriate and prudent for the Commission to proceed with a rulemaking at this time, or whether the preference is to adhere to the current Guidance, or some hybrid of the two.

As with all rulemakings, input the Commission receives through public comment drives the conversation, and sets us on a course that balances diverse interests; seeks transparency, resiliency, and efficiency; and above all else, focuses on protecting U.S. markets, its participants and most importantly the customers that rely on this truly global marketplace. One might assume that making targeted, surgical changes to an existing regulatory framework is easier than creating a framework. But, in some circumstances, it is exactly the opposite. Global swaps markets have grown and evolved around rule sets that were completed and implemented in the very recent past. As regulators I believe we should caution against any wholesale rewrite when we find well regulated, transparent, and generally well running financial markets. But, if we do find vulnerabilities or inefficiencies in our rules (certainly both old and new), the process to reconsider should be deliberate, balanced, and inclusive to ensure the Commission, as a collective body, understands the gravity of its decisions.

Appendix 5—Dissenting Statement of Commissioner Dan M. Berkovitz

I dissent from today's cross-border swap regulation proposal (the ''Proposal'') because it would significantly weaken the Commission's existing regulatory framework that protects the United States from risky overseas swaps activity. The existing cross-border framework has worked well over the past six years to protect the U.S. financial system from risks from cross-border swaps activity, while simultaneously enabling U.S. banks to compete successfully in overseas markets.[1] The Proposal would create multiple loopholes for U.S. banks to evade the Commission's oversight of their cross-border activity and pose risks to the U.S. financial system. With a wink and a nod, U.S. banks could effectively guarantee their overseas swap dealing affiliates from losses while also enabling those affiliates to escape regulation as swap dealers. The Proposal would enable U.S. banks to book their swap trades in unregistered foreign affiliates that would not be required to report their swaps in the United States, and would not be subject to our capital, margin, and risk management requirements.

The Proposal also sends us down a rabbit hole with a complex new entity designation, ''Significant Risk Subsidiary'' (''SRS''). An SRS would be a type of overseas swap dealing affiliate that in theory is subject to greater Commission oversight. The Proposal admits, however, that there would be ''few, if any,'' entities in this elusive category.[2] What is the purpose of creating a complicated category that does not include a single entity? This is a Seinfeldian regulation—a regulation about nothing.[3]

The Proposal would transform the Commission from a watchdog guarding U.S. shores into a timid turtle, reluctant to poke its head out of its domestic shell. When the next financial crisis arrives, will foreign governments bail out affiliates of U.S. persons located in their jurisdictions? Experience has taught us that while finance may be global, global financial rescues are American. With today's Proposal, I fear that the U.S. tax payer will once again be called on to bear the costs. We've been down this de-regulatory road before, and it ended in disaster for the United States and the global financial system. Congress enacted the Dodd-Frank Act to avoid these same mistakes, yet today the Commission is voting out a proposal that ignores both those lessons and the law.

Why Cross-Border Swaps Must Be Regulated by the CFTC

It seems that every few years, we must remind ourselves of why regulating cross-border financial transactions, and swaps in particular, is important to managing systemic risk. If we forget, the financial system delivers its own destructive reminders. Examples from recent history prove that foreign financial activity, usually involving swaps, can lead to massive losses triggering the need for emergency action by the Department of the Treasury and/or the Federal Reserve System—sometimes at the expense of the U.S. taxpayer. As described later in my statement, the Proposal would undermine the direction in CEA section 2(i) to regulate cross-border swap activity, and again allow such activity by U.S. financial institutions to go unobserved and unsupervised.

In 1998, the U.S. hedge fund Long-Term Capital Management L.P. (''LTCM'') was saved from failure through an extraordinary bailout by 15 banks. The bailout was brokered by the Federal Reserve Bank of New York. The near failure of LTCM roiled financial markets. The financial system could have seized up if LTCM had failed because of the large and opaque derivatives exposures that many U.S. banks had with LTCM.[4] Although LTCM was mostly managed from Connecticut, it was a Cayman Islands entity with over a dozen affiliates, only $4 billion in capital, and a complex derivatives book with a notional amount in excess of $1 trillion.[5]

In 2007, U.S.-based Bear Stearns provided loans intended to shore up two Cayman Islands hedge funds sponsored by Bear

[35] *See* Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 FR 71946 (Oct. 18, 2016).

[36] Proposal at I.A.

[37] Indeed, the discussion of the seventeen comments to the 2014 Request for Comment in the 2016 Proposal is nearly identical to that of the Proposal. *See,* 2016 Proposal, 81 FR at 71946, 71952–3; Proposal at V.

[38] *See* U.S. Dep't of the Treasury, A Financial System that Creates Economic Opportunities: Capital Markets 135–136 (Oct. 2017), *https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.*

[39] Proposal at V.

[1] U.S. banks are the strongest in the world. The Global League Tables ranking global banks by amount of banking business activity shows that three or four U.S. banks are in the top five banks in almost every category, including for banking business in foreign markets. *See* GlobalCapital.com, Global League Tables, available at *https://www.globalcapital.com/data/all-league-tables.* While we could not locate a global ranking of banks by swap business, GlobalCapital.com selected Bank of America Merrill Lynch as ''derivatives house of the year'' and four of the seven other banks shortlisted for the award were U.S. banks. *See* Ross Lancaster, *Global Derivatives Awards 2019: the winners,* GlobalCapital.com (Sept. 26, 2019), available at *https://www.globalcapital.com/article/b1h9txdc91yw4k/globalcapital-global-derivatives-awards-2019-the-winners.* By comparison, in 2006, ''Deutsche Bank dominate[d] in every region'' in the competition for derivatives house of the year. *See* Yassine Bouhara, *Global Derivatives House of the Year,* GlobalCapital.com, (Nov. 9, 2006), available at *https://www.globalcapital.com/article/k64qjpc6mxwc/global-derivatives-house-of-the-year.*

[2] *See* Proposal, section VII.C.2(i).

[3] *See* Wikipedia.org, *Seinfeld,* available at *https://en.wikipedia.org/wiki/Seinfeld.*

[4] *See* The President's Working Group on Financial Markets, Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management (Apr. 1999) available at *http://www.treasury.gov/resource-center/fin-mkts/Documents/hedgfund.pdf; see also* International Monetary Fund, *World Economic Outlook and International Capital Markets* (Dec. 1998), available at *https://www.imf.org/external/pubs/ft/weo/weo1298/pdf/file3.pdf.*

[5] *Id.*

Stearns. Bear Stearns was not legally obligated to back the funds financially. Those actions were the beginning of a chain of events that eventually led to the fire sale of Bear Stearns to J.P. Morgan in March 2008. To entice J.P. Morgan to buy a distressed Bear Stearns, the Federal Reserve System provided financial support for the purchase.[6] This is not to suggest that Bear Stearns failed solely because of swap activity, but to illustrate how financial institutions are essentially obligated to support foreign affiliated entities even when they do not guarantee performance, and how such support can have serious consequences to the U.S. financial system.

Walter Wriston, former chairman and CEO of Citicorp, testified to Congress regarding the obligation of a parent bank to bail out a subsidiary, no matter the degree of legal separation: ''It is inconceivable that any major bank would walk away from any subsidiary of its holding company. If your name is on the door, all of your capital funds are going to be behind it in the real world. *Lawyers can say you have separation, but the marketplace is persuasive, and it would not see it that way.*'' [7]

When Lehman Brothers went bankrupt and triggered the 2008 financial crisis, its London affiliate, Lehman Brothers International Europe, had a book of nearly 130,000 swaps that took many years to resolve in bankruptcy.[8] Soon thereafter, American International Group would have failed as a result of swaps trading by the London operations of a subsidiary, AIG Financial Products, if not for over $180 billion of support from the Federal Reserve System and the U.S. Department of Treasury. [9]

In 2012, on the eve of the swap dealer regulations going into effect, J.P. Morgan Chase & Co. disclosed multi-billion dollar losses from credit-related swaps managed through its London chief investment office. While this loss did not require the Treasury or the Federal Reserve System to act, it did result in an enforcement action by the CFTC. The enforcement order detailed how the trading activity that caused the loss would have been subject to tighter controls and oversight—and likely would not have happened—if the activity had been subject to swap dealer regulation by the CFTC.[10]

Each of these very substantial financial failures occurred at least in part because of overseas activity by U.S. financial institutions. Although the activity occurred away from the United States, and was not subject to direct U.S. regulatory oversight, the risks and the costs both came back to the United States.

Foreign derivatives activity is of particular concern because derivatives are, by their very nature, contracts that can transfer large amounts of risk between entities and across borders. Congress recognized this concern when it adopted CEA section 2(i) applying the swaps provisions of the Dodd-Frank Act to regulate cross-border swaps activity that has a ''direct and significant connection with activities in, or effect on, commerce of the United States.'' Notably, this cross-border jurisdiction is both activity-based as well as effects-based. It is the nature of the activity and its connection to commerce in the United States—not simply the level of risk presented—that is the basis for the CFTC's cross-border jurisdiction. Congress recognized that we cannot always foresee the risks presented by swap activities. By supposedly focusing on risk, the Proposal ignores this crucial insight and critical component of the Commission's cross-border jurisdiction.

But even with respect to activities presenting serious risks to the United States, the Proposal gets it wrong. The risks incurred by foreign affiliates are transferred, or otherwise inure, to the U.S. parent firms in several ways. The traditional method was for the U.S. parent to guarantee the swap payment obligations of its foreign affiliates. Swap dealers removed many of those formal, written guarantees that were executed prior to the financial crisis in 2014 after the 2013 Guidance was issued (more on that later). Alternatively, using inter-affiliate swaps, a foreign affiliate typically transfers to its U.S. parent all of the risk it incurs in a swaps portfolio. While the U.S. parent may not be directly liable to the counterparties of its foreign affiliate, any losses of the affiliate are equivalent to losses the parent incurs on its swap with the affiliate. If the affiliate makes bad bets, the parent pays for them. Finally, a U.S. parent can be less directly responsible for its foreign affiliate's swap obligations through capital contribution arrangements (*e.g.,* keepwell agreements or deed-poll arrangements), or simply because letting an affiliate fail and default to numerous foreign entities is untenable as a business matter. As Walter Wriston noted, as a matter of market survival a U.S. bank would not allow a wholly-owned affiliate to fail and default on its swap obligations.

The Commission's regulation of cross-border swap activity should address all of these risk transfer conduits. At the same time, it should be flexible enough to allow U.S. banks to compete in global markets. In my view, the 2013 Guidance and the attendant no action relief achieved the right balance and is working well. As noted above, U.S. banks are competing throughout the world. In fact, they are out-competing their non-U.S. competitors. There is no persuasive reason to weaken a regulatory standard that is consistent with our law and that has successfully protected the American people for the last six years—*while simultaneously witnessing the global preeminence of American banks.* The Proposal snatches defeat from the jaws of victory.

The Proposal would greatly weaken the Commission's ability to monitor and regulate foreign swap activity by U.S. financial institutions, putting our financial system at risk once again. Only ten years after the financial crisis, the Proposal tosses aside hard lessons learned at the expense of 10% unemployment, millions of foreclosures, massive bailouts, and lasting damage to the economic fortunes of tens of millions of our fellow citizens. It does this in the interest of secondary considerations—harmonization, a ''workable framework'' for regulations, and reducing costs. Whereas ''legal certainty'' was the buzzword to limit the CFTC's jurisdiction over the swaps market in the 1990s and 2000s, today's de-regulatory mantra includes ''harmonization,'' ''reducing fragmentation,'' and ''deference.'' Call it what you like, but the results are intended to be the same: Preventing the CFTC from overseeing the swaps activity of major U.S. banks. Creating the possibility for another taxpayer-funded bailout for overseas swap activity cannot possibly be the right outcome for the American people.

What Is Wrong With the Proposal

The Proposal starts on a good note by essentially adopting the interpretation of CEA section 2(i) contained in the 2013 Guidance. The Proposal also acknowledges that ''a global financial enterprise effectively operates as a single business, with a highly integrated network of business lines and services conducted through various branches or affiliated legal entities that are under the control of the parent entity.'' [11] It then explains that the entities in a global financial enterprise provide ''financial or credit support to each other, such as in the form of a guarantee or the ability to transfer risk through inter-affiliate trades or other offsetting transactions.'' [12] The Proposal then uses the basic framework of the 2013 Guidance and adopts some of its substantive provisions.

But the Proposal makes a number of changes to key provisions, all geared toward limiting the application of our regulations. Most concerning are the narrowing of the definition of ''guarantee'' and ''U.S. persons,'' and codifying full relief for arranging, negotiating, or executing (''ANE'') swaps in the United States that are then booked in non-U.S. legal entities. Together, these provisions in the Proposal create a loophole through which U.S. financial institutions can undertake substantial swap dealing activity outside the U.S. swap regulatory regime through unregistered foreign affiliates and bring the risks they incur back to the United

[6] *See* Reuters, *Timeline: A dozen key dates in the demise of Bear Stearns* (Mar. 17, 2008), available at *https://www.reuters.com/article/us-bearstearns-chronology/timeline-a-dozen-key-dates-in-the-demise-of-bear-stearns-idUSN1724031920080317.*

[7] *See https://en.wikipedia.org/wiki/Walter_Wriston* (citing Financial Institutions Restructuring and Services Act of 1981, Hearings on S. 1686, S. 1703, S. 1720 and S. 1721, before the Senate Committee on Banking, Housing, and Urban Affairs, 97th Congress, 1st Session, Part 11, 589–590) (italics added).

[8] *See* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292, 45294 (July 26, 2013) (''2013 Guidance'').

[9] *Id.* at 45293–94.

[10] *See In re JPMorgan Chase Bank, N.A.,* CFTC No. 14–01, 2013 WL 6057042, at *6–8 (Oct. 16, 2013), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfjpmorganorder101613.pdf.*

[11] Proposal, section I.B. (noting that large U.S. banks have thousands of affiliated entities around the world.)

[12] *Id.* The Proposal notes that ''even in the absence of an explicit arrangement or guarantee, the parent entity may, for reputational or other reasons, choose or be compelled to assume the risk incurred by its affiliates, branches, or offices located overseas.''

States. In addition, these key provisions allow U.S. persons to undertake substantial dealing activity *inside* the United States and then evade regulation by booking the trades in foreign entities. Together, these provisions will codify a framework for circumventing our swap regulations greatly undermining CEA section 2(i) and Title VII of the Dodd-Frank Act.

I am concerned that codifying this result will encourage U.S. banks to book much of their swap dealing activity in foreign affiliates that limit their swap dealing with U.S. persons and therefore will not have to register as swap dealers. Under the narrowed definition of ''guarantee'' in the Proposal, the U.S. parents would be able to provide full financial support to these unregistered foreign affiliates, just not in the form of an explicit, direct swap payment guarantee. Furthermore, these changes will allow two U.S. entities, whether they are, for example, two global banks or a global bank and a large U.S. corporation, insurance company or hedge fund, to trade with each other without subjecting that trade to U.S. oversight so long as the trade is booked in foreign affiliates. Finally, by largely eliminating the ANE requirement,[13] those U.S. firms can use their employees in the United States for that trading activity and still evade U.S. regulation if the swaps are booked in foreign affiliates. As discussed above and acknowledged in the Proposal, the U.S. parents will still be on the hook because the risks incurred by the foreign affiliates is transferred back to the U.S. parent through swaps with the affiliate and/or through other capital support mechanisms.

This outcome is not merely an issue of whether the foreign affiliates of U.S. persons need to register as swap dealers. By not registering, these foreign affiliates will not need to report their swap activity to CFTC registered swap data repositories. They will not be subject to our margin, capital, and risk management requirements. These firms will not be subject to the swap dealing best practices that our regulations require. CEA section 2(i) will be undermined.

The three changes in the Proposal are intended to address unintended effects on previously standard business practices that helped U.S. banks compete in global markets. A foreign counterparty that is not headquartered in the United States (a ''true non-U.S. entity'') may not want to trade with affiliates of U.S. banks, or with bank employees in the United States, if doing so means the true non-U.S. entity would need to count those swaps toward its CFTC swap dealer registration threshold.

Under the 2013 Guidance, guaranteed foreign affiliates of U.S. banks are deemed U.S. persons for purposes of counting dealing swaps with U.S. persons. The term ''guarantee'' was defined broadly. Once it became apparent that true non-U.S. entities did not want to count those swaps, U.S. banks de-guaranteed their foreign affiliate swap dealers. The 2016 cross border proposal[14] tried to adjust the guidance framework by adding back into the U.S. person definition foreign consolidated subsidiaries (''FCS'') that are consolidated on the books of a U.S. parent. However, that would have the effect of exacerbating the problem for U.S. banks competing for swap business with true non-U.S. entities. The Proposal discards the FCS concept and narrows the definition of a ''guarantee'' to solely an explicit recourse of the counterparty to the U.S. parent for payment on the swap. The Proposal further narrows the U.S. person definition to delete full recourse subsidiaries and eliminate conduit affiliates treatment for the same reasons.

I am highly skeptical that the status quo will be maintained if the ANE no action relief and de-guaranteeing framework are codified. Large U.S. banks would have incentives to de-register some of their foreign affiliate swap dealers. They are likely to maintain only one or two foreign entities that are registered to handle business with U.S. persons operating in foreign jurisdictions who want to trade with registered swap dealers. Even if they do not de-register those swap dealers, swap activity can easily be moved to other unregistered foreign affiliates that are supported by their U.S. parents in ways other than an explicit swap payment obligation guarantee.

There is a potential alternative for addressing the concerns of true non-U.S. entities without also excluding from oversight all activity of foreign affiliates of U.S. financial institutions. The regulations potentially could provide that, with substituted compliance determinations in place for key swap regulations (*e.g.* margin and risk management), true non-U.S. entities can trade with foreign affiliates of U.S. entities without counting those swaps toward U.S. swap dealer registration. This could be a reasonable balance of systemic safety and competitiveness.

At the same time, foreign entities that are wholly owned by U.S. parents would still be required to count swaps with other wholly-owned foreign affiliates of other U.S. parents. In this way, U.S. financial institutions can compete for foreign swap business while preventing U.S. firms from evading swap regulation by booking swaps with each other in foreign affiliates.

I invite commenters to address this potential solution.

Seinfeldian Regulation: Significant Risk Subsidiary

The Proposal contains a new regulatory construct called the ''Significant Risk Subsidiary'' (''SRS''). It is a putative replacement for a broader definition of guarantee and the FCS alternative. But it appears to be an empty set. The Cost-Benefit Considerations project that ''few, if any'' entities would fall within its ambit. It would not accomplish anything.

The SRS is a very complicated construct, with no less than six tests for determining whether a firm would qualify for regulation as an SRS. Bizarrely, none of these tests have anything to do with the amount of the entity's swap activity. The basic threshold is that the entity be affiliated with a commercial enterprise with at least $50 billion in capital. Consider this: LTCM had $4 billion in capital and a derivatives book with a notional amount of about $1 trillion at the time it was bailed out.

Another hurdle excludes any entity regulated by U.S. or foreign banking regulators. In effect, the entities that do the vast majority of swap dealing in the world are excluded from the SRS definition. With so many hurdles for the SRS determination, it appears that the Proposal has little interest in actually contributing to the control of systemic risk exposure in the U.S. financial system. The reasoning goes, if the entity is regulated by a banking regulator that follows basic Basel capital and supervision standards, then CFTC regulation is unnecessary.[15] But Congress decided in 2010 when it adopted the Dodd-Frank Act that swap dealing needed to be separately regulated from prudential bank regulation. The catastrophic cross border financial failures discussed previously in this statement demonstrate why these additional protections are necessary. Prudential regulation alone was insufficient to prevent those failures and risks to the financial system. Those failures eventually required emergency action by the Federal Reserve System and/or the Department of the Treasury.

Substituted Compliance Shortcomings

I support the principle of international comity. The CFTC should continue to recognize the interests of other countries in regulating swap activity occurring within their borders. The 2013 Guidance has a flexible, outcomes based substituted compliance review process based on a finding that the foreign regulated entities are subject to comparable, comprehensive supervision and regulation.[16] The standard of review is effectively the same as the standard established by Congress in CEA sections 4(b)(1)(A), 5b(h), and 5h(g) for finding, respectively, foreign boards of trade, swap

[13] At my request, the preamble to the Proposal was modified to clarify that our anti-fraud and anti-manipulation regulations never the less apply to the conduct occurring in the United States.

[14] Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 FR 71946 (Oct. 18, 2016).

[15] ''An entity that meets either of these two exceptions, in the Commission's preliminary view, would be subject to a level of regulatory oversight that is sufficiently comparable to the Dodd-Frank Act swap regime with respect to prudential oversight. . . . In such cases where entities are subject to capital standards and oversight by their home country regulators that are consistent with Basel III and subject to a CFTC Margin Determination, the Commission preliminarily believes that the potential risk that the entity might pose to the U.S. financial system would be adequately addressed through these capital and margin requirements.'' Proposal, at II.C.4.

[16] ''[T]he Commission will rely upon an outcomes-based approach to determine whether these requirements achieve the same regulatory objectives of the Dodd-Frank Act. An outcomes-based approach in this context means that the Commission is likely to review the requirements of a foreign jurisdiction for rules that are comparable to and as comprehensive as the requirements of the Dodd-Frank Act, but it will not require that the foreign jurisdiction have identical requirements to those established under the Dodd-Frank Act.'' 2013 Guidance, 78 FR 45292, 45342–3.

execution facilities, and exempt derivatives clearing organizations comparable.

The Proposal would apply a lesser standard. It would permit the Commission to issue a comparability determination if it determines that ''some or all of the relevant foreign jurisdiction's standards are comparable.'' The condition that the regulations be ''comprehensive'' is dropped. Furthermore, unlike the 2013 Guidance and the CEA comparability analysis, which require the Commission to make a comparability determination or finding based on the standard, the Proposal says that the Commission can consider any factors it ''determines are appropriate, which *may* include'' [17] four factors listed. This arbitrary, non-standard ''standard'' creates too much uncertainty and flexibility. The Commission should not defer regulating U.S. bank affiliates to other regulatory jurisdictions operating under a lesser standard than the Commission has previously used in this context or currently uses in other contexts.

Conclusion

The Proposal would allow U.S. banks to evade swap regulation by booking swaps in non-U.S. affiliates. The Proposal would enable U.S. banks to arrange, negotiate, and execute swaps in New York, but avoid swap regulation by booking those swaps in their non-U.S. affiliates. A non-U.S. affiliate of a U.S. bank could enter into trillions of dollars of swaps with non-U.S. affiliates of other U.S. entities without registering with the CFTC as a swap dealer. The U.S. parent bank could provide full financial support for those non-U.S. affiliates so long as the support does not come in the narrow form of an explicit swap payments guarantee.

Ultimately, the risk from all of those swaps will still be borne by the parent bank in the United States. These risks can be very large. The activities of bank affiliates outside the United States have a direct and significant connection with activities in, or effect on, commerce in the United States. In Title VII of the Dodd-Frank Act, the Congress directed the CFTC to apply its swap regulations to these activities. Because the Proposal retreats from these responsibilities, I dissent.

[FR Doc. 2019–28075 Filed 1–7–20; 8:45 am]

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[17] Proposal, rule text section 23.23(g)(4).

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Hermes Copper Butterfly With 4(d) Rule and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2017–0053; 4500030113]

RIN 1018–BC57

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Hermes Copper Butterfly With 4(d) Rule and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Hermes copper butterfly (*Lycaena [Hermelycaena] hermes*), a butterfly species from San Diego County, California, and Baja California, Mexico, as a threatened species and propose to designate critical habitat for the species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species as described in the proposed rule provisions issued under section 4(d) of the Act, and designate approximately 14,249 hectares (35,211 acres) of critical habitat in San Diego County, California. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Hermes copper butterfly.

DATES: We will accept comments received or postmarked on or before March 9, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 24, 2020.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2017–0053, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2017–0053; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments* below for more information).

FOR FURTHER INFORMATION CONTACT: Scott Sobiech, Acting Field Supervisor, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760–431–9440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

Document availability: The draft economic analysis and the Species Status Assessment for the Hermes Copper Butterfly are available at *http://www.fws.gov/carlsbad,* at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053, and at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decisional file and are available at *http://www.fws.gov/carlsbad, http://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053, and at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the U.S. Fish and Wildlife Service website and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register.** When we determine that a species is endangered or threatened, we must designate critical habitat to the maximum extent prudent and determinable. Listing a species as an endangered or threatened species and designations of critical habitat can only be completed by issuing a rule.

What this document does. This rule, if finalized, would add the Hermes copper butterfly *(Lycaena [Hermelycaena] hermes*) to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations as a threatened species (50 CFR 17.11(h)) and extend the Act's protections to this species through specific regulations issued under section 4(d) of the Act (50 CFR 17.47(d)). The Hermes copper butterfly is currently a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal but for which development of a listing regulation had previously been precluded by other higher priority listing activities. This proposed rule reassesses all available information regarding the status of and threats to the Hermes copper butterfly.

This document also includes a proposed rule to designate critical habitat for the Hermes copper butterfly. We have determined that designating critical habitat is both prudent and determinable for the Hermes copper butterfly, and we propose a total of approximately 14,249 ha (35,211 ac) for the species in San Diego County, California.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the Hermes copper butterfly and its habitat are threatened primarily by wildfire and to a lesser extent by habitat fragmentation, isolation, land use change, and climate change and drought, and by those threats acting in concert.

Under the Endangered Species Act, any species that is determined to be a threatened or endangered species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate

such area as critical habitat will result in the extinction of the species.

Economic analysis. In order to consider economic impacts, we prepared an analysis of the economic impacts of the proposed critical habitat designation. We hereby announce the availability of the draft economic analysis and seek public review and comment.

Peer review. We requested comments on the Species Status Assessment for the Hermes Copper Butterfly (*Lycaena [Hermelycaena] hermes*) (SSA) from independent specialists to ensure that we based our designation on scientifically sound data, assumptions, and analyses. Comments from our peer reviewers were incorporated into the SSA and informed this proposed rule. We invite any additional comment from the peer reviewers on the revised SSA during the public comment period.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The Hermes copper butterfly's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Information on activities or areas that might warrant being exempted from the section 9(a)(1) take prohibitions proposed in this rule under section 4(d) of the Act. The Service will evaluate ideas provided by the public in considering the extent of prohibitions that are necessary and advisable to provide for the conservation of the species.

(5) Any additional conservation opportunities, such as mitigation banks, candidate conservation agreements with assurances, or habitat conservation plans that could provide for conservation and regulatory certainty for the development community.

(6) Any additional information on Hermes copper butterfly occurrence locations or threats impacting Hermes copper butterfly habitat in northern Baja California, Mexico, particularly impacts of wildfire or development.

(7) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including information to inform the following factors such that a designation of critical habitat may be determined to be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat.

(8) Specific information on:

(a) The amount and distribution of Hermes copper butterfly habitat;

(b) What areas within the geographical area currently occupied by the species, that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed for the physical or biological features essential to the conservation of the species in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the species; and,

(ii) Specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and, contain at least one physical or biological feature essential to the conservation of the species.

(9) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(10) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(11) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(12) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(13) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(14) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. All comments submitted electronically via *http://www.regulations.gov* will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on

http://www.regulations.gov. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we have sought the expert opinions of appropriate and independent specialists on the SSA report to ensure that our listing and critical habitat proposals are based on scientifically sound data, assumptions, and analyses. We sent the SSA report to eight independent peer reviewers and received six responses. The peer reviewers we selected have expertise in butterfly biology, habitat, genetics, and threats (factors negatively affecting the species), and their comments on the SSA helped inform our proposals. These comments will be available along with other public comments in the docket for this proposed rule.

Previous Federal Actions

The Hermes copper butterfly was included as a Category 2 candidate species in our November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), Candidate Notices of Review (CNOR). Category 2 included taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In the CNOR published on February 28, 1996 (61 FR 7596), the Service announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants. The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of these species and to clarify that the Service no longer regarded these species as candidates for listing. Since the Hermes copper butterfly was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR.

On October 26, 2004, we received a petition dated October 25, 2004, from the Center for Biological Diversity (CBD) and David Hogan requesting that Hermes copper butterfly be listed as endangered under the Act and that critical habitat be designated. On August 8, 2006, we published a 90-day finding for the Hermes copper butterfly in the **Federal Register** (71 FR 44966). The finding concluded that the petition and information in our files did not present substantial scientific or commercial information indicating that listing Hermes copper butterfly may be warranted. For a detailed history of Federal actions involving Hermes copper butterfly prior to 2004, please see the August 8, 2006, **Federal Register** document (71 FR 44966).

On March 17, 2009, CBD and David Hogan filed a complaint for declaratory and injunctive relief challenging the Service's decision not to list Hermes copper butterfly as endangered or threatened under the Act. In a settlement agreement dated October 23, 2009 (Case No. 09–0533 S.D. Cal.), the Service agreed to submit a new 90-day petition finding to the **Federal Register** by May 13, 2010, for Hermes copper butterfly. On May 4, 2010, we published a 90-day finding in the **Federal Register** (75 FR 23654) that found the petition did present substantial scientific or commercial information indicating that listing the Hermes copper butterfly may be warranted.

On April 14, 2011, we published a 12-month finding stating that the Hermes copper butterfly was warranted for listing as threatened or endangered under the Act (76 FR 20918). However, we also found that listing the Hermes copper butterfly was precluded by higher priority listing actions. Based on species-level taxonomic classification and on high-magnitude but non-imminent threats, we assigned the Hermes copper butterfly a listing priority number of 5 and added it to the list of candidate species. Candidate species are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. We reaffirmed the Hermes copper butterfly's candidate status in the annual CNOR in subsequent years (76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015).

In the 2016 CNOR (81 FR 87246, December 2, 2016), we announced that, although listing Hermes copper butterfly continued to be warranted but precluded at the date of publication of the notice, we were working on a thorough review of all available data. This proposed listing rule constitutes completion of our status review for this candidate species.

Background

A thorough review of the taxonomy, life history, and ecology of the Hermes copper butterfly is presented in the Species Status Assessment for the Hermes Copper Butterfly (*Lycaena [Hermelycaena] hermes*) Version 1.1 (Service 2018a), which is available at *https://regulations.gov/* at Docket No. FWS–R8–ES–2017–0053).

The Hermes copper butterfly is a small-sized butterfly historically found in San Diego County, California, and northwestern Baja California, Mexico (Service 2018a, Figure 4). There are 95 known historical or extant Hermes copper butterfly occurrences in the United States and northwestern Baja California, Mexico; 45 are extant or presumed extant (all in the United States), 40 are presumed extirpated, and 10 are permanently extirpated (Table 1).

While most recent scientific studies support recognition of Hermes copper butterfly as belonging to the monotypic

genus *Hermelycaena,* Hermes copper butterfly was recognized as *Lycaena hermes* (subgenus *Hermelycaena*) in the most recent peer-reviewed taxonomic treatment (Pelham 2008, p. 191). Therefore, we recognize Hermes copper butterfly as *Lycaena hermes* throughout the SSA (Service 2018a), this proposed rule, and subsequent documents.

Hermes copper butterfly individuals diapause (undergo a low metabolic rate resting stage) as eggs during the late summer, fall, and winter (Deutschman *et al.* 2010, p. 4). Adults are active May through July, when females deposit single eggs exclusively on *Rhamnus crocea* shrubs (spiny redberry; Thorne 1963, p. 143; Emmel and Emmel 1973, p. 62) in coastal sage scrub and chaparral vegetation. Adult occupancy and feeding are also associated with presence of their primary nectar source, the shrub *Eriogonum fasciculatum* (California buckwheat), although other nectar sources may provide equivalent or supplemental adult nutrition. Hermes copper butterflies are considered poor dispersers, but they appear to have limited directed movement ability and have been recaptured up to 0.7 mi (1.1 km) from the point of release (Marschalek and Klein 2010, pp. 727–728). More information is needed to fully understand movement patterns of Hermes copper butterfly, especially across vegetation types; however, dispersal is likely aided by winds but inhibited by lack of dispersal corridor-connectivity areas in many areas (Deutschman *et al.* 2010, p. 17).

There are two types of ''habitat connectivity'' important to the Hermes copper butterfly. Hermes copper butterflies need within-habitat patch connectivity—an unfragmented habitat patch where reproduction occurs. Habitat patches are a collection of host plants and host plant patches among which adult butterflies readily and randomly move during a flight season (any given butterfly is just as likely to be found anywhere within that area). Butterflies must be free and likely to move among individual host plants and patches of host plants within a habitat patch. They also require dispersal corridor-connectivity areas, which are undeveloped wildlands with suitable vegetation structure between habitat patches close enough that recolonization of a formerly occupied habitat patch is likely. We refer to both types of connectivity in this proposed rule.

TABLE 1—HERMES COPPER BUTTERFLY OCCURRENCES IN THE UNITED STATES AND MEXICO. YEAR IS GIVEN FOR ANY KNOWN MEGAFIRE THAT IMPACTED AN OCCURRENCE. APPROXIMATE PERCENT OF OCCURRENCE AFFECTED BY LAST FIRE IS GIVEN IF OCCURRENCE IS EXTANT OR PRESUMED EXTANT

[See also service 2018a, Figure 12]

Map No.	Occurrence name	EU [1]	Size [2]	Last record	Accuracy [3]	Status [4]	Megafire year (%)	Reason extirpated
1	Bonsall	WGF	NC	1963	3	Presumed Extirpated		Development Isolation.
2	East San Elijo Hills	CH	NC	1979	2	Presumed Extirpated		Development Isolation.
3	San Elijo Hills	CH	NC	1957	3	Extirpated		Development Isolation.
4	Elfin Forest	CH	NC	2011	1	Extant		
5	Carlsbad	CH	NC	Pre-1963	3	Extirpated		Development.
6	Lake Hodges	CH	NC	1982	3	Presumed Extirpated	2007	Development Isolation Fire.
7	Rancho Santa Fe	CH	NC	2004	1	Presumed Extirpated	2007	Development Isolation Fire.
8	Black Mountain	CH	NC	2004	1	Presumed Extant		
9	South Black Mountain	CH	NC	Pre-1963	3	Extirpated		Development.
10	Van Dam Peak	CH	NC	2011	1	Extant		
11	Sabre Springs	CH	NC	2001	1	Presumed Extirpated		Development Isolation.
12	Lopez Canyon	CT	Core	2011	1	Extant		
13	Mira Mesa	CT	NC	Pre-1963	3	Extirpated		Development.
14	West Mira Mesa	CT	NC	Pre-1963	3	Extirpated		Development.
15	Northeast Miramar	CH	Core	2000	1	Presumed Extirpated	2003	Fire.
16	Southeast Miramar	CH	NC	1998	2	Presumed Extirpated	2003	Fire.
17	Miramar	CH	Core	2000	1	Presumed Extirpated	2003	Fire.
18	West Miramar	CT	NC	1998	2	Presumed Extirpated	2003	Fire.
19	Miramar Airfield	CT	NC	Pre-1963	3	Presumed Extirpated	2003	Fire.
20	South Miramar	CH	NC	2000	1	Presumed Extirpated	2003	Fire.
21	Sycamore Canyon	WGF	Core	2003	1	Presumed Extirpated	2003	Fire.
22	South Sycamore Canyon.	WGF	NC	2000	1	Presumed Extirpated	2003	Fire.
23	North Santee	CH	Core	2005	1	Presumed Extant	2003 (60%)	
24	Santee	CH	NC	1967	3	Extirpated		Development.
25	Santee Lakes	CH	NC	2001	1	Presumed Extirpated	2003	Development Fire.
26	Mission Trails	CH	Core	2010	1	Extant	2003 (60%)	Fire (pre-2003, recolonized).
27	North Mission Trails	CH	NC	2003	1	Presumed Extirpated	2003	Fire.
28	Cowles Mountain	CH	NC	1973	2	Presumed Extant		
29	South Mission Trails	CH	NC	1978	3	Presumed Extirpated		Development Isolation.
30	Admiral Baker	CH	NC	2015	1	Extant		
31	Kearny Mesa	CT	NC	1939	3	Extirpated		Development.
32	Mission Valley	CT	NC	Pre-1963	3	Extirpated		Development.
33	West Mission Valley	CT	NC	1908	3	Extirpated		Development.
34	San Diego State University.	CT	NC	Pre-1963	3	Presumed Extirpated		Development.
35	La Mesa	CH	NC	Pre-1963	3	Presumed Extirpated		Development.
36	Mt. Helix	CH	NC	Pre-1963	3	Presumed Extirpated		Development.
37	East El Cajon	CH	NC	Pre-1963	3	Presumed Extirpated		Development.
38	Dictionary Hill	CT	NC	1962	2	Presumed Extant		
39	El Monte	CH	NC	1960	2	Presumed Extirpated	2003	Development Fire.
40	BLM Truck Trail	WGF	Core	2006	1	Presumed extant	2003 (90%)	Fire (recolonized?).
41	North Crestridge	WGF	NC	1981	2	Presumed Extirpated	1970, 2003	Fire.
42	Northeast Crestridge	WGF	NC	1963	2	Presumed Extant	2003 (25%)	
43	East Crestridge	WGF	NC	2003	1	Presumed Extant	1970, 2003 (50%)	

TABLE 1—HERMES COPPER BUTTERFLY OCCURRENCES IN THE UNITED STATES AND MEXICO. YEAR IS GIVEN FOR ANY KNOWN MEGAFIRE THAT IMPACTED AN OCCURRENCE. APPROXIMATE PERCENT OF OCCURRENCE AFFECTED BY LAST FIRE IS GIVEN IF OCCURRENCE IS EXTANT OR PRESUMED EXTANT—Continued

[See also service 2018a, Figure 12]

Map No.	Occurrence name	EU [1]	Size [2]	Last record	Accuracy [3]	Status [4]	Megafire year (%)	Reason extirpated
44	Crestridge	WGF	Core	2014	1	Extant	1970, 2003 (80%)	
45	Boulder Creek Road	PC	Core	2017	1	Extant	2003 (100%)	Fire (recolonized?).
46	North Guatay Mountain	PC	NC	2004	1	Presumed Extant	2003 (10%)	
47	South Guatay Mountain	PC	NC	2010	1	Extant	1970	
48	Pine Valley	PC	NC	Pre-1963	3	Presumed Extant		
49	Descanso	PC	Core	2017	1	Extant	1970, 2003 (50%)	
50	Japutal	WGF	Core	2012	1	Extant	1970	
51	East Japutal	WGF	NC	2010	1	Extant	1970	
52	South Japutal	WGF	Core	2010	1	Extant	1970	
53	Corte Madera	PC	NC	Pre-1963	3	Presumed Extant	1970	
54	Alpine	WGF	Core	2011	1	Extant	1970	
55	East Alpine	WGF	NC	Pre-1963	3	Presumed Extant	1970	
56	Willows (Viejas Grade Road).	WGF	NC	2003	1	Presumed Extirpated	2003	Fire.
57	Dehesa	CH	NC	Pre-1963	3	Presumed Extant	1970	
58	Loveland Reservoir	WGF	Core	2012	1	Extant	1970	
59	East Loveland Reservoir	WGF	NC	2011	1	Extant	1970	
60	West Loveland Reservoir.	CH	NC	2009	1	Extant	1970	
61	Hidden Glen	WGF	NC	2010	1	Extant	1970	
62	McGinty Mountain	CH	Core	2014	1	Extant	1970	
63	East McGinty Mountain	WGF	NC	2001	2	Presumed Extant	1970	
64	North Rancho San Diego.	CH	NC	Pre-1963	3	Extirpated	1970	Development Isolation.
65	Rancho San Diego	CH	Core	2011	1	Extant	1970, 2007 (5%)	
66	South Rancho San Diego.	CH	NC	2007	1	Presumed Extant	1970, 2007 (50%)	
67	San Miguel Mountain	CH	Core	2007	1	Presumed Extirpated	1970, 2007	Fire.
68	South San Miguel Mountain.	CH	NC	2004	1	Presumed Extant	1970, 2007 (50%)	
69	North Jamul	CH	Core	2004	1	Presumed Extant	1970, 2003 (5%)	
70	North Rancho Jamul	CH	NC	2007	1	Presumed Extirpated	2003, 2007	Fire.
71	Rancho Jamul	CH	Core	2003	1	Presumed Extirpated	2003, 2007	Fire.
72	East Rancho Jamul	CH	NC	2007	1	Presumed Extant	1970, 2003, 2007 (5%).	
73	Sycuan Peak	WGF	Core	2016	1	Extant	1970	
74	Skyline Truck Trail	WGF	Core	2017	1	Extant	1970	
75	Lyons Peak	WGF	NC	2003	1	Presumed Extant	1970, 2007 (50%)	
76	Gaskill Peak	WGF	NC	2010	1	Extant	1970	
77	Lawson Valley	WGF	Core	2017	1	Extant	1970, 2007 (40%)	
78	Bratton Valley	WGF	NC	Pre-1963	3	Presumed Extirpated	1970, 2007	Fire.
79	Hollenbeck Canyon	WGF	Core	[5] 2016	1	Presumed Extirpated [5]	1970, 2007	Fire.
80	Southeast Hollenbeck Canyon.	WGF	NC	2007	1	Presumed Extirpated	1970, 2007	Fire.
81	South Hollenbeck Canyon.	CH	NC	Pre-1963	3	Presumed Extirpated	1970, 2003, 2007	Fire.
82	West Hollenbeck Canyon.	CH	NC	2007	1	Presumed Extirpated	1970, 2007	Fire.
83	Otay Mountain	WGF	NC	1979	2	Presumed Extirpated	2003, 2007	Fire.
84	South Otay Mountain	WGF	NC	Pre-1963	3	Presumed Extirpated	2003, 2007	Fire.
85	Dulzura	WGF	NC	2005	1	Presumed Extirpated	2007	Fire.
86	Deerhorn Valley	WGF	NC	1970	3	Presumed Extirpated	2007	Fire.
87	North Hartley Peak	WGF	NC	2010	1	Extant	2007 (100%)	Fire (recolonized?).
88	South Hartley Peak	WGF	NC	2010	1	Extant	2007 (50%)	
89	North Portrero	WGF	Core	2010	1	Extant	2007 (25%)	
90	South Portrero	WGF	Core	2012	1	Extant		
91	Tecate Peak	WGF	NC	1980	3	Presumed Extirpated	2007	Fire.
92	Otay Mesa	CT	NC	Pre-1920	3	Presumed Extirpated		Development Isolation.
	Mexico [6]							
93	Salsipuedes	n/a	NC	1983	3	Presumed Extirpated	2014	Fire.
94	Santo Tomas	n/a	NC	Pre-1920	3	Presumed Extirpated	2003	Fire.
95	North Ensenada	n/a	NC	1936	3	Presumed Extirpated	2005, 2014	Fire.

[1] California Ecological Units: CH = Coastal Hills; CT = Coastal Terraces; WGF = Western Granitic Foothills; PC = Palomar-Cuyamaca Peak.

[2] NC means ''non-core.'' ''Core''/large geographic footprint defined by a total area within ½ km of Hermes copper butterfly records greater than 176 hectares (435 acres).

[3] Geographic accuracy categories: 1 means recorded GPS coordinates or accurate map; 2 means relatively accurate specimen collection site label or map; 3 means site name record or map only accurate enough for determining species' range (not used to determine size, or in mapping if within 1.5 km of a higher accuracy record).

[4] ''Extirpated'' means associated habitat has all been developed. ''Presumed extirpated'' means the record location is developed but there is a significant amount of remaining undeveloped habitat, or all records within a 2003 or later fire footprint and no post-fire butterfly records. ''Presumed extant'' means unburned or post-fire record >10 years old. ''Extant'' means there is a record <10 years old in unburned habitat.

[5] At least one adult observed after 2015 translocation, may not represent breeding.

[6] Although records are low accuracy, extirpation of populations in Mexico is presumed due to numerous large fires in the area between 2003 and 2014 (NASA imagery).

Summary of Analysis

To assess Hermes copper butterfly viability, we used the three conservation biology principles of resiliency, redundancy, and representation (together, the 3Rs) (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental stochasticity (for example, wet or dry, warm or cold years); representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes); and redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, hurricanes). In general, the more redundant, representative, and resilient a species is, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The assessment process used to develop the SSA (Service 2018a) can be categorized into three sequential stages. During the first stage, we used the principles of resiliency, redundancy, and representation to evaluate the Hermes copper butterfly's life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the Hermes copper butterfly arrived at its current condition. The final stage involved making predictions about the species' response to positive and negative environmental and anthropogenic influences. This process used the best scientific and commercial data available to characterize viability as the ability of the Hermes copper butterfly to sustain populations in the wild over time.

In the SSA (Service 2018a), we describe the ecological needs of the Hermes copper butterfly at the hierarchical levels of individual, population, and species. There are also spatial and temporal components to hierarchical resource needs, reflected in the average area occupied by and ''life expectancy'' of each ecological entity. Individual needs are met and resource availability should be assessed at the adult male territory scale on an annual basis, reflecting the life span of an individual (from egg to adult). Population-level resilience needs are met and resource availability should be assessed on the habitat patch or metapopulation (interconnected habitat patches) scale over a period of decades. Populations or subpopulations persist in intact habitat until they are extirpated by stochastic events such as wildfire, to eventually be replaced as habitat is recolonized (18 years is the estimated time it took for the Mission Trails occurrence recolonization). Species-level viability needs are assessed and must be met at a range-wide scale if the species is to avoid extinction. The following list describes the Hermes copper butterfly's ecological needs:

(1) Individual Resource Needs:

(a) Egg: Suitable spiny redberry stems for substrate.

(b) Larvae: Suitable spiny redberry leaf tissue for development.

(c) Pupae: Suitable leaves for pupation.

(d) Adults: Suitable spiny redberry stem tissue for oviposition; nectar sources (primarily California buckwheat); mates.

(2) Population Needs:

(a) Resource needs and/or circumstances: Habitat elements required by populations include spiny redberry bushes (quantity uncertain, but not isolated individuals) and associated stands of California buckwheat or similar nectar sources.

(b) Population-level redundancy: Populations must have enough individuals (population growth) in ''good years'' that after reproduction is limited by poor environmental conditions such as drought in intervening ''bad years,'' individuals can still find mates. Alternatively, there need to be enough diapausing eggs to wait out a bad year and restore the average population size or greater in the subsequent year. That is, populations are always large enough to persist through expected periods of population decline.

(c) Population-level representation: It is unclear how susceptible the Hermes copper butterfly is to inbreeding depression. A mix of open, sunny areas should be present within habitat patches and stands of California buckwheat for nectar in the vicinity of spiny redberry host plants. Additionally, individuals must be distributed over a large enough area (population footprint/distribution) that not all are likely to be killed by stochastic events such as wildfire.

(3) Species Needs:

(a) Resource needs and/or circumstances: Dispersal corridor-connectivity areas among subpopulations to maintain metapopulation dynamics. For Hermes copper butterfly, this means suitable corridor habitat with suitable intervening vegetation structure and topography between habitat patches that are close enough so that recolonization of habitat patches where a subpopulation was extirpated is likely. Apparent impediments to dispersal include forested, riparian, and developed areas.

(b) Species-level redundancy: 95 known historical or extant Hermes copper butterfly occurrences have been documented in southern California, United States, and northwestern Baja California, Mexico: 45 are extant or presumed extant (all in the United States), 40 are presumed extirpated, and 10 are permanently extirpated (Table 1). In order to retain the species-level redundancy required for species viability, populations and temporarily unoccupied habitats must be distributed throughout the species' range in sufficient numbers and in a geographic configuration that supports dispersal corridor-connectivity areas described in (a) above.

(c) Species-level representation: Populations must be distributed in a variety of habitats (including all four California Ecological Units; Service 2018a, p. 58) so that there are always some populations experiencing conditions that support reproductive success. In especially warm, dry years, populations in wetter habitats should experience the highest population growth rates within the species' range, and in colder, wetter years populations in drier habitats should experience the highest growth rates. Populations should be represented across a continuum of elevation levels from the coast to the mountain foothills. There is currently only one known extant occurrence remaining with marine climate influence, four with montane climate influence, and the remainder at intermediate elevations with a more arid climate (Service 2018a, p. 55). Those populations in higher elevation, cooler habitats, and coastal habitats with more marine influence are less susceptible to a warming climate and are, therefore, most important to maintain.

Summary of Factors Affecting the Species

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed a comprehensive assessment of the biological status of the Hermes copper butterfly and prepared a report of the assessment, which provides a thorough account of the species' overall viability. We generally define viability as the ability of the species to sustain

populations in the natural ecosystem for the foreseeable future.

The SSA (Service 2018a) documents the results of our comprehensive biological status review for the Hermes copper butterfly, including an assessment of the potential threats to the species. The SSA does not represent a decision by the Service on whether the Hermes copper butterfly should be proposed for listing as an endangered or threatened species under the Act. The SSA does, however, provide the scientific basis that informs our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and policies. In this section, we summarize the conclusions of the SSA report, which can be accessed at Docket No. FWS–R8–ES–2017–0053 on *http://www.regulations.gov* and at *http://www.fws.gov/carlsbad.*

To evaluate the current and future viability of the Hermes copper butterfly, we assessed a range of conditions to allow us to consider the species' resiliency, redundancy, and representation. We use the terms ''stressor'' and ''threat'' interchangeably as any action or condition that is known to or is reasonably likely to negatively affect individuals of a species. This includes those actions or conditions that have a direct impact on individuals, as well as those that affect individuals through alteration of their habitat or required resources. The mere identification of ''threats'' is not sufficient to compel a finding that listing is warranted. Describing the negative effects of the action or condition (*i.e.,* ''threats'') in light of the exposure, timing, and scale at the individual, population, and species levels provides a clear basis upon which to make our determination. In determining whether a species meets the definition of an ''endangered species'' or a ''threatened species,'' we have considered the factors under section 4(a)(1) and assessed the cumulative effect that the threats identified within the factors—as ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts—will have on the species now and in the foreseeable future.

The following sections include summary evaluations of five threats impacting the Hermes copper butterfly or its habitat, including wildfire (Factor A), land use change (Factor A), habitat fragmentation and isolation (Factor A), climate change (Factor E), and drought (Factor E); as well as evaluating the cumulative effect of these on the species, including synergistic interactions between the threats and the vulnerability of the species resulting from small population size. We also consider the impacts of existing regulatory mechanisms (Factor D) on all existing threats (Service 2018a, pp. 33–54). We also note that potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C) were evaluated but found to have minimal to no impact on the species (Service 2018a, pp. 33–54).

For the purpose of this analysis, we generally define viability as the ability of the species to sustain populations in the natural ecosystem for the foreseeable future—in this case, 30 years. We chose 30 years because it is within the range of the available hydrological and climate change model forecasts, fire hazard period calculations, and the fire-return interval estimates for habitat-vegetation associations that support the Hermes copper butterfly.

Current Condition

Wildfire

Wildfire impacts both Hermes copper butterfly and its habitat. The vegetation types that support Hermes copper butterfly—chaparral and coastal sage scrub—are prone to relatively frequent wildfire ignitions, and many plant species that characterize those habitat types are fire-adapted. The Hermes copper butterfly's host plant, spiny redberry, resprouts after fires and is relatively resilient to frequent burns (Keeley 1998, p. 258). The effect of wildfire on Hermes copper butterfly's primary nectar source California buckwheat is more complicated. California buckwheat is a facultative seeder that has minimal resprouting capability (approximately 10 percent) for young individuals (Keeley 2006, p. 375). Wildfires cause high mortality in California buckwheat, and densities are reduced the following year within burned areas (Zedler *et al.* 1983, p. 814); however, California buckwheat recolonizes relatively quickly (compared to other coastal sage scrub species) if post-fire conditions are suitable.

The historical fire regime in southern California likely was characterized by many small, lightning-ignited fires in the summer and a few infrequent large fires in the fall (Keeley and Fotheringham 2003, pp. 242–243). These infrequent, large, high-intensity wildfires, so-called ''megafires'' (defined in the SSA as those fires greater than 16,187 hectares (ha) (40,000 acres (ac)) in size) (Service 2018a, p. 33), burned the landscape long before Europeans settled the Pacific coast (Keeley and Zedler 2009, p. 90). As such, the current pattern of small, low-intensity fires with large infrequent fires is consistent with that of historical regimes (Keeley and Zedler 2009, p. 69). Therefore, habitat that supports Hermes copper butterfly is naturally adapted to fire and has some natural resilience to impacts from wildfire.

However, in recent decades, wildfire has been increasing in both frequency and magnitude (Safford and Van de Water 2014, pp. i, 31–35). Annual mean area under extreme fire risk has increased steadily in California since 1979, and 2014 ranked highest in the history of the State (Yoon *et al.* 2015, p. S5).

For the historical range of the Hermes copper butterfly, the fire rotation interval decreased from 68 (1910–2000) to 49 years (1925–2015) (Service 2017, entire). In other words, the amount of time it took for all burned areas to add up to the total range decreased when the last 15 years of data were added to the analysis. A change in only 17 percent of the time period analyzed resulted in a 28 percent decrease in fire rotation interval (Service 2017, entire).

Increasing fire frequency and size is of particular concern for the Hermes copper butterfly because of how long it can take for habitat to be recolonized after wildfire. For example, in Mission Trails Park the 2,596-ha (7,303-ac) ''Assist #59'' Fire in 1981 and the smaller 51-ha (126-ac) ''Assist #14'' Fire in 1983 (no significant overlap between acreages burned by the fires), resulted in an approximate 18-year extirpation of the Mission Trails Park Hermes copper butterfly occurrence (Klein and Faulkner 2003, pp. 96, 97).

To assess the impacts of fire on the Hermes copper butterfly, we examined maps of recent high-fire-hazard areas in San Diego County (Service 2018a, Figure 8). Almost all remaining habitat within mapped Hermes copper butterfly occurrences falls within the ''very high'' fire hazard severity zone for San Diego County (Service 2018a, Figure 8). Areas identified in our analysis as most vulnerable to extirpation by wildfire include most occupied and potentially occupied Hermes copper butterfly habitats in San Diego County within the southern portion of the range. Twenty-eight potential source occurrences for recolonization of recently burned habitat fall within a contiguous area that has not recently burned (Service 2018a, Figure 7), and where the fire hazard is considered high (Service 2018a, Figure 8).

Although habitat that supports Hermes copper butterfly is adapted to fire, increased fire frequency can still

have detrimental effects. Frequent fires open up the landscape, making the habitat more vulnerable to invasive, nonnative plants and vegetation type-conversion (Keeley *et al.* 2005, p. 2117). The extent of invasion of nonnative plants and type conversion in areas specifically inhabited by Hermes copper butterfly is unknown. However, wildfire clearly results in at least temporary reductions in suitable habitat for Hermes copper butterfly and may result in lower densities of California buckwheat (Zedler *et al.* 1983, p. 814; Keeley 2006, p. 375; Marschalek and Klein 2010, p. 728). Although Keeley and Fotheringham (2003, p. 244) indicated that continued habitat disturbance, such as fire, will result in conversion of native shrublands to nonnative grasslands, Keeley (2004, p. 7) also noted that invasive, nonnative plants will not typically displace obligate resprouting plant species in mesic shrublands that burn once every 10 years. Therefore, while spiny redberry resprouts, the quantity of California buckwheat as a nectar source necessary to support a Hermes copper butterfly occurrence may be temporarily unavailable due to recent fire impacts, and nonnative grasses commonly compete with native flowering plants that would otherwise provide abundant nectar after fire.

Extensive and intense wildfire events are the primary recent cause of direct mortality and extirpation of Hermes copper butterfly occurrences. The magnitude of this threat appears to have increased due to an increased number of recent megafires created by extreme ''Santa Ana'' driven weather conditions of high temperatures, low humidity, strong erratic winds, and human-caused ignitions (Keeley and Zedler 2009, p. 90; Service 2018a, pp. 33–41). The 2003 Otay and Cedar fires and the 2007 Harris and Witch Creek fires in particular have negatively impacted the species, resulting in or contributing to the extirpation of 33 occurrences (Table 1). Only 3 of the 31 U.S. occurrences thought to have been extirpated in whole or in part by fire since 2003 appear to have been naturally re-established, or were not entirely extirpated (Table 1; Service 2018a, Figure 7; Winter 2017, pers. comm.).

Wildfires that occur in occupied Hermes copper butterfly habitat result in direct mortality of Hermes copper butterflies (Klein and Faulkner 2003, pp. 96–97; Marschalek and Klein 2010, pp. 4–5). Butterfly populations in burned areas rarely survive wildfire because immature life stages of the butterfly inhabit host plant foliage, and spiny redberry typically burns to the ground and resprouts from stumps (Deutschman *et al.* 2010, p. 8; Marschalek and Klein 2010, p. 8). This scenario results in at least the temporal loss of both the habitat (until the spiny redberry and nectar source regrowth occurs) and the presence of butterflies (occupancy) in the area.

Wildfires can also leave patches of unburned occupied habitat that are functionally isolated (further than the typical dispersal distance of the butterfly) from other occupied habitat. Furthermore, large fires can eliminate source populations before previously burned habitat can be recolonized, and can result in long-term or permanent loss of butterfly populations. Historically, Hermes copper butterfly persisted through wildfire by recolonizing extirpated occurrences once the habitat recovered. However, as discussed below, ongoing loss and isolation of habitat has resulted in smaller, more isolated populations than existed historically. This isolation has likely reduced or removed the ability of the species to recolonize occurrences extirpated by wildfire.

Our analysis of current fire danger and fire history illustrates the potential for catastrophic loss of the majority of remaining butterfly occurrences should another large fire occur prior to recolonization of burned habitats. As discussed by Marschalek and Klein (2010, p. 9) and Deutschman *et al.* (2010, p. 42), one or more wildfires could extirpate the majority of extant Hermes copper butterfly occurrences. Furthermore, no practical measures are known that could significantly reduce the impact of megafires on the Hermes copper butterfly and its habitat. In a 2015 effort to mitigate the impact of wildfires on Hermes copper butterfly, Marschalek and Deutschman (2016c) initiated a translocation study, funded by the San Diego Association of Governments (SANDAG), to assist recolonization of habitat formerly occupied by the large Hollenbeck Canyon occurrence. While it is not clear that this attempt was successful, in 2016 there were signs of larval emergence from eggs and at least one adult was observed, indicating some level of success (Marschalek and Deutschman 2016c, p. 10). Regulatory protections, such as ignition-reduction measures, do exist to reduce fire danger; however, large megafires are considered resistant to control (Durland, pers. comm., in Scauzillo 2015).

The current fire regime in Mexico is not as well understood. Some researchers claim chaparral habitat in Mexico within the Hermes copper butterfly's range is not as affected by megafires because there has been less fire suppression activity than in the United States (Minnich and Chou 1997, pp. 244–245; Minnich 2001, pp. 1,549–1,552). In contrast, Keeley and Zedler (2009, p. 86) contend the fire regime in Baja California mirrors that of Southern California, similarly consisting of ''small fires punctuated at periodic intervals by large fire events.'' Local experts agree the lack of fire suppression activities in Mexico has reduced the fuel load on the landscape, subsequently reducing the risk of megafire in Mexico (Oberbauer 2017, pers. comm.; Faulkner 2017, pers. comm.). However, examination of satellite imagery from the 2000s indicates impacts from medium-sized wildfire in Mexico are similar to those in San Diego County, as evidenced by two large fires in 2014 that likely impacted habitats associated with the Hermes copper butterfly records near Ensenada (NASA 2017a; 2017b; Service 2018a p. 37).

Although the level of impact may vary over time, wildfires cause ongoing degradation, destruction, fragmentation, and isolation of Hermes copper butterfly habitat as well as direct losses of Hermes copper butterfly that have contributed to the extirpation of numerous populations. As discussed above, only 3 of the 31 U.S. occurrences thought to have been extirpated in whole or in part by fire since 2003 appear to have been naturally re-established. This threat affects all Hermes copper butterfly populations and habitat across the species' entire range.

Land Use Change

Urban development within San Diego County has resulted in the loss, fragmentation, and isolation of Hermes copper butterfly habitat (CalFlora 2010; Consortium of California Herbaria 2010; San Diego County Plant Atlas 2010) (see the Habitat Isolation section below). Of the 50 known Hermes copper butterfly occurrences confirmed or presumed extirpated, loss, fragmentation, and isolation of habitat as a result of development contributed to 23 of those (46 percent; Table 1). In particular, habitat isolation is occurring between the northern and southern portions of the species' range and in rural areas of the southeastern county; this loss of dispersal corridor-connectivity areas is of greatest concern where it would impact core occurrences in these areas (Service 2018a, p. 41).

To quantify the remaining land at risk of development, we analyzed all existing habitat historically occupied by the Hermes copper butterfly based on specimens and observation records. We

then removed lands that have been developed and examined the ownership of remaining, undeveloped land. Currently, approximately 64 percent of the remaining undeveloped habitat is protected from destruction by development because it is conserved (Service 2018a, p. 41).

The County of San Diego has two ordinances in place that restrict new development or other proposed projects within sensitive habitats. The Biological Mitigation Ordinance of the County of San Diego Subarea Plan and the County of San Diego Resource Protection Ordinance regulate development within coastal sage scrub and mixed chaparral habitats that currently support extant Hermes copper butterfly populations on non-Federal land within the County's jurisdiction (for example, does not apply to lands under the jurisdiction of the City of Santee or the City of San Diego). Additionally, County regulations mandate surveys for Hermes copper butterfly occupancy and habitat, and to the extent it is a significant impact under the California Environmental Quality Act (Cal. Pub. Res. Code 21000 *et seq.*), mitigation may be required. These local resource protection ordinances may provide some regulatory measures of protection for the remaining 36 percent of extant Hermes copper butterfly habitat throughout the species' occupied range, when occurring within the County's jurisdiction. Additionally, presence of Hermes copper butterflies has on occasion been a factor within San Diego County for prioritizing land acquisitions for conservation from Federal, State, and private funding sources due to the focus of a local conservation organization. However, there is no coordinated effort to prioritize Hermes copper butterfly conservation efforts within the species' range. SANDAG has provided funding for Hermes copper butterfly surveys and research since 2010, as well as grants for acquisition of two properties that have been (or are) occupied by Hermes copper butterfly.

There is uncertainty regarding the Hermes copper butterfly's condition within its southernmost known historical range in Mexico; however, one expert estimated that development pressure in known occupied areas near the city of Ensenada was similar to that in the United States (Faulkner 2017, pers. comm.).

We conclude that development is a current, ongoing threat contributing to reduction and especially isolation of remaining Hermes copper butterfly habitat in limited areas on non-Federal lands at this time. However, some regulatory protections are in place, and 64 percent of historically occupied habit is on conserved lands. Therefore, although the rate of habitat loss has been reduced relative to historical conditions, regulations have not served to protect some key populations or dispersal corridor-connectivity areas, and development continues to increase isolation of the northern portion from the southern portion of the species' range (Service 2018a, pp. 40–44).

Habitat Isolation

Habitat isolation directly affects the likelihood of Hermes copper butterfly population persistence in portions of its range, and exacerbates other effects from fire and development. Hermes copper butterfly populations have become isolated both permanently (past and ongoing urban development) and more temporarily (wildfires). Habitat isolation separates extant occurrences and inhibits movement by creating a gap that Hermes copper butterflies are not likely to traverse. Any loss of resources on the ground that does not affect butterfly movement, such as burned vegetation, may degrade but not fragment habitat. Therefore, in order for habitat to be isolated, movement must either be inhibited by a barrier, or the distance between remaining suitable habitat must be greater than adult butterflies will typically move to mate or to deposit eggs. Thus, a small fire that temporarily degrades habitat containing host plants is not likely to support movement between suitable occupied habitat patches and could cause temporary isolation. It is important to note that, although movement may be possible, to ensure successful recolonization, habitat must be suitable at the time Hermes copper butterflies arrive.

Effects from habitat isolation in the northern portion of the species' range have resulted in extirpation of at least four Hermes copper butterfly occurrences (see Table 1 above). A historical Hermes copper butterfly occurrence (Rancho Santa Fe) in the northern portion of the range has been lost since 2004. This area is not expected to be recolonized because it is mostly surrounded by development and the nearest potential ''source'' occurrence is Elfin Forest, 2.7 mi (4.3 km) away, where at least one adult was last detected in 2011 (Marschalek and Deutschman 2016a, p. 8). Farther to the south, Black Mountain, Lopez Canyon, Van Dam Peak, and the complex of occurrences comprising Mission Trails Park, North Santee, and Lakeside Downs are isolated from other occurrences by development. Because a number of populations have been lost, and only a few isolated and mostly fragmented ones remain, the remaining populations in the northern portion of the range are particularly vulnerable to the effects of further habitat isolation. These populations may already lack the dispersal corridor-connectivity areas needed to recolonize should individual occurrences be extirpated. Reintroduction or augmentation may be required to sustain the northern portion of the species' range. No information is available on the potential impacts of habitat isolation in the species' range in Mexico.

Overall, habitat isolation is a current, ongoing threat that continues to degrade and isolate Hermes copper butterfly habitat across the species' range.

Climate Change and Drought

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has increased since the 1950s. Global climate projections are informative, and, in some cases, the only or the best scientific information available. However, projected changes in climate and related impacts can vary across and within different regions of the world (IPCC 2013, pp. 15–16). To evaluate climate change for the region occupied by the Hermes copper butterfly, we used climate projections ''downscaled'' from global projection models, as these provided higher resolution information that is more relevant to spatial scales used for analyses of a given species (Glick *et al.* 2011, pp. 58–61).

Southern California has a typical Mediterranean climate. Summers are typically dry and hot while winters are cool, with minimal rainfall averaging about 25 centimeters (10 inches) per year. The interaction of the maritime influence of the Pacific Ocean combined with inland mountain ranges creates an inversion layer typical of Mediterranean-like climates. These conditions also create microclimates, where the weather can be highly variable within small geographic areas at the same time.

We evaluated the available historical weather data and the species' biology to determine the likelihood of effects assuming the climate has been and will continue to change. The typical effect of a warmer climate, as observed with Hermes copper butterfly in lower, warmer elevation habitats compared to higher, cooler elevations, is an earlier flight season by several days (Thorne 1963, p. 146; Marschalek and Deutschman 2008, p. 98). Marschalek and Klein (2010, p. 2) noted that past records suggest a slightly earlier flight

season in recent years compared to the 1960s. The historical temperature trend in Hermes copper butterfly habitats for the month of April (when larvae are typically developing and pupating) from 1951 to 2006 can be calculated with relatively high confidence (*p* values from 0.001 to 0.05). The mean temperature change in occupied areas ranged from 0.07 to 0.13 °F (0.04 to 0.07 °C) per year (Climate Wizard 2016), which could explain the earlier than average flight seasons. Nevertheless, given the temporal and geographical availability of their widespread perennial host plant, and exposure to extremes of climate throughout their known historical range (Thorne 1963, p. 144), Hermes copper butterfly and its host and nectar plants are not likely to be negatively affected throughout the majority of the species' range by phenological shifts in development of a few days.

Drought has been a major factor affecting southern California ecosystems, starting with the driest 12-month period on record in 2013–2014 (Swain *et al.* 2014, p. S3) extending through 2016. The exact mechanism by which drought impacts Hermes copper butterflies is not known. However, other butterfly species in southern California have shown declines caused by drought stress on their perennial host plants (Ehrlich *et al.* 1980, p. 105). Spiny redberry shows decreased health and vegetative growth during drought years (Marschalek 2017, pers. comm.).

Though limited, existing data suggest that drought is contributing to the decline of Hermes copper butterflies. Systematic monitoring of adult abundance at five sentinel sites indicates that the past 4 years of warm, dry drought conditions negatively affected habitat suitability and suppressed adult population sizes. At the Sycuan Peak occurrence, where the highest ever maximum adult daily count was recorded in 2013 (41), the population dropped in number with decreased precipitation and has remained at record low numbers for the past 4 years (1, 1, 0, and 0; Service 2018a, Figure 10; Marschalek and Deutschman 2017, p. 9; Marschalek 2018 pers. comm.). The highest elevation occurrence (Boulder Creek Road) was the largest of the monitored sites in 2017 following years of drought and high temperatures with a maximum daily count of 14 (down from 20 in 2013; Service 2018a, Figure 10; Marschalek and Deutschman 2017, p. 9). This higher elevation site received more rain than lower sites. Therefore, though population data are limited, drought appears to negatively impact Hermes copper butterfly populations.

The Hermes copper butterfly is a rare species with limited abundance at all sites across its range, many of which are also isolated by habitat isolation, and population counts have gone down at all sites where surveys are occurring. Temperatures have significantly increased from 1951 to 2016; these changes may be influencing the timing of the Hermes copper butterfly's flight season as well as their phenology (Service 2018a, pp. 47–48). Through increased evapotranspiration and soil drying, high temperatures increase the indirect negative effects of drought on average quality of the host plant and nectar resources. Still, we are unaware of any direct negative impacts on Hermes copper butterfly life history due to these temperature changes. Drought appears to be having a more pronounced indirect negative effect, as the mean maximum daily adult counts have decreased in recent years with a decrease in precipitation that may be more of a concern at low-elevation sites.

Combined Effects

Threats working in concert have a much greater effect than threats working individually; for example, habitat loss and isolation due to land use change combined with wildfire together have a greater impact on the species than wildfire alone. Multiple threats at a given hierarchical level have combined effects that emerge at the next higher level. For example, at the population level, habitat loss significantly reducing the resilience of one population combined with wildfire affecting resilience of another has a greater effect on Hermes copper butterfly species-level redundancy and, therefore, species viability than either threat would individually.

Threats that alone may not significantly reduce species viability have at least additive, if not synergistic, effects on species viability. For example, wildfire and habitat modification (type conversion) typically have a synergistic effect on habitat suitability in Mediterranean-type climate zones (Keeley and Brennon 2012, entire; California Chaparral Institute 2017, entire). Wildfire increases the rate of nonnative grass invasion, a component of the habitat modification threat, which in turn increases fire frequency. Overall, these factors increase the likelihood of megafires on a landscape/species range-wide scale.

The relationship between habitat fragmentation and type conversion is in part synergistic, particularly for Hermes copper butterflies, which are typically sedentary with limited direct movement ability. Fragmentation increases the rate of nonnative plant species invasion and type conversion through increased disturbance, nitrogen deposition, and seed dispersal, and type conversion itself reduces habitat suitability and, therefore, habitat contiguity and dispersal corridor-connectivity areas (increasing both habitat fragmentation and isolation). Another example of combined impacts is climate change. Although not a significant threat on its own, the increased temperature resulting from climate change significantly exacerbates other threats, especially wildfire and drought.

Small population size, low population numbers, and population isolation are not necessarily independent factors that threaten a species. Typically, it is the combination of small size and number and isolation of populations in conjunction with other threats (such as the present or threatened destruction and modification of the species' habitat or range) that may significantly increase the probability of species' extinction. Considering reduced numbers in recent surveys and historically low population numbers relative to typical butterfly population sizes, the magnitude of effects due to habitat fragmentation and isolation, drought, and wildfire are likely exacerbated by small population size.

Therefore, multiple threats are acting in concert to fragment, limit, and degrade Hermes copper butterfly habitat and decrease species resiliency, redundancy, and representation. The effects of these threats are evidenced by the loss and isolation of many populations throughout the range; those remaining extant populations fall within very high fire-hazard areas.

Future Condition

To analyze species' viability, we consider the current and future availability or condition of resources. The consequences of missing resources are assessed to describe the species' current condition and to project possible future conditions.

As discussed above, we generally define viability as the ability of the species to sustain populations in the natural ecosystem for the foreseeable future, in this case, 30 years. We chose 30 years because it is within the range of the available hydrological and climate change model forecasts, fire hazard period calculations, habitat-vegetation association, and fire-return intervals.

Threats

To consider the possible future viability of Hermes copper butterfly, we first analyzed the potential future conditions of ongoing threats. Possible development still in the preliminary planning stage (Service and CDFW 2016) could destroy occupied or suitable habitat on private land within the North Santee occurrence. Similar concerns apply to habitat in the Lyons Valley, Skyline Truck Trail area. Habitat isolation is a continuing concern for Hermes copper butterfly as lack of dispersal corridor-connectivity areas among occupied areas limits the ability of the species to recolonize extirpated habitat. Development outside of occupied habitat can also negatively affect the species by creating dispersal corridor-connectivity barriers throughout the range.

Anticipated severity of effects from future habitat development and isolation varies across the range of the species. Within U.S. Forest Service (USFS) lands (2,763 ha (6,829 ac)), we anticipate future development, if any, will be limited. As it implements specific activities within its jurisdiction, the USFS has incorporated measures into the Cleveland National Forest Plan to address threats to Hermes copper butterfly and its habitat (USFS 2005, Appendix B, p. 36). The limited number of Hermes copper butterfly occurrences within BLM lands is also unlikely to face future development pressure. Based on our analysis, we conclude land use change, while significant when combined with the stressor of wildfire, will not be the most significant future source of Hermes copper butterfly population decline and loss. Some habitat areas vulnerable to development are more important than others to species' viability. Of particular concern are potential extirpations due to development of the North Santee, Loveland Reservoir, Skyline Truck Trail, North Jamul, and South Japutal core occurrences (26 percent of the core occurrences considered or presumed extant; Service 2018a, pp. 23–28, 41). Absent additional conservation of occupied habitat and dispersal corridor-connectivity areas, effects of habitat loss, fragmentation, and isolation will continue to extirpate occurrences, degrade existing Hermes copper butterfly habitat, and reduce movement of butterflies among occurrences, which reduces the likelihood of natural recolonizations following extirpation events (Service 2018a, p. 53 and Figure 9).

As discussed above, wildfire can permanently affect habitat suitability. If areas are reburned at a high enough frequency, California buckwheat may not have the time necessary to become reestablished, rendering the habitat unsuitable for Hermes copper butterfly (Marschalek and Klein 2010, p. 728). Loss of nectar plants is not the only habitat effect caused by wildfire; habitat type conversion increases flammable fuel load and fire frequency, further stressing Hermes copper butterfly populations. Therefore, habitat modification due to wildfire is cause for both short- and long-term habitat impact concerns.

We expect that wildfire will continue to cause direct mortality of Hermes copper butterflies. In light of the recent drought-influenced wildfires in southern California, a future megafire affecting most or all of the area burned by the Laguna Fire in 1970 (40-year-old chaparral) could encompass the majority of extant occurrences and result in significantly reduced species viability (Service 2018a, Figures 7 and 8).

In the case of Hermes copper butterfly, the primary limiting species-level resource is dispersal corridor-connectivity areas of formerly occupied to currently occupied habitats, on which the likelihood of post-fire recolonization depends, is a limiting factor. We further analyzed fire frequency data to determine the effect on occurrence status and the likelihood of extirpation over the next 30 years. Our analysis concluded that the probability of a megafire occurring in Hermes copper butterfly's range has significantly increased. During the past 15 years (2002–2017), there were six megafires within Hermes copper butterfly's possible historical range (Poomacha, Paradise, Witch, Cedar, Otay Mine, and Harris; all prior to 2008), a significant increase compared to none during the two previous 15 years (1987–2001 and 1972–1986), and only one during the 15-year period prior to 1972 (Laguna). This represents a more than six-fold increase in the rate of megafire occurrence over the past 15 years. While fires meeting our megafire definition of greater than 16,187 ha (40,000 ac) have not occurred in the past 10 years, several relatively large fires occurred in the Hermes copper butterfly's range in 2014 and 2017. The Cocos and Bernardo fires burned approximately 809 ha (2,000 ac) and 607 ha (1,500 ac) of potentially occupied Hermes copper butterfly habitat near the Elfin Forest and the Black Mountain occurrences (Service 2018a, Figure 5). A smaller unnamed fire burned approximately 38 ha (95 ac) of potential habitat near the extant core Mission Trails occurrence (Burns *et al.,* 2014; City News Source 2014). In 2017, the Lilac Fire burned 1,659 ha (4,100 ac) of potentially occupied habitat between the Bonsall and Elfin Forest occurrences. At the current large-fire return rate, multiple megafires could impact Hermes copper butterfly over the next 30 years, and that assumes no further increase in rate. If the trend does not at least stabilize, the frequency of megafires could continue to increase with even more devastating impacts to the species.

Combined effects increase the likelihood of significant and irreversible loss of populations, compared to individual effects. If fewer source populations are available over time to recolonize burned habitat when host and nectar plants have sufficiently regenerated, the combined effects of these threats will continue to reduce resiliency, redundancy, and representation, resulting in an increase in species extinction risk.

Species Viability Index

In order to quantify population viability for the Hermes copper butterfly, we calculated a viability index in our SSA (Service 2018a, pp. 58–62). In our index calculations, the contribution of a population to species-level redundancy depends on population-level resiliency, and contribution to species-level representation depends on how rare populations are in the habitat type (California Ecological Unit) it occupies (Service 2018a, Figure 12). Species redundancy and representation are assumed to equally influence species' viability. We assign a 100 percent species viability index value to the baseline state of all known historical population occurrences in the United States. For this index calculation, we do not consider Mexican occurrences, because there are only 3 (possibly 2) out of a total of 95, and all are presumed extirpated.

Our index of species viability is proportional to, but not equal to, the ability of a species to sustain populations in the wild (in other words, it is an index that should change proportionally with the likelihood of persistence, but is not itself a probability value). As such, our viability index uses population resilience, species redundancy, and species representation to quantify changes in species viability, but does not predict probability of persistence. For a detailed description of our methodology and of viability index results, see the Species Viability Index section of the SSA (Service 2018a, pp. 58–62).

To estimate species viability, we first estimated species redundancy and species representation. To estimate a current species redundancy value, we ranked each occurrence's resiliency value using a scale of 0–4, with 0 being extirpated, and 4 being connected core occurrences (Service 2018a, p. 53; Appendix III). We estimate there are currently 18 presumed extant occurrences (rank sum of 18), 3 extant non-core isolated (rank sum of 6), 11 extant non-core connected or core isolated (rank sum of 33), and 13 extant core connected (rank sum of 52) occurrences for a total current species redundancy value of 109 (Service 2018a, p. 57). Based on our calculations, the species currently retains 30 percent of its historical population redundancy.

In order to model species representation, we used California Ecological Units (Goudey and Smith 1994 [2007]; see Table 1 above) as a measure of habitat diversity (Service 2018a, Figure 10). Using those units, occupancy in the Coastal Terraces (CT) ecological unit has been reduced to 18 percent (2/11 occurrences not extirpated), in the Coastal Hills (CH) unit to 40 percent (16/40 not extirpated), in the Western Granitic Foothills (WGF) unit to 63 percent (22/35 not extirpated), while the Palomar-Cuyamaca Peak Coastal Terraces (PC) unit remains at 100 percent (none extirpated). Based on these proportional values, the species retains 55 percent of its historical species representation (Service 2018a, p. 57).

Species viability was calculated by summing the results of the redundancy and representation calculations (Service 2018a, p. 57); we estimate the species currently retains no more than 43 percent of its estimated historical viability.

Future Scenarios

Given climate change predictions of more extreme weather, less precipitation, and warmer temperatures, and the recent trend of relatively frequent and large fires, we can assume the primary threats of drought and wildfire will continue to increase in magnitude. If land managers work to conserve and manage all occupied and temporarily unoccupied habitat, and maintain habitat contiguity and dispersal corridor-connectivity, this should prevent further habitat loss. Although fire and drought are difficult to control and manage for, natural recolonization and assisted recolonization through translocation in higher abundance years (*e.g.,* Marschalek and Deutschman 2016b) should allow recolonization of extirpated occurrences.

All scenarios described below incorporate some change in environmental conditions. However, it is important to keep in mind that even if environmental conditions remain unchanged, the species may continue to lose populations so that viability declines by virtue of maintaining the current trend. Given that there is uncertainty as to exact future trends of many threats, these future scenarios are meant to explore the range of uncertainty and examine the species' response across the range of likely future conditions. For more detailed discussions of the future scenarios, see the Possible Future Conditions section of the SSA (Service 2018a, pp. 60–62).

Scenario 1: Conditions worsen throughout the range, resulting in increased extinction risk.

Due to a combination of increased wildfire and drought frequency and severity, no habitat patches are recolonized, and all Hermes copper butterfly occurrences with a resilience score of less than 4 are extirpated (without reducing the redundancy weight of remaining occurrences based on changed size or isolation status). These losses would reduce the species redundancy value from 109 to 52. Based on the resulting redundancy value ratio of 52/368, the species would retain 14 percent of its historical baseline population redundancy. There would be no occupancy remaining in the CT ecological unit (0 percent), CH ecological unit occupancy would be reduced from 40 to 8 percent (3/40 not extirpated), WGF unit from 63 to 26 percent (9/35 not extirpated), and PC unit from 100 to 17 percent (1/6 not extirpated). Based on these proportional values, the species would retain approximately 13 percent of its historical representation. Resulting changes to the population redundancy and representation values would cause an approximate drop from 43 to 14 percent species viability relative to historical conditions. We judge this scenario about as likely as not to occur in the next 30 years.

Scenario 2: A megafire comparable to the 1970 Laguna Fire increases extinction risk.

If there was a megafire comparable to the 1970 Laguna Fire, many occurrences would likely be extirpated, and, due to the number of occurrences already lost, the likelihood of any being recolonized would be low. With regard to redundancy, these losses would result in the additional loss of four unknown status occurrences; no small isolated occurrences; three small, connected or large, isolated occurrences; and five large, connected occurrences.

In this scenario, the species would retain 18 percent of its historical baseline redundancy and 30 percent of its historical representation. These changes to population redundancy and representation values would result in an approximate drop in species viability relative to historical conditions from the current 43 percent to 24 percent. We judge this scenario more likely than not to occur in the next 30 years.

Scenario 3: Conditions stay the same, resulting in extinction risk staying the same.

While environmental conditions never stay the same, changes that negatively affect populations may be offset by positive ones—for example, continued habitat conservation and management actions such as translocations to recolonize burned habitats. In this scenario, the risk of wildfire remains high. Occurrence extirpations and decreased resiliency of some populations in this scenario are balanced by habitat recolonizations and increased resiliency in others. Species viability would thus remain at approximately 43 percent relative to historical conditions. Even if environmental conditions remain unchanged, the species may continue to lose populations so that viability declines by virtue of maintaining the current trend. We judge this scenario about as likely as not to occur in the next 30 years.

Scenario 4: Conditions improve, resulting in decreased extinction risk.

In this scenario, environmental threats such as fire and drought decrease in frequency and magnitude relative to the past 30 years, and management actions such as continued conservation and translocation efforts are successful. Due to favorable climate conditions and proactive management and conservation, all fire-extirpated occurrence habitats are recolonized, no further occurrences are extirpated, and at least half the ''unknown status'' occurrences are determined to be extant. This scenario would result in an increase to 62 percent species viability relative to historical conditions. We judge this scenario unlikely to occur in the next 30 years.

Determination of Hermes Copper Butterfly Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species

that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Hermes copper butterfly, and we have determined the following factors are impacting the resiliency, redundancy, and representation of the species: wildfire (Factor A), land use change (Factor A), habitat fragmentation and isolation (Factor A), climate change (Factor E), and drought (Factor E); as well as the cumulative effect of these on the species, including synergistic interactions between the threats and the vulnerability of the species resulting from small population size. We also considered the effect of existing regulatory mechanisms (Factor D) on the magnitude of existing threats. We also note that potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C) were evaluated but found to have little to no impact on species viability (Service 2018a, p. 50); thus, we did not discuss them in this document.

Individually, land use change (Factor A), habitat fragmentation and isolation (Factor A), climate change (Factor A), and drought (Factor E) are impacting the Hermes copper butterfly and its habitat. Although most impacts from land use change have occurred in the past, and some existing regulations are in place to protect remaining occurrences, 36 percent of historically occupied habitat is not protected and remains at risk from land use change. As a result of past development, which has contributed to the loss of 23 occurrences (Table 1), species representation has been reduced through loss of most occurrences in ecological units closest to the coast, while redundancy has decreased through loss of overall numbers of occurrences. Remaining habitat has been fragmented, decreasing species resiliency by removing habitat corridors and thus decreasing the species' ability to recolonize previously extirpated occurrences. Climate change is currently having limited effects on the species; however, drought is a significant threat resulting in degradation of habitat and decreased numbers of Hermes copper butterflies at all monitored occurrences, with the exception of the highest elevation occurrence that receives the most rainfall.

Wildfire (Factor A) is the most substantial threat currently impacting Hermes copper butterfly and is the most significant source of ongoing population decline and loss of occurrences. Large fires can eliminate source populations before previously burned habitat can be recolonized, and can result in long-term or permanent loss of butterfly populations. Since 2003, wildfire is estimated to have caused or contributed to the extirpation of 31 U.S. occurrences (and 3 in Mexico), only 3 of those are known to have been apparently repopulated. Wildfire frequency has significantly increased in Hermes copper butterfly habitat since 1970, and the likelihood of additional megafires occurring over the next 30 years is high. Frequent wildfire degrades available habitat through conversion of suitable habitat to nonnative grasslands, and we anticipate that fire will continue to modify and degrade Hermes copper butterfly habitat into the foreseeable future. Furthermore, though fuel-reduction activities are ongoing throughout much of the species' range, megafires cannot be controlled through regulatory mechanisms. We expect the ongoing effects of wildfire will continue to result in substantial reductions of species resiliency, redundancy, and representation for the Hermes copper butterfly.

Combined effects of threats have a greater impact on the Hermes copper butterfly than each threat acting individually. Wildfire increases the rate of nonnative grass invasion, which in turn increases fire frequency. Overall, these factors increase the likelihood of megafires on a range-wide scale now and in the foreseeable future. The combination of habitat fragmentation and isolation (as a result of past and potential limited future urban development), existing dispersal barriers, and megafires (that encompass vast areas and are increasing in frequency) that limit, and degrade Hermes copper butterfly habitat, results in substantial reduction in species resiliency, redundancy, and representation. Furthermore, remaining extant populations fall within very high fire-hazard areas, increasing the risk that a single megafire could result in the extirpation of the majority of extant occurrences. Additionally, effects from habitat fragmentation and isolation, megafire, and drought are exacerbated by the small population size and isolated populations of the Hermes copper butterfly. Overall, the combined effects of threats are currently decreasing the resiliency, redundancy, and representation of the Hermes copper butterfly, and we expect that they will continue to decrease species viability into the foreseeable future.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that that the Hermes copper butterfly meets the definition of a threatened species. Multiple threats are impacting Hermes copper butterfly across its range, and the most probable future scenarios predict that species viability will either remain at 43 percent of historical levels, or decrease to 24 percent or 14 percent of historical viability within the foreseeable future. Thus, after assessing the best available information, we conclude that the Hermes copper butterfly is likely to become in danger of extinction within the foreseeable future throughout all of its range. We find that the Hermes copper butterfly is not currently in danger of extinction, because although a megafire has the potential to extirpate a high number of occurrences, it is not likely that a single megafire would impact all occurrences, particularly given the urban area separating the most northern and southern occurrences. Furthermore, even the future scenarios resulting in the lowest species viability do not predict that the species is currently in danger of extinction. Therefore, threatened status is the most appropriate for the species.

Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Because we have determined that the Hermes copper butterfly is likely to become an endangered species within the foreseeable future throughout all of its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the

species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Hermes copper butterfly meets the definition of a threatened species. Therefore, we propose to list the Hermes copper butterfly as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific areas, we focus on the specific features that are essential to the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the species status assessment (SSA) report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may

have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

We did not identify any of the factors above to apply to the Hermes copper butterfly. Therefore, we find designation of critical habitat is prudent for the species.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Hermes copper butterfly is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Hermes copper butterfly.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As discussed above, we conducted a Species Status Assessment (SSA) for Hermes copper butterfly, which is an evaluation of the best available scientific and commercial data on the status of the species. The SSA provides the scientific information upon which this proposed critical habitat determination is based (Service 2018a).

Space for Individual and Population Growth and for Normal Behavior

Patches of spiny redberry host plants, including post-fire stumps that can resprout, are required to support Hermes copper butterfly populations and subpopulations; the number of plants in a patch required to support a subpopulation is unknown. Because we know that Hermes copper butterflies are periodically extirpated from patches of host plants by wildfire, and subsequently re-colonize these patches (Table 1), we can assume functional metapopulation dynamics are important

for species viability. The time-scale for recolonization from source subpopulations may be 10–30 years. Spiny redberry is often associated with the transition between sage scrub and chaparral vegetation associations, but may occur in a variety of vegetation associations. Such host plant patches occur between 30–1,341 m (100–4,400 ft) above sea level.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Adults require relatively abundant nectar sources associated with patches of their host plants, spiny redberry. Plants specifically identified as significant nectar sources include *Eriogonum fasciculatum* (California buckwheat) and *Eriophylum confirtiflorum* (golden yarrow). Any other butterfly nectar source (short flower corolla) species found associated with spiny redberry that together provide nectar similar in abundance to that typically provided by California buckwheat would also meet adult nutritional requirements. Larvae feed on the leaves of the host plant.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

All immature life-cycle stages develop on the host plant, spiny redberry. Eggs are deposited on branches, caterpillars are sheltered on and fed by leaves, and chrysalides are attached to live host plant leaves.

Habitats That Are Protected From Disturbance and Representative of the Historic Geographical and Ecological Distributions of a Species

Corridor (connective) habitat areas containing adult nectar sources are required among occupied (source subpopulations) and formerly occupied host plant patches, in order to maintain long-term the number and distribution of source subpopulations required to support resilient metapopulation species viability.

Protected spiny redberry host plants must be distributed in four California Ecological Units to maintain species representation.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Hermes copper butterfly from studies of this species' habitat, ecology, and life history as described above and in the Species Status Assessment for the Hermes Copper Butterfly (Service 2018a).

We have determined that the physical or biological features essential to the conservation of the Hermes copper butterfly consist of the following components when found between 30 m and 1,341 m above sea level, and located in habitat providing an appropriate quality, quantity, and spatial and temporal arrangement of these habitat characteristics in the context of the life-history needs, condition, and status of the species (see *Criteria Used to Identify Critical Habitat* below):

(1) Spiny redberry host plants.

(2) Nectar sources for adult butterflies.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of this species may require special management considerations or protection to reduce or mitigate the following threats: Wildfire, land use change, habitat fragmentation and isolation, and climate change and drought. In particular, habitat that has at any time supported a subpopulation will require protection from land use change that would permanently remove host plant patches and nectar sources, and habitat containing adult nectar sources that connects such host plant patches through which adults are likely to move. These management activities will protect from losses of habitat large enough to preclude conservation of the species.

Additionally, when considering the conservation value of areas proposed as critical habitat within each unit, especially among subpopulations within the same California Ecological Unit, maintenance of dispersal corridor-connectivity among them should be a conservation planning focus for stakeholders and regulators (such connectivity was assumed by the criteria used to delineate proposed critical habitat units).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species.

Sources of data for this species and its habitat requirements include multiple databases maintained by universities and by State agencies in San Diego County and elsewhere in California, white papers by researchers involved in conservation activities and planning, peer-reviewed articles on this species and relatives, agency reports, and numerous survey reports for projects throughout the species' range.

The current distribution of the Hermes copper butterfly is much reduced from its historical distribution. We anticipate that recovery will require continued protection of existing subpopulations and habitat, protection of dispersal corridor connectivity areas among subpopulations, as well as re-establishing subpopulations where they have been extirpated within the species' current range in order to ensure adequate numbers of subpopulations to maintain metapopulations. This activity will help to ensure future catastrophic events, such as wildfire, cannot simultaneously affect all known populations.

Geographical Area Occupied at the Time of Listing

The following meets the definition of the geographical area currently occupied by the Hermes copper butterfly in the United States: Between approximately 33° 20′ 0″ North latitude and south to the international border with Mexico, and from approximately 30 m (100 ft) in elevation near the coast, east up to 1,340 m (4,400 ft) in elevation near the mountains (Service 2018a, Figure 5). This includes those specific areas within the geographical area occupied by the species at this time or the currently known range of the species.

The proposed critical habitat designation does not include all areas within the geographical area occupied by the species at this time. Rather, it includes those lands with physical and biological features essential to the conservation of the species which may require special management or protections. We also limited the proposal to specific areas historically or currently known to support the species. This proposal focuses on maintaining areas that are known to have supported those known occurrences we consider

required for survival and recovery of the species. That is, areas required to maintain species' viability by virtue of occurrence contribution to species' redundancy (core status, or subpopulation contribution to metapopulation dynamics/resilience), and contribution to continued species representation within all California Ecological Units. Hermes copper butterflies may be found in areas without documented populations (and perhaps even some areas slightly beyond that range), and would likely be important to the conservation of the species.

In summary, we delineated critical habitat unit boundaries using the following criteria:

(1) We started by considering all high-accuracy record-based occurrences mapped in the SSA (accuracy codes 1 and 2 in Table 1; Service 2018a, p. 20) within the geographical area currently occupied by the species. Occurrences were mapped as intersecting areas within 0.5 km (0.3 mi) of high geographic accuracy records, and areas within 0.5 km (0.3 mi) of any spiny redberry record within 1 km (0.6 mi) of these butterfly records. These distances are based on the maximum recapture distance of 1.1 km (0.7 mi) recorded by Marschalek and Klein's (2010, p. 1) intra-habitat movement study.

(2) We removed seven non-core occurrences that were more than 3 km (1.9 mi) from a core occurrence, or otherwise deemed not-essential for metapopulation resilience or continued species representation within all California Ecological Units.

(3) We added habitat contiguity areas between occurrences that were 0.5 km (0.3 mi) or less apart that are likely to be within a single subpopulation distribution. To do this, we included the area within 0.5 km (0.3 mi) of the midpoint of the tangent between the two closest butterfly records in each occurrence (to capture likely unrecorded physical or biological features).

(4) Using the best available vegetation association GIS database, we removed areas within 95 sub-categories (out of 177) not likely to contain host plants, such as those associated with streams.

(5) We removed by visual review of the best available satellite imagery all clearly developed areas, areas of disturbed vegetation such as nonnative grasslands, and granitic formations not likely to contain host plants, at the scale of approximately 1.2 ha (3 ac).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Hermes copper butterfly. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification within mapped areas unless the land contained Hermes copper butterfly physical or biological features, or the specific action would affect the physical or biological features in adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are within the geographical area currently occupied by the species and contain one or more of the physical or biological features that are essential to support life-history processes of the species. Three units are proposed for designation.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053, on our internet sites *http://www.fws.gov/carlsbad,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Critical Habitat Designation

We are proposing three units as critical habitat for the Hermes copper butterfly. The critical habitat areas described below constitute our current best assessment of areas that meet the definition of critical habitat for the Hermes copper butterfly. The three units we propose as critical habitat are: (1) Lopez Canyon; (2) Miramar/Santee; and (3) Southeast San Diego. Table 2 shows the land ownership and approximate areas of the proposed designated areas for Hermes copper butterfly.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR HERMES COPPER BUTTERFLY

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type in hectares (acres)	Approximate size of unit in hectares (acres)
1. Lopez Canyon	Federal: 0; State: 0; Local Jurisdiction: 88 (218); Private: 77 (191)	166 (410)
2. Miramar/Santee	Federal: 0; State: 111 (275); Local Jurisdiction: 1,113 (2,750); Private: 1,646 (4,068).	2,870 (7,092)
3. Southeast San Diego	Federal: 4,213 (10,411); State: 2,074 (5,124); Local Jurisdiction: 1,162 (2,871); Private: 3,765 (9,303).	11,213 (27,709)
Total	Federal: 4,213 (10,411); State: 2,185 (5,399); Local Jurisdiction: 2,363 (5,839); Private: 5,488 (13,562).	14,249 (35,211)

Note: Area sizes may not sum due to rounding or unit conversion.

We present brief descriptions of all proposed critical habitat units, and reasons why they meet the definition of critical habitat for the Hermes copper butterfly, below. Although conservation and management of dispersal corridor connectivity areas among occurrences proposed for designation as critical habitat will also be required for species

survival and recovery (occurrence isolation was a factor that eliminated occurrences in Criterion (2) above), the best available data do not provide sufficient information to identify the specific location of these lands at this time. Therefore, we did not include dispersal corridor connectivity areas among occurrences in the proposed critical habitat units.

Unit 1: Lopez Canyon

Unit 1 consists of 166 ha (410 ac) within the geographical area currently occupied by the species and contains all of the essential physical or biological features. The physical or biological features may require special management to protect them from wildfire and land use change, although the latter is less likely in this unit (see *Special Management Considerations and Protection* above). This area encompasses the core Lopez Canyon occurrence, the only known extant occurrence that falls within the Coastal Terraces Ecological Unit (Table 1), and is therefore required to maintain species representation. Unit 1 is within the jurisdiction of the City of San Diego, associated with the communities of Sorrento Valley and Mira Mesa. This unit is surrounded by development. Habitat consists primarily of canyon slopes. The majority of this unit falls within the Los Peñasquitos Canyon Preserve jointly owned and managed by the City and County of San Diego. The primary objective of Los Peñasquitos Canyon Preserve is the preservation and enhancement of natural and cultural resources. The preserve master plan states that recreational and educational use by the public is a secondary objective, development should be consistent with these objectives, and public use should not endanger the unique preserve qualities. Land use in this unit is almost entirely recreation and conservation.

Unit 2: Miramar/Santee

Unit 2 consists of 2,870 ha (7,092 ac) within the geographical area currently occupied by the species and contains all of the essential physical or biological features. The physical or biological features may require special management to protect them from land use change and wildfire, although wildfire will be challenging to manage for in this unit because of its size and risk of megafire (see *Special Management Considerations and Protection* above). This area encompasses the core Sycamore Canyon, North Santee, and Mission Trails occurrences, as well as non-core occurrences connected to core occurrences also required for metapopulation resilience and continued species representation in two California Ecological Units (Coastal Hills and Western Granitic Foothills). This unit includes half of the extant/presumed extant core occurrences in the Coastal Hills California Ecological Unit (the other half are in Unit 3). Unit 2 mostly surrounds the eastern portion of Marine Corps Air Station Miramar (lands encompassing areas that also meet the definition of critical habitat and would be included in this unit but are exempt from designation), falling primarily within the jurisdictions of the City of San Diego, but also within the City of Santee and unincorporated areas of San Diego County. In this unit, the City of San Diego owns and manages the over 2,830-ha (7,000-ac) Mission Trails Regional Park (887 ha (2,192 ac) in this unit) and the County owns and manages the 919-ha (2,272-ac) Gooden Ranch/Sycamore Canyon County preserve (198 ha (488 ac) included in this unit).

Unit 3: Southeast San Diego

Unit 3 consists of 11,213 ha (27,709 ac) within the geographical area currently occupied by the species and contains all of the essential physical or biological features. The physical or biological features may require special management to protect them from land use change and wildfire, although wildfire will be challenging to manage in this unit because of its size and risk of megafire (see *Special Management Considerations and Protection* above). This unit configuration would conserve the essential contiguous habitat patches and dispersal corridor connectivity among the occurrences. This area encompasses the majority of extant and connected occurrences within the species' current range that are required for metapopulation resilience and continued species representation in two California Ecological Units. This unit includes all of the extant/presumed extant core occurrences in the Western Granitic Foothills and Palomar-Cuyamaca Peak California Ecological Units. The majority of the Crestridge core occurrence falls within the Crestridge Ecological Reserve jointly managed by the Endangered Habitats Conservancy and the California Department of Fish and Wildlife. The majority of the Alpine core occurrence falls within the Wright's Field preserve owned and managed by the Back Country Land Trust. Thirty-eight percent of this unit (4,213 ha (10,411 ac)) is owned and managed by the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the Bureau of Land Management.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal Agency, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a

listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

Actions that would remove spiny redberry host plants or a significant amount of nectar source plants. Such activities could include, but are not limited to, residential and commercial development, and conversion to agricultural orchards or fields. These activities could permanently eliminate or reduce the habitat necessary for the growth and reproduction of Hermes copper butterflies.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. Marine Corps Air Station Miramar is the only military installation located within the range of the proposed critical habitat designation for the Hermes copper butterfly that has a completed, Service-approved INRMP. As discussed below, we analyzed the INRMP to determine if it meets the criteria for exemption from critical habitat under section 4(a)(3) of the Act.

Approved INRMP

Marine Corps Air Station Miramar—Unit 2 (967 ha (2,389 ac))

Marine Corps Air Station (MCAS) Miramar has an approved INRMP completed in June 2018. The U.S. Marine Corps is committed to working closely with the Service and California Department of Fish and Wildlife to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. The MCAS Miramar INRMP overall strategy for conservation and management is to: (1) Limit activities, minimize development, and perform mitigation actions in areas supporting high densities of vernal pool habitat, threatened or endangered species, and other wetlands; and (2) manage activities and development in areas of low densities, or no regulated resources, with site-specific measures and programmatic instructions.

The MCAS Miramar INRMP contains elements that benefit the Hermes copper butterfly, such as mitigation guidance for projects which may impact Hermes copper butterfly or its habitat (MCAS Miramar 2018, p. 6–13) and natural resources management goals and objectives which support both Hermes copper butterfly conservation and military operational requirements. Identified management actions within the INRMP include restoring degraded sites, restricting access to sensitive

areas, training military personnel to recognize and avoid sensitive areas, invasive species removal, surveys to identify areas suitable for habitat restoration or enhancement, and long-term ecosystem monitoring (MCAS Miramar 2018, p. 7–17). The INRMP also includes measures to avoid or minimize the effects of planned actions, such as limiting training and land management activities during flight season, as well as minimizing off-road activities to avoid damage to host plants and crushing eggs and larval butterflies (MCAS Miramar 2018, p. 5–7). It further provides guidance for project planners on required impact avoidance, minimization, and compensation of occupied and unoccupied habitat. Overall, these measures will protect Hermes copper butterflies from impacts such as loss of spiny redberry and nectar plants from direct and indirect effects of planned actions and will minimize conflicts with military operational needs. In total, 967 ha (2,389 ac) on MCAS Miramar meet the definition of critical habitat for the Hermes copper butterfly.

Based on our review of the Hermes copper butterfly habitat on MCAS Miramar, the MCAS Miramar INRMP, and the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Marine Corps Air Station Miramar INRMP and that conservation efforts identified in the INRMP will provide a benefit to the Hermes copper butterfly. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 967 ha (2,389 ac) of habitat in this proposed critical habitat designation because of this exemption.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We have not considered any areas for exclusion from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an Incremental Effects Memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat (Service 2018b). The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Hermes copper butterfly (IEc 2018, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation), including probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and, as a result of the critical habitat designation for the species, may require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis and the information contained in our IEM are what we consider our draft economic analysis of the proposed critical habitat designation for the Hermes copper butterfly and are summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory

analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Hermes copper butterfly, first we identified probable incremental economic impacts associated with the following categories of activities: (1) Agriculture, (2) development; (3) forest management; (4) grazing; (5) mining; (6) recreation; (7) renewable energy; (8) transportation; and (9) utilities (Service 2018b, p. 2). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation only requires consideration of potential project effects when there is an action conducted, funded, permitted, or authorized by Federal agencies. If listed, in areas where the Hermes copper butterfly is present, Federal agencies would already be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Hermes copper butterfly's critical habitat. Because the designation of critical habitat for Hermes copper butterfly is proposed concurrently with the listing, it is difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. The essential physical or biological features identified for Hermes copper butterfly critical habitat are the same features essential for the life requisites of the species. In particular, because the Hermes copper butterfly is closely associated with the plant species essential for its conservation, and because it is a non-migratory species that remains on spiny redberry plants during all immature stages, and on the plant as an adult, reasonable and prudent alternatives needed to avoid jeopardy from impacts to the species' life-requisite habitat features would also likely serve to avoid destruction or adverse modification of critical habitat resulting from those impacts. Additionally, measures to avoid or minimize take of the species (attributable to listing) would also likely serve to address impacts to critical habitat.

The proposed critical habitat designation for the Hermes copper butterfly totals approximately 14,249 ha (35,211 ac) in three units, all of which are occupied by the species. The screening memo found that incremental costs associated with section 7 consultations would likely be low for the Hermes copper butterfly for several reasons (IEc 2018, p. 9). First, the majority of the critical habitat designation is on State, private, and local lands where a Federal nexus is unlikely (although there are a few areas where the Army Corps of Engineers has jurisdiction). Secondly, given that all the proposed units are occupied, should a Federal nexus exist, any proposed projects would need to undergo some form of consultation due to the presence of the butterfly regardless of critical habitat designation.

Additionally, as previously stated, we expect that any project modifications identified to avoid jeopardy that would result from project-related effects to habitat features required by the species would be similar to those identified to avoid destruction or adverse modification of the critical habitat's physical or biological features essential to the conservation of the species. Furthermore, all critical habitat units overlap to some degree with critical habitat for other listed species or with various conservation plans, State plans, or Federal regulations. These protections may also benefit the Hermes copper butterfly, even in the absence of critical habitat for the species.

When an action is proposed in an area of occupied designated critical habitat, and the proposed activity has a Federal nexus, the need for consultation is triggered. Any incremental costs associated with consideration of potential effects to the critical habitat are a result of this consultation process. Overall, we expect that agency administrative costs for consultation, incurred by the Service and the consulting Federal agency, would be minor (less than $6,000 per consultation effort) and, therefore, would not be significant (IEc 2018, p. 10). In addition, based on the non-inclusion of lands likely to have a Federal nexus (such as riparian vegetation associations), and coordination efforts with State and local agencies, we expect the overall incremental costs will be minor.

Therefore, incremental costs would be limited to additional administrative efforts by the Service and consulting Federal agencies to include consideration of potential effects to the designated critical habitat in otherwise needed consultations. These future costs are unknown, but expected to be relatively small given the projections by affected entities and are unlikely to exceed $100,000 in any given year. Consequently, future probable incremental economic impacts are not likely to exceed $100 million in any single year and would therefore not be significant.

Consideration of National Security Impacts or Homeland Security Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the impact to national security that may result from a designation of critical habitat. For this proposed rule, we considered whether there are lands owned or managed by the Department of Defense within proposed critical habitat where a national security impact might exist. In this case, we are exempting under section 4(a)(3) of the Act all lands that meet the definition of critical habitat owned by the Department of Defense. Additionally, in preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for Hermes copper butterfly are not owned or managed by the Department of Homeland Security. Therefore, we anticipate no impact on national security.

Consideration of Other Relevant Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we also consider any other relevant impacts that may result from a designation of critical habitat. In conducting that analysis, we consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of any Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Hermes copper butterfly, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

At this time, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation of critical habitat under section 4(b)(2) of the Act. During the development of the final designation, we will consider any additional information related to the economic impacts, national security impacts, or any other relevant impacts of specifying any particular area as critical habitat that is received through the public comment period, and as such areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and in conservation by Federal, State, Tribal, and local agencies, as well as private organizations and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan for the Hermes copper butterfly, if listed, will be available on our website (*http://www.fws.gov/endangered*), or from our Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Hermes copper butterfly. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Hermes copper butterfly is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include activities that may affect the species, land management, and any other landscape-altering activities that may affect the physical or biological features essential to the conservation of the species.

Proposed Rule Provisions

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened species

(hereafter referred to as a ''4(d) rule''). Through a 4(d) rule, we may prohibit by regulation with respect to threatened wildlife any act prohibited by section 9(a)(1) of the Act for endangered wildlife. Exercising this discretion, the Service has developed a 4(d) rule for the Hermes copper butterfly containing all the general prohibitions and exceptions to those prohibitions that is tailored to the specific threats and conservation needs of this species.

As discussed above in the Summary of Factors Affecting the Species section of this proposed listing rule and the SSA (Service 2018a, pp. 15 and 16), factors limiting the distribution of Hermes copper butterfly are not entirely understood, since the species' distribution is much more restricted than its host plant. The highest magnitude threats to the Hermes copper butterfly include extirpation of populations by wildfire and loss and isolation of populations due to development.

This 4(d) rule describes how and where the prohibitions of section 9(a)(1) of the Act will be applied. As described in more detail later in this section, this proposed 4(d) rule identifies a certain portion of the species' range that would not be subject to the take prohibitions under section 9(a)(1) of the Act (Figure 1). Outside of the area delineated in Figure 1, this proposed 4(d) rule would prohibit all acts described under section 9(a)(1) of the Act, except take resulting from the activities listed below when conducted within habitats occupied by the Hermes copper butterfly. All of the activities listed below must be conducted in a manner that (1) maintains contiguity of suitable habitat for the species within and dispersal corridor connectivity among populations, allowing for maintenance of populations and recolonization of unoccupied, existing habitat; (2) does not increase the risk of wildfire in areas occupied by the Hermes copper butterfly while preventing further habitat fragmentation and isolation, or degradation of potentially suitable habitat; and (3) does not preclude efforts to augment or reintroduce populations of the Hermes copper butterfly within its historical range with management of the host plant. Some exempted activities must be coordinated with and reported to the Service in writing and approved to ensure accurate interpretation of exemptions (for example, that activities do not adversely affect the species' conservation and recovery). Questions regarding the proposed application of these requirements should be directed to the Carlsbad Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

This proposed 4(d) rule would exempt from the prohibitions in section 9(a)(1) of the Act take resulting from any of the following activities when conducted within habitats occupied by the Hermes copper butterfly:

(1) Survey and monitoring work in coordination with and reported to the Service as part of scientific inquiry involving quantitative data collection (such as population status determinations).

(2) Habitat management or restoration activities, including removal of nonnative, invasive plants, expected to provide a benefit to Hermes copper butterfly or other sensitive species of the chaparral and coastal sage scrub ecosystems, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(3) Activities necessary to maintain the minimum clearance (defensible space) requirement of 30 m (100 ft) from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and comply with State of California fire codes to reduce wildfire risks.

(4) Fire management actions on protected/preserve lands to maintain, protect, or enhance coastal sage scrub and chaparral vegetation. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(5) Maintenance of existing fuel breaks identified by local fire authorities to protect existing structures.

(6) Firefighting activities associated with actively burning fires to reduce risk to life or property.

(7) Collection, transportation, and captive-rearing of Hermes copper butterfly for the purpose of population augmentation or reintroduction, maintaining refugia, or as part of scientific inquiry involving quantitative data collection (such as survival rate, larval weights, and post-release monitoring) approved by, in coordination with, and reported to the Service. This does not include activities such as personal ''hobby'' collecting and rearing intended for photographic purposes and re-release.

(8) Research projects involving collection of individual fruits, leaves, or stems of the Hermes copper butterfly host plant, spiny redberry, approved by, in coordination with, and reported to the Service.

We believe these actions and activities, while they may result in some minimal level of mortality, harm, or disturbance to the Hermes copper butterfly, are not expected to adversely affect the species' conservation and recovery. In fact, we expect they would have a net beneficial effect on the species. Across the species' range, suitable habitat has been degraded or fragmented by development and wildfire, including megafires. The activities covered by this proposed 4(d) rule will address some of these problems, creating more favorable habitat conditions for the species and helping to stabilize or increase populations of the species. Like the proposed listing rule, this proposed 4(d) rule will not be finalized until we have reviewed comments from the public and peer reviewers.

Additionally, we are proposing under section 4(d) of the Act to delineate a certain portion of the species' range that would not be subject to the take prohibitions under section 9(a)(1) of the Act (Figure 1). Areas inside this portion of the species' range capture all remnant habitat areas where there is any possibility of Hermes copper butterfly occupancy and where we are confident they would not contribute significantly to species' recovery because of limited available habitat and connectivity. They are unlikely to contribute to recovery because any occupied areas within the boundary are too small and isolated to support a population in the long term. The intent is to provide regulatory relief to those who might otherwise be affected by the species being listed as threatened, and to encourage and strengthen conservation partnerships among Federal, State, and local agencies; and other partners and other public we serve.

The areas where the section 9(a)(1) prohibitions would not apply are shown in Figure 1. These areas were designed in the following way: The southern edge is the Mexican border and the western edge is the Pacific coast. The eastern and northern edges of the boundary follow the development that would isolate any extant populations found within the boundaries. We did not include areas where we believed there was any chance of future dispersal corridor connectivity among extant populations, including habitat that could potentially be managed or restored to act as suitable connecting habitat. For a more detailed map of the areas where the section 9(a)(1) prohibitions would not apply, please contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

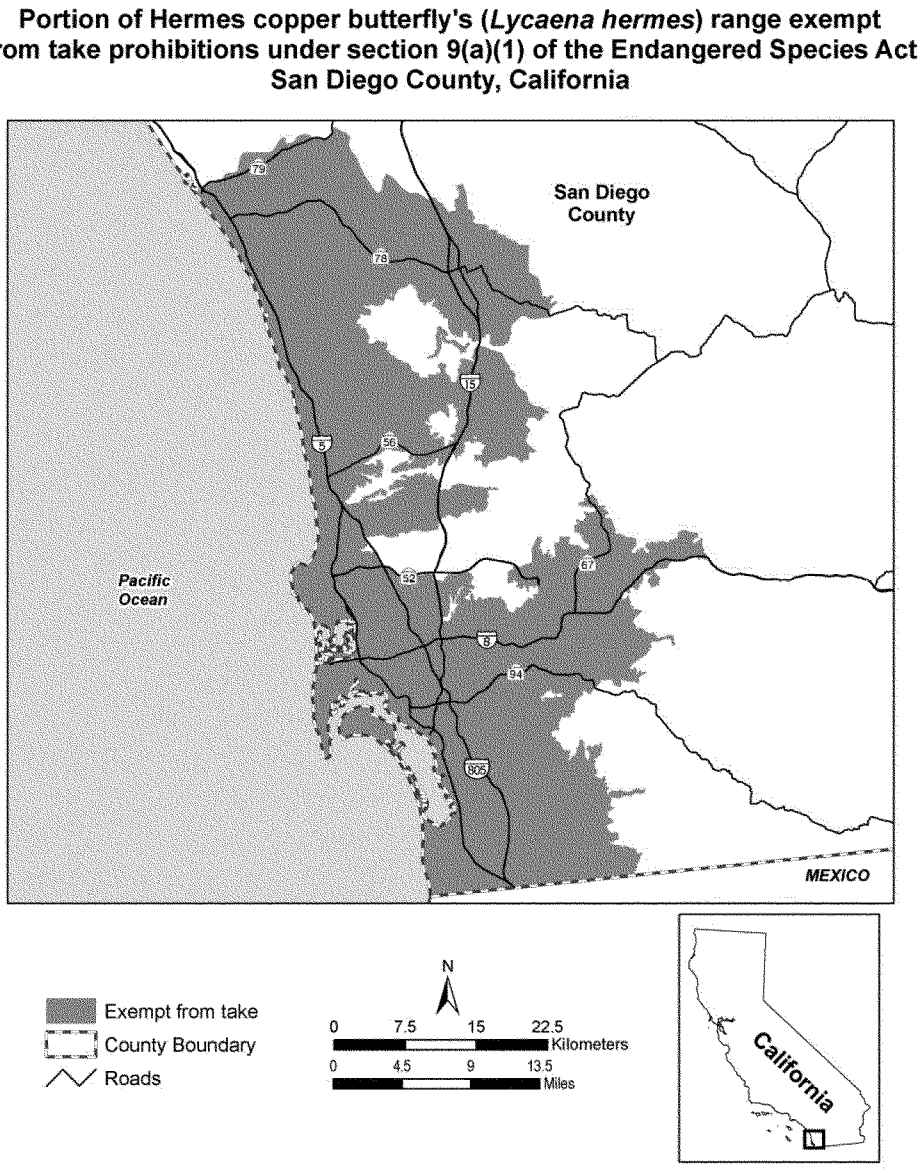


Figure 1. Portion of the Hermes copper butterfly's current range that is proposed to be exempt from take prohibitions under section 9(a)(1) of the Act.

Based on the rationale above, the provisions included in this proposed 4(d) rule are necessary and advisable to provide for the conservation of the Hermes copper butterfly. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Hermes copper butterfly.

Activities Subject to Take Prohibitions

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements or within the portion of the species' range

described above that would not be subject to the take prohibitions; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(2) Normal residential and urban landscape activities, such as mowing, edging, fertilizing, etc.; and

(3) Recreation and management at National Forests that is conducted in accordance with existing USFS regulations and policies.

Based on the best available information, the following activities may potentially result in violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species (adults, eggs, larvae, or pupae), including transport across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Unauthorized modification, removal, or destruction of spiny redberry within the species' range that is known to be occupied by Hermes copper butterfly and that may result in death or injury of adults, eggs, larvae, or pupae; and

(3) Illegal pesticide applications (*i.e.,* in violation of label restrictions) in or adjacent to (due to spray drift concerns) habitat known to be occupied by Hermes copper butterfly that may result in death or injury of adults, eggs, larvae, or pupae.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Carlsbad Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Executive Order 13771

We do not believe this proposed rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has waived their review regarding their significance determination of this proposed rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and

adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat will significantly affect energy supplies, distribution, or use. Furthermore, although it does include areas where powerlines and power facility construction and maintenance may occur in the future, it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Hermes copper butterfly in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the Hermes copper butterfly does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we request information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in California. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning

(because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with listing a species as an endangered or threatened species or with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

References Cited

A complete list of references cited in this proposed rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Carlsbad Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Carlsbad Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Butterfly, Hermes copper'' to the List of Endangered and Threatened Wildlife in alphabetical order under ''Insects'' to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
INSECTS				
*	*	*	*	*
Butterfly, Hermes copper	*Lycaena hermes*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.47(d)[4d]; 50 CFR 17.95(i)[CH].
*	*	*	*	*

■ 3. Amend § 17.47 by adding paragraph (d) to read as follows:

§ 17.47 Special rules—insects.

* * * * *

(d) Hermes copper butterfly (*Lycaena hermes*)—(1) *Prohibitions.* Except as noted in paragraph (d)(2) of this section, all prohibitions and provisions of 16 U.S.C. 1538(a)(1) and 50 CFR 17.32 apply to the Hermes copper butterfly.

(2) *Exceptions from prohibitions.* (i) All of the activities listed in paragraph (d)(2)(ii) of this section occurring outside the area delineated in paragraph (d)(2)(iii) of this section must be conducted in a manner that:

(A) Maintains contiguity of suitable habitat for the species within and dispersal corridor connectivity among populations, allowing for maintenance of populations and recolonization of unoccupied, existing habitat;

(B) Does not increase the risk of wildfire in areas occupied by the Hermes copper butterfly while preventing further habitat fragmentation and isolation, or degradation of potentially suitable habitat; and

(C) Does not preclude efforts to augment or reintroduce populations of the Hermes copper butterfly within its historical range with management of the host plant.

(ii) Take of the Hermes copper butterfly outside the area delineated in paragraph (d)(2)(iii) of this section will

not be considered a violation of section 9 of the Act if the take results from any of the following activities when conducted within habitats occupied by the Hermes copper butterfly:

(A) Survey and monitoring work in coordination with and reported to the Service as part of scientific inquiry involving quantitative data collection (such as population status determinations).

(B) Habitat management or restoration activities, including removal of nonnative, invasive plants, expected to provide a benefit to Hermes copper butterfly or other sensitive species of the chaparral and coastal sage scrub ecosystems, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(C) Activities necessary to maintain the minimum clearance (defensible space) requirement of 30 m (100 ft) from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and comply with State of California fire codes to reduce wildfire risks.

(D) Fire management actions on protected/preserve lands to maintain, protect, or enhance coastal sage scrub and chaparral vegetation. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(E) Maintenance of existing fuel breaks identified by local fire authorities to protect existing structures.

(F) Firefighting activities associated with actively burning fires to reduce risk to life or property.

(G) Collection, transportation, and captive-rearing of Hermes copper butterfly for the purpose of population augmentation or reintroduction, maintaining refugia, or as part of scientific inquiry involving quantitative data collection (such as survival rate, larval weights, and post-release monitoring) in coordination with and reported to the Service. This does not include activities such as personal ''hobby'' collecting and rearing intended for photographic purposes and re-release.

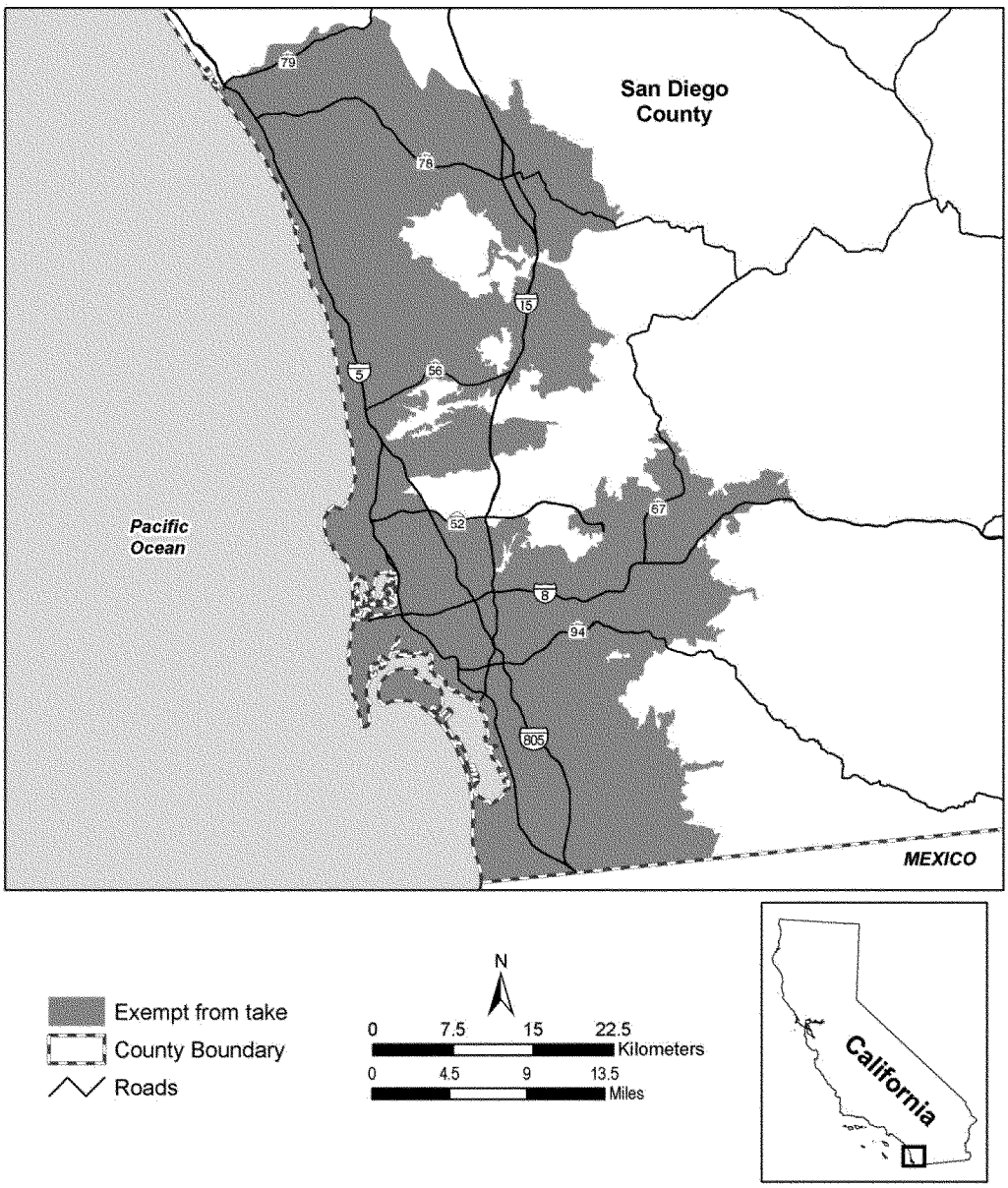
(H) Research projects involving collection of individual fruits, leaves, or stems of the Hermes copper butterfly host plant, spiny redberry, in coordination with and reported to the Service.

(iii) A portion of the range of the Hermes copper butterfly is exempt from all take prohibitions under section 9(a)(1) of the Act.

(A) The southern edge is the Mexican border, and the western edge is the Pacific coast. The eastern and northern edges of the boundary follow the development that would isolate any extant populations found within the boundaries.

(B) *Note:* The map of areas exempted from take prohibitions follows:

Portion of Hermes copper butterfly's (*Lycaena hermes*) range exempt from take prohibitions under section 9(a)(1) of the Endangered Species Act San Diego County, California



(3) *Contact information.* To contact the Service, see 50 CFR 2.2 for a list of the addresses for the Service regional offices.

■ 4. Amend § 17.95(i) by adding an entry for ''Hermes copper butterfly (*Lycaena hermes*),'' in alphabetical order to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Hermes Copper Butterfly (Lycaena hermes)

(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

(2) Within these areas, the physical or biological features essential to the conservation of the Hermes copper butterfly consist of the following components when found between 30 m and 1,341 m above sea level:

(i) Spiny redberry host plants.

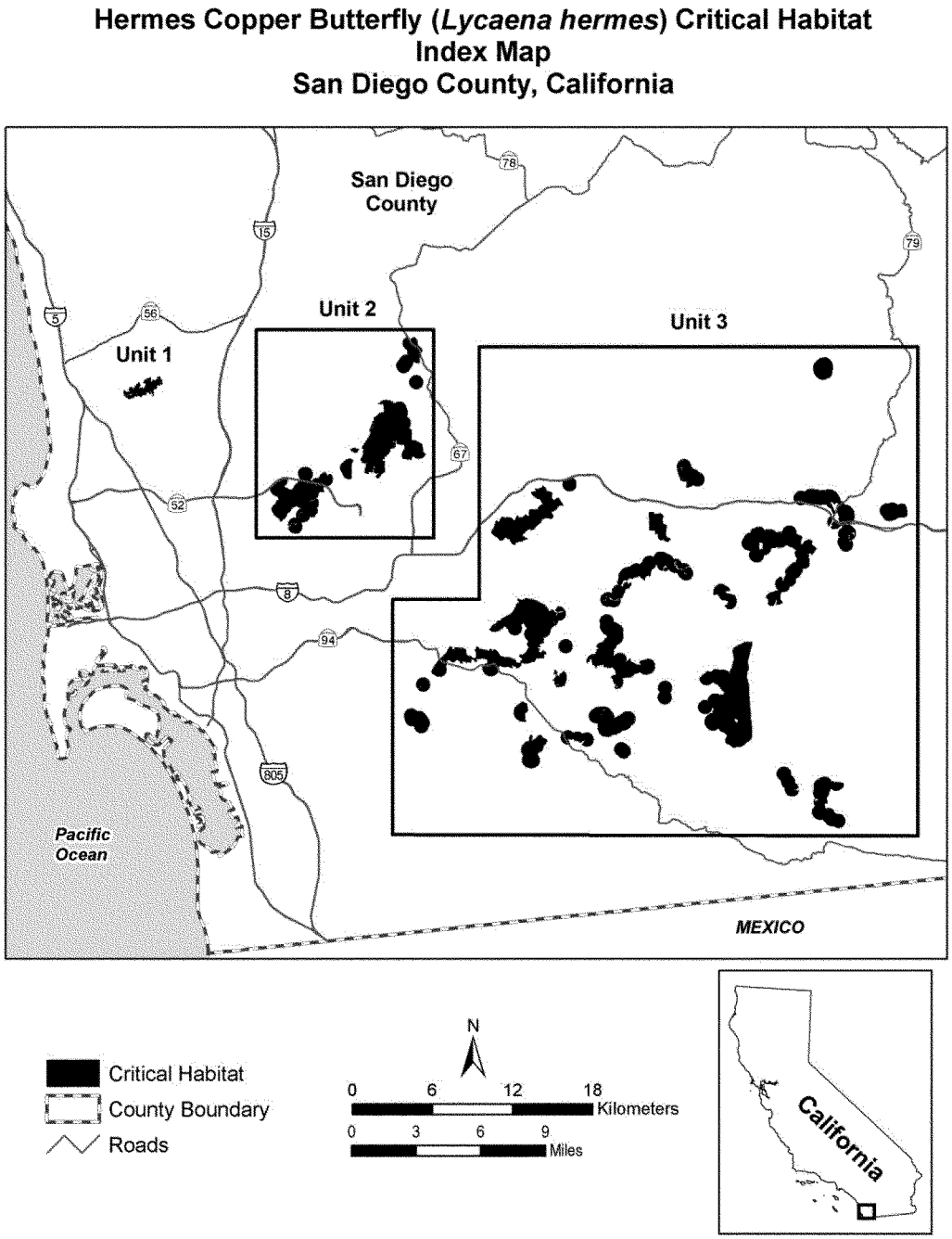
(ii) Nectar sources for adult butterflies.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) Critical habitat was mapped using GIS analysis tools and refined using 2016 NAIP imagery and/or the World Imagery layer from ArcGIS Online. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://www.regulations.gov* at Docket

No. FWS–R8–ES–2017–0053 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

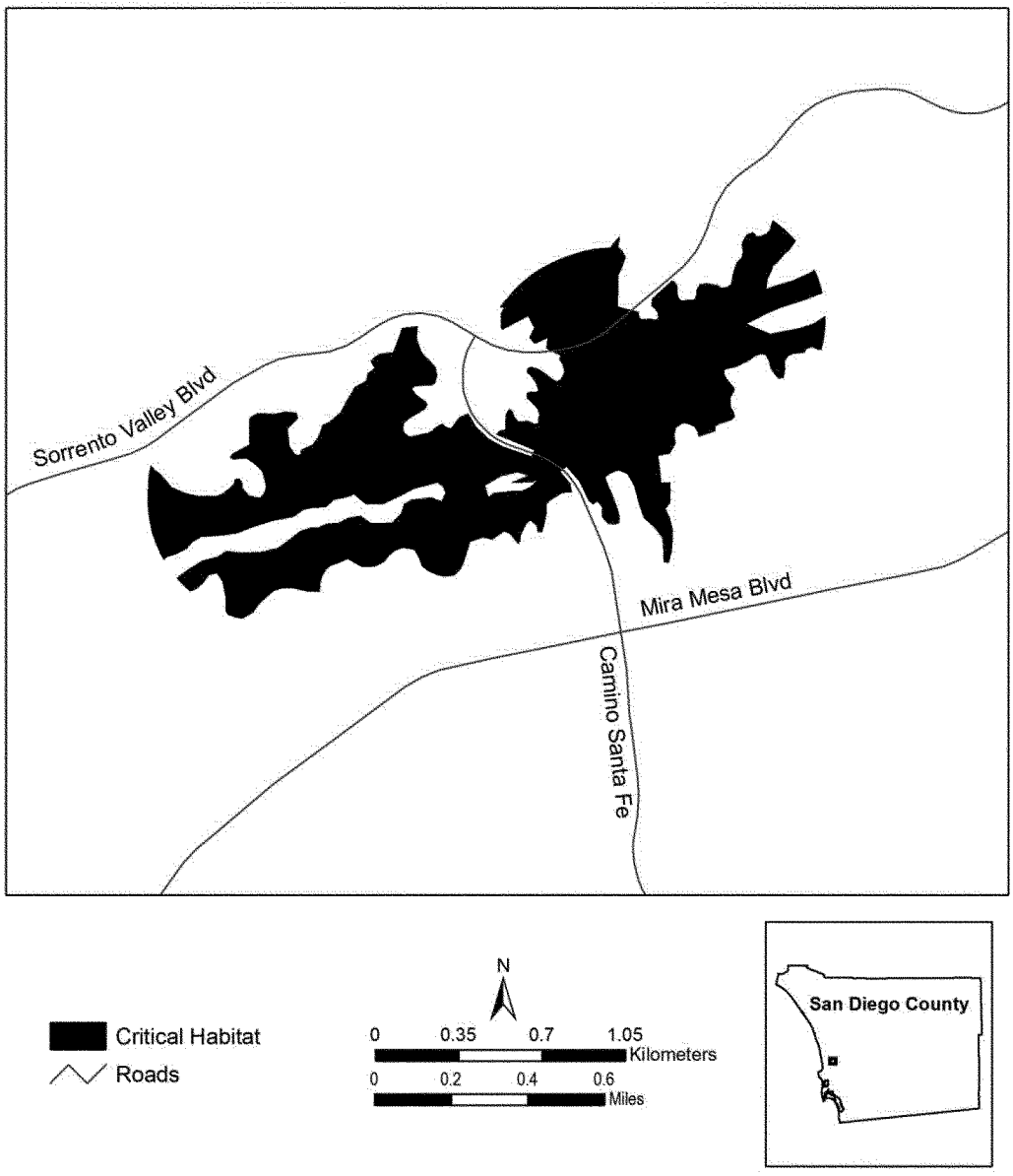


(6) Unit 1: Lopez Canyon, San Diego County, California.

(i) Unit 1 consists of 166 ha (410 ac) in San Diego County and is composed of lands jointly owned and managed by the City and County of San Diego (88 ha (218 ac)) and private or other ownership (77 ha (191 ac)).

(ii) *Note:* Map of Unit 1, Lopez Canyon, follows:

Hermes Copper Butterfly (*Lycaena hermes*) Critical Habitat
Unit 1
San Diego County, California

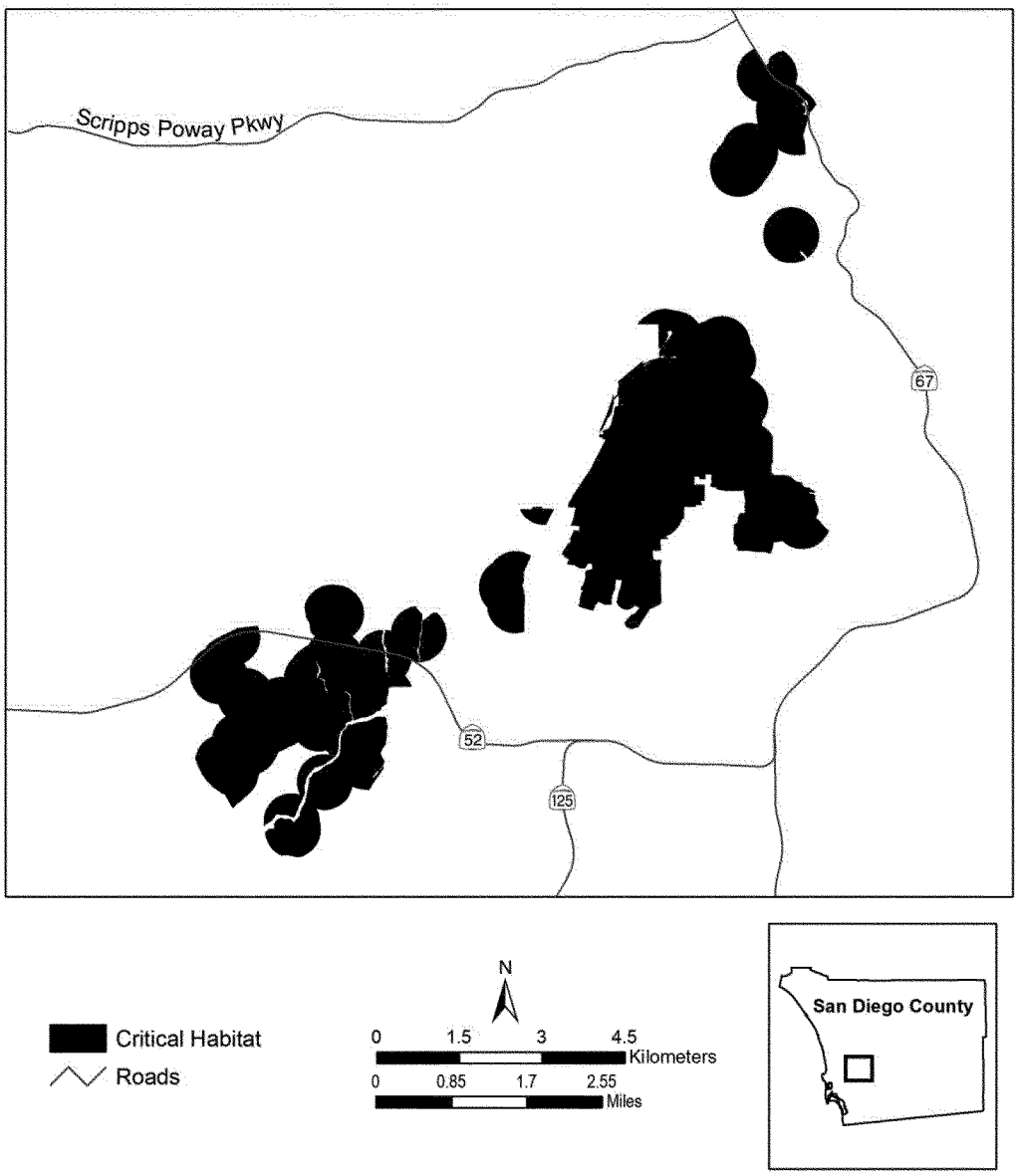


(7) Unit 2: Miramar/Santee, San Diego County, California.

(i) Unit 2 consists of 2,870 ha (7,092 ac) in San Diego County and is composed of lands owned and managed by the State of California (111 ha (275 ac)), local jurisdictions (primarily the County of San Diego; 1,113 ha (2,750 ac)), and private or other ownership (1,646 ha (4,068 ac)).

(ii) *Note:* Map of Unit 2, Miramar/Santee, follows:

Hermes Copper Butterfly (*Lycaena hermes*) Critical Habitat
Unit 2
San Diego County, California

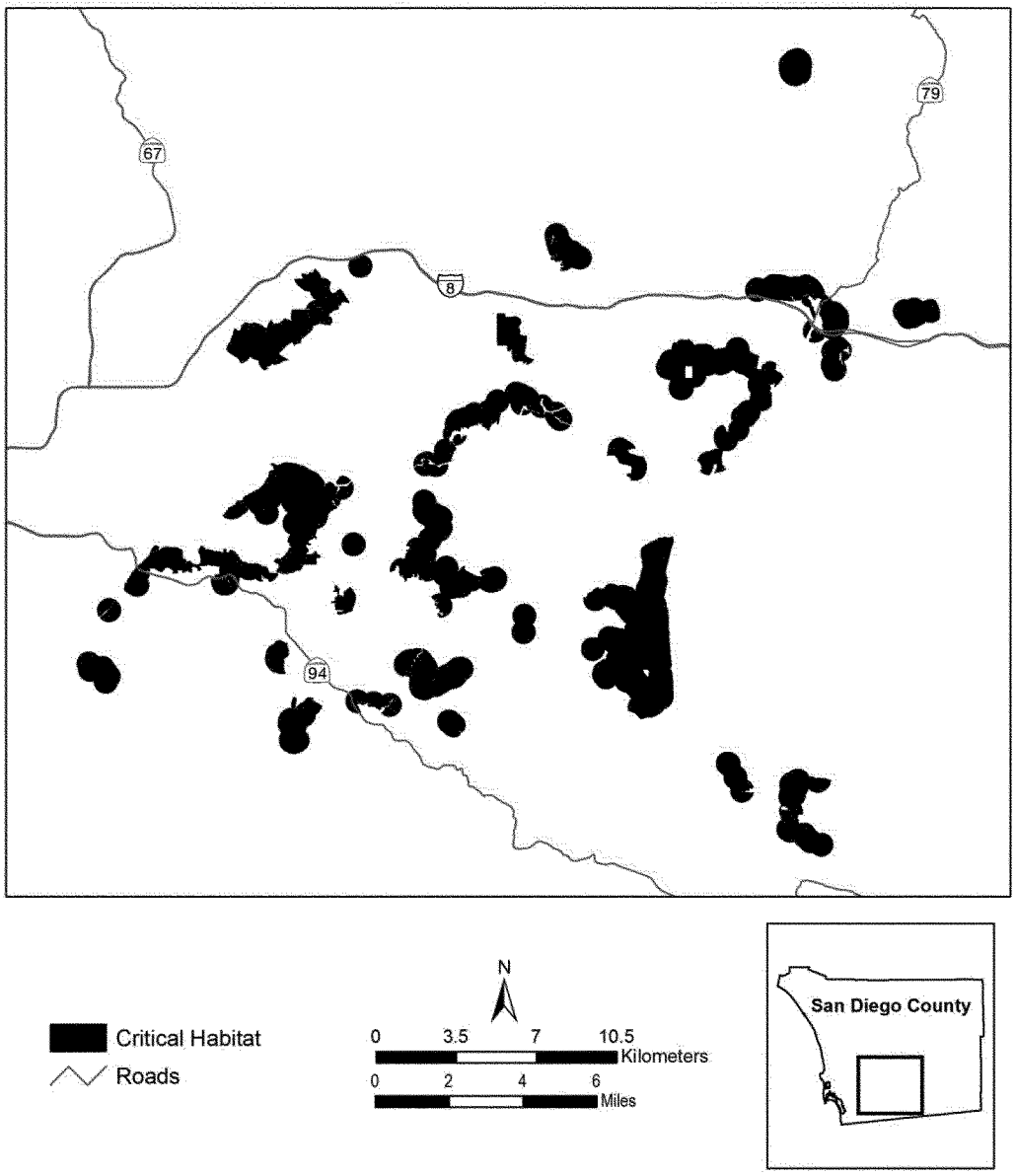


(8) Unit 3: Southeast San Diego, San Diego County, California.

(i) Unit 3 consists of 11,213 ha (27,709 ac) in San Diego County and is composed of lands owned by the Federal Government (4,213 ha (10,411 ac)), the State of California (2,074 ha (5,124 ac)), local jurisdictions (primarily the City and County of San Diego; 1,162 ha (2,871 ac)), and private or other ownership (3,765 ha (9,303 ac)).

(ii) *Note:* Map of Unit 3, Southeast San Diego, follows:

Hermes Copper Butterfly (*Lycaena hermes*) Critical Habitat
Unit 3
San Diego County, California



* * * * *

Dated: November 26, 2019.

Margaret E. Everson,

Principal Deputy Director, Exercising the Authority of the Director, for the U.S. Fish and Wildlife Service.

[FR Doc. 2019–28461 Filed 1–7–20; 8:45 am]

BILLING CODE 4333–15–P

FEDERAL REGISTER

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Part IV

Department of Treasury

Office of the Comptroller of the Currency

12 CFR Parts 3, 4, 11, et al.

Replica Motor Vehicles; Vehicle Identification Number (VIN) Requirements; Manufacturer Identification; Certification; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 4, 11, 16, 19, 23, 26, 32, 108, 112, 141, 160, 161, 163, and 192

[Docket ID OCC–2018–0041]

RIN 1557–AE21

Employment Contracts, Mutual to Stock Conversions, Technical Amendments

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC seeks comment on a proposed rule that would implement changes recommended in the March 2017 Economic Growth and Regulatory Paperwork Reduction Act report, including the repeal of the OCC's employment contract rule for Federal savings associations, and amend the OCC's fiduciary rules. The proposed rule also would amend the OCC's rule for conversions from mutual to stock form of a savings association to reduce burden, increase flexibility, and update cross-references. Additionally, the proposed rule would update cross-references to repealed and integrated rules, remove unnecessary definitions, and make technical changes to other OCC rules.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Employment Contracts, Mutual to Stock Conversions, Technical Amendments'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta.*

Regulations.gov Classic: go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2018–0041'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2018–0041'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877)-378–5457 (toll free) or (703) 454–9859 Monday-Friday, 9am-5pm ET or email *regulations@erulemakinghelpdesk.com.*

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0041'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2018–0041'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2018–0041'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9am–5pm ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Charlotte Bahin, Senior Advisor for Thrift Supervision, (202) 649–6281, Marta Stewart-Bates, Senior Attorney, (202) 649–5490, Chief Counsel's Office, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC continually reviews its regulations with the goal of updating them to reduce burden, increase flexibility, and provide clarity where possible. Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires that, at least once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and each appropriate Federal banking agency (Agencies) represented on the FFIEC (the OCC, the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (Federal Reserve Board))

conduct a review of their regulations.[1] The purpose of this review is to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Specifically, EGRPRA requires the Agencies to categorize and publish their regulations for comment, requesting commenters to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome, and eliminate unnecessary regulations to the extent that such action is appropriate. The Agencies completed their second EGRPRA review on March 30, 2017, and published a Report to Congress in the **Federal Register**.[2] The OCC seeks comment on a proposed rule that addresses recommendations from the March 2017 EGRPRA report, including the repeal of 12 CFR 163.39 (Federal savings association employment contracts) and possible amendments to 12 CFR 9.8 and 150.420 (fiduciary recordkeeping) and 9.10 and 150.320 (acceptable collateral for fiduciary funds awaiting investment or distribution).[3]

The proposed rule would amend part 192 (Federal savings association conversions from mutual to stock form) to reduce burden, increase flexibility, and replace cross-references to repealed 12 CFR 197 (Securities offerings rules for Federal savings associations) with cross-references to part 16 (Securities offering disclosure rules). The proposed amendments would clarify which forms and accounting standards savings associations must use in connection with a part 192 conversion. The proposed rule also would increase flexibility and reduce burden for Federal savings associations by encouraging electronic filing, electronic meetings, and notice by email and by reducing the number of copies of proxy materials that must be filed with the OCC.

Finally, the proposed rule contains various technical and clarifying amendments to parts 3, 4, 11, 16, 19, 23, 26, 32, 108, 112, 141, 160, 161, and 163.

II. Description of the Proposal

Employment Contracts for Federal Savings Associations.

Twelve CFR 163.39 sets forth requirements for Federal savings associations that enter into employment contracts with their officers and employees. Section 163.39(a) requires a Federal savings association's board of directors to approve all employment contracts with its officers and other employees and for those employment contracts to be in writing. Section 163.39(a) also prohibits a Federal savings association from entering into an employment contract with any of its officers or other employees if the employment contract would constitute an unsafe or unsound practice. Section 163.39(b) sets forth provisions that a Federal savings association must include in the contract, including the Federal savings association's right to terminate the employee at will. There are no similar requirements for national banks.

In March 2017, the FFIEC made its Joint Report to Congress under EGRPRA. One EGRPRA commenter recommended that the OCC eliminate § 163.39 in its entirety because the regulation only applies to Federal savings associations and there is no reason to distinguish Federal savings associations from national banks. Additionally, the commenter stated that it is unnecessary to require board approval of all employment contracts because there are comprehensive safety and soundness standards and interagency guidance on compensation. In the EGRPRA report, the OCC described the plan to limit the requirement for board approval of employment contracts to senior executive officers rather than all employees.

Instead of limiting the scope of § 163.39 in the proposed rule to senior executive officers, the OCC proposes to eliminate § 163.39 in its entirety. This approach would provide for consistent treatment of Federal savings associations and national banks with respect to employment contracts and compensation. The OCC believes that the current framework of rules and guidance on compensation and employment contracts, independent of § 163.39, is adequate to address and safeguard against unsafe and unsound employment and compensation practices for Federal savings associations. Federal savings associations, like national banks, are subject to the safety and soundness standards of 12 U.S.C. 1818; 12 CFR part 30, the prohibition on unsafe and unsound compensation in appendix A to part 30; the prompt corrective action restrictions on compensation to senior executive officers in 12 CFR 6.6(a)(3) and section 38 of the Federal Deposit Insurance Act (FDIA); and are informed by the 2010 Interagency Guidance on Sound Incentive Compensation Policies. Moreover, the boards of directors at national banks and Federal savings associations have oversight responsibilities for compensation, benefits arrangements, and employment contracts for their executive officers and employees.

The proposed rule also would reduce burden and increase flexibility for Federal savings associations by eliminating the requirement for written contracts that must be approved by the board of directors, although Federal savings associations would not be prohibited from voluntarily using those procedures for their employment contracts. It is a good corporate governance practice to have agreements relating to employment and compensation in writing and that the board, or committee thereof, review and approve those agreements. The proposed repeal of § 163.39 would not alter any other obligation with regard to employment agreements entered into by a Federal savings association. For example, if there are other laws and regulations that apply to Federal savings associations regarding employment contracts, the repeal of § 163.39 does not affect the application of those laws.

The OCC invites comment on whether the OCC should repeal all of § 163.39 or whether there are advantages to retaining the provisions of the rule that provide that an officer or employee has no right to receive compensation or other benefits after termination for cause. Do the safety and soundness standards in part 30, the prohibition on unsafe and unsound compensation in appendix A to part 30, the 2010 Interagency Guidance on Sound Incentive Compensation Policies, board of directors' oversight, and the prompt corrective action restrictions on compensation to senior executive officers provide appropriate safeguards regarding employment and compensation for the officers and employees of Federal savings associations? Would the repeal of § 163.39 reduce burden for Federal savings associations by removing the requirement that employment contracts be in writing and approved by the board? Would the repeal of § 163.39 reduce burden or provide flexibility for Federal savings associations for other reasons?

Fiduciary Recordkeeping.

Part 9 sets forth the standards that apply to the fiduciary activities of national banks. Part 150 sets forth the standards that apply to the fiduciary activities of Federal savings associations. Sections 9.8 and 150.420 contain requirements for the documentation and retention of records for fiduciary accounts at national banks and Federal savings associations, respectively. Sections 9.8(b) and

[1] Section 2222 of EGRPRA is codified at 12 U.S.C. 3311(b).

[2] 82 FR 15900 (March 30, 2017).

[3] See FFIEC Joint Report to Congress (March 2017), available at *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

150.420 require a national bank and Federal savings association to retain fiduciary account records for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account. An EGRPRA commenter recommended that the OCC amend 12 CFR 9.8(b) to require the retention of documents for a ''necessary period'' or to refer to applicable State law on the retention of documents, instead of the current three-year requirement. The commenter explained that three years may be inadequate to protect beneficiaries in some situations, such as a suit filed by a beneficiary against a predecessor trustee more than three years after an account is closed but before a State statute of limitations has run. In the EGRPRA report, the OCC agreed to consider aligning this retention requirement with State statutes of limitation.[4]

To address this comment, one option would be to amend §§ 9.8(b) and 150.420 to require a national bank or Federal savings association to retain fiduciary account records for the later of three years from the termination of an account, three years from the termination of any litigation relating to the account, or the minimum period required by applicable fiduciary State law. A concern with this approach is that it would impose additional burden on national banks and Federal savings associations if it increases the number of years an institution would be required to retain records and may also require institutions to monitor changes to states' fiduciary laws.

Another option would be to decline to amend §§ 9.8(b) and 150.420, after having considered the burden related to aligning this regulation's existing three-year documentation and record retention requirement with applicable State fiduciary law. The OCC notes that nothing in §§ 9.8(b) or 150.420 prohibits financial institutions from holding fiduciary account records longer than the three-year period in order to comply with State law. The OCC invites comment on these options for §§ 9.8(b) and 150.420.

Acceptable Collateral for Self-Deposited Trust Funds.

Under 12 U.S.C. 92a(d) and 12 CFR 9.10(b)(1), a national bank may deposit trust funds awaiting investment or distribution in the commercial, savings, or other department of the bank, unless prohibited by applicable law. To the extent the funds are not insured by the Federal Deposit Insurance Corporation (FDIC), the national bank must set aside U.S. bonds or other securities and assets designated by the OCC as collateral for the deposit. Sections 9.10(b)(2) and 150.320 list acceptable collateral types for national banks and Federal savings associations, respectively. During the notice and comment period for the EGRPRA report, one commenter suggested an expansion of the § 9.10(b)(2) list of acceptable collateral for fiduciary funds to allow for other instruments that provide similar protection from loss. In response to this comment, the OCC is contemplating expanding the list of acceptable collateral.

The OCC requests comment on whether to expand the list of acceptable collateral in §§ 9.10(b)(2) and 150.320 to include additional types of instruments. What other instruments should qualify as acceptable collateral and why? Do these instruments provide sufficient protection from loss to qualify as acceptable collateral under § 9.10(b)(2) and 150.320?

Amendments to securities offering disclosure rules.

Twelve CFR 16.8 provides an exemption from the registration and prospectus requirements for offers and sales of national bank- or Federal savings association-issued securities that satisfy the requirements of SEC Regulation A (17 CFR part 230) (General rules and regulations, Securities Act of 1933). The SEC's Form 1–A, the offering statement required by Regulation A, requires audited financial statements for certain offerings. However, a national bank or Federal savings association in organization does not have an operating history and cannot generate detailed financial statements that require an audit. The audited financial statements of a national bank or Federal savings association in organization typically do not add materially to the information already available to the OCC through the chartering process. Therefore, the OCC is proposing to revise § 16.15(e) to clarify that a national bank or Federal savings association in organization is not required to include audited financial statements as part of its offering statement for the issuance of securities pursuant to § 16.8, unless the OCC determines otherwise.

Twelve CFR 16.17 sets forth the filing requirements and inspection of documents for securities offerings. The OCC is proposing to add a sentence to § 16.17(b) to clarify that all registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to 12 CFR part 192 must be filed with the appropriate OCC Licensing office and not the Securities and Corporate Practices Division of the OCC.

Removal, suspension, or debarment of independent public accountants.

Section 36(g)(4)(A) of the FDIA (12 U.S.C. 1831m(g)(4)(A)) provides that the FDIC or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by section 36. The OCC's implementing rules for insured national banks and insured Federal branches of foreign banks are set forth in subpart P to 12 CFR part 19. The former OTS implemented section 36(g)(4) with respect to insured savings associations at 12 CFR 513.8, and these rules are substantively identical to subpart P. However, when republishing the former OTS rules as OCC rules pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the OCC inadvertently did not republish 12 CFR 513.8 nor amend subpart P of part 19 to apply to Federal savings associations. This proposed amendment would correct that error by amending subpart P to also apply to insured Federal savings associations.

The OCC also proposes clarifying amendments to subpart P. First, the proposal would make a clarifying change to § 19.243(b)(2), which provides that hearings will be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 19, subpart A), by adding a cross-reference to the specific rules and limitations for subpart P hearings set forth in § 19.243(c)(4). Second, the OCC proposes a clarifying change to § 19.243(c)(3), which currently states that an accountant or firm immediately suspended from performing audit services may, within 10 calendar days after service of the notice of immediate suspension, file a stay of the immediate suspension with the OCC, and that if no petition is filed, the immediate suspension will remain in effect. The proposed amendment would clarify that if the accountant or firm has not filed a petition within 10 calendar days, they have waived their right to file a petition. The proposal also would add a cross-reference to § 19.243(c)(2) in § 19.243(c)(3), which sets forth the rules for when the OCC may lift a suspension. Third, the OCC proposes to amend § 19.243(c)(4), which provides that upon request of a stay petition, the Comptroller must designate a presiding officer who must fix a place and time for the hearing that is not more than 10 calendar days after receipt of

[4] EGRPRA Joint Report to Congress at p. 71, available at *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

the petition, unless extended by the OCC at the request of petitioner. The proposed amendment would provide that a later hearing date may occur only if permitted by the OCC, and, therefore, the request for an extension would not receive automatic approval. This change would allow the OCC some discretion as to how far into the future a hearing may take place. Fourth, the proposal would clarify that subpart P to part 19 applies only to insured Federal branches by adding ''insured Federal branches of foreign banks'' where appropriate and removing references to Federal ''agencies.'' Section 36(g)(4) of the FDIA only applies to insured depository institutions and no insured Federal agencies exist. Finally, the proposed rule would replace the word ''shall'' with ''must,'' ''will,'' or other appropriate language, which is the recommended drafting style of the **Federal Register**.

Definitions of small business loans and small farm loans in lending limits rules.

The OCC is proposing revised definitions of ''small business loans'' and ''small farm loans or extensions of credit'' in 12 CFR 32.2(cc) and (dd) of the lending limits rule to align the definitions with the language of the Call Report instructions. The revisions to § 32.2(dd) will clarify that the $500,000 limit contained within the ''loans to small farms'' definition in the Call Report instructions does not apply for purposes of the supplemental lending limit program.

Savings Association Conversions from Mutual to Stock Form.

The OCC is proposing amendments to 12 CFR part 192, which governs how a savings association may convert from mutual to stock form of ownership under standard and voluntary supervisory conversions. The proposed amendments would reduce burden and increase flexibility for savings associations and would make a number of technical and clarifying amendments. Unless otherwise noted, part 192 applies to both Federal and State savings associations.

Forms. The proposed rule would amend § 192.5(b) to clarify that a savings association must use the forms prescribed under part 192 and 12 CFR part 16 (the securities offering disclosure rules for Federal savings associations and national banks), including the applicable form for a registration statement under § 16.15. Use of the registration forms required by § 16.15 is the standard industry practice, and the proposed amendment is intended to clarify the use of such forms and, therefore, generally would not increase burden on savings associations. The OCC also is proposing to clarify the accounting guidance and requirements that should be used in the preparation and filing of these forms, financial statements, and related financial data under part 192. The accounting guidance and requirements which applied to part 192 conversions and proxy materials were repealed in 2017.[5] New § 192.5(d) would provide that the institution must prepare and present the form and content of financial statements and related financial data in a filing under part 192 in accordance with U.S. Generally Accepted Accounting Principles (GAAP), pursuant to 12 U.S.C. 1463(b)(2)(A), and other applicable accounting guidance and requirements as specified by the OCC in the relevant mutual to stock conversion forms required under § 192.5(b). The OCC notes that it is currently revising its forms under part 192, including Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form), to conform with these proposed amendments to part 192.

The proposed rule also would make a technical change to this section by defining ''OCC'' as the Office of the Comptroller of the Currency in the text of § 192.5(b).

Electronic filing and computation of time. The OCC is proposing to add a new § 192.7 to encourage the electronic filing of all part 192 applications, notices, or other documents through *http://www.banknet.gov,* consistent with other licensing-related filings.[6] The OCC also is proposing a new § 192.8 to clarify the computation of time under part 192 when the last day of a time period falls on a Saturday, Sunday, or Federal holiday. Specifically, in computing the time period, the OCC would exclude the day of the act or event (*e.g.,* the date an application is received by the OCC) from when the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period would run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. This amendment would make the computation of time under part 192 consistent with the computation of time rule that applies to corporate activities and transactions pursuant to 12 CFR part 5.[7]

Definitions. In § 192.25, the OCC is proposing to add definitions of ''community offering,'' ''offering circular,'' and ''voluntary supervisory conversion,'' as these terms are currently undefined in part 192. The proposal defines ''community offering'' as the offering to sell to members of the general public in the savings association's community the securities not subscribed for in the subscription offering and provides that the community offering may occur concurrently with the subscription offering and any syndicated community offering or upon conclusion of the subscription offering. The proposal defines ''offering circular'' as the securities offering materials for the conversion. The proposal defines ''voluntary supervisory conversion'' as a mutual to stock conversion for a savings association that is unable to complete a standard mutual to stock conversion under subpart A to part 192 and that meets the eligibility requirements of § 192.625.

The proposed rule would also add a number of definitions to § 192.25 that are currently included in 12 CFR part 141 (Definition for regulations affecting Federal savings associations), and 12 CFR part 161 (Definitions for regulations affecting all savings associations). Although the definitions in parts 141 and 161 apply to part 192, the OCC believes that it is more appropriate to include these definitions in part 192 than in a separate rule. Specifically, the proposal would add the definition of: (1) ''appropriate Federal banking agency'' from § 161.7, which is defined as in section 3 of the FDIA (12 U.S.C. 1813(q)); (2) ''demand accounts'' from § 161.16, which means non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand; (3) ''Federal savings association'' from § 141.11, which means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464); (4) ''savings account'' from § 161.42, which means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account; and (5) ''savings association'' from § 161.43, which means a savings association as defined in section 3 of the FDIA (12 U.S.C. 1813(b)(1)). In addition, the proposed rule would add the definition of ''state'' to mean any State of the United States, the District of Columbia, any territory of the United

[5] *See* 82 FR 8082 (January 23, 2017).

[6] *See* 12 CFR 5.2(d).

[7] *See* 12 CFR 5.12.

States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands. This definition would be the same as the definition in § 161.50 as amended by this proposed rule, discussed below.

Finally, the proposed rule would add the definition of ''state savings association,'' defined to have the same definition as in section 3 of the FDIA (12 U.S.C. 1813(b)(3)). This definition is not included in parts 141 or 161. However, the OCC believes it would be helpful to define this term in part 192 because the proposed rule adds the definitions of other related terms.

Prior to conversion. Twelve CFR 192.100 (Preparing for a conversion) requires that a savings association's board, or subcommittee of the board, meet with the appropriate Federal banking agency before adopting its plan of conversion. The OCC is proposing to increase flexibility by allowing in person or electronic board meetings for purposes of § 192.100. The OCC also proposes to amend § 192.115 (Review of business plan by the appropriate Federal banking agency) to clarify that the business plan must be filed as a confidential exhibit to Form AC (Application for Conversion).

Plan of conversion. Twelve CFR 192.135 (Notifying members of plan of conversion) requires that a savings association promptly notify its members that its board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in its home office and its branch offices. The savings association must make this notice by mailing a letter to each member or by publishing a notice in the local newspaper in every local community where the savings association has an office. The savings association may also issue a press release. The OCC proposes to increase flexibility and reduce burden by allowing a savings association to email a letter with a notification of the plan of conversion instead of mailing a letter to its members who receive electronic communication. The proposal also would allow a savings association to make the press release available on its website.

Rejection of application for conversion. Twelve CFR 192.150 (Information required in an application for conversion) provides that the appropriate Federal banking agency will not accept for filing, and will return, any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses. The OCC proposes to amend § 192.150(b) to permit, rather than require, the appropriate Federal banking agency to return any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses. A materially deficient or substantially incomplete application may not always be returned, especially if it is submitted electronically as a PDF document or if there are supervisory or enforcement reasons to retain the application.

Notice of filing of application and comment process. Twelve CFR 192.185 sets forth the process for commenters to submit public comments on an application for conversion. Section 192.185 currently requires a commenter to file the original and one copy of any comments on an application for conversion with the appropriate OCC licensing office. The OCC proposes to amend § 192.185 to require the commenter to file only one copy of the comment instead of both an original and copy of any comments with the appropriate OCC licensing office.

Proxy solicitation. Twelve CFR 192.275 requires a savings association to file seven copies of its revised proxy materials and related documents as an amendment to its application for conversion. The OCC proposes to revise § 192.275 to reduce burden for savings associations by requiring the filing of only one copy of these materials with the OCC. The OCC also proposes to amend § 192.275(c) to remove the requirement that four copies of the revised proxy solicitation materials be marked to clearly indicate the changes from the prior filing. Instead, the savings association would need to file only one copy of the revised proxy solicitation materials that clearly indicates the changes.

Offering circular requirements. Twelve CFR 192.300 currently requires that a Federal savings association file its offering circular with the Securities and Corporate Practices Division of the OCC and that a State savings association file its offering circular with the appropriate FDIC region in compliance with part 192 and Form OC, and, where applicable, part 197. The OCC proposes to amend § 192.300 to replace the cross-reference to repealed part 197 with a more specific cross-reference to the applicable SEC registration statement form required under 12 CFR 16.15. Additionally, the OCC is clarifying that a Federal savings association must file its offering circular with the appropriate OCC Licensing office, not the Securities and Corporate Practices Division.

As a corresponding change, the OCC is proposing to amend § 16.17 (Filing requirements and inspection of documents) to clarify that all registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to part 192 must be filed with the appropriate OCC Licensing office.

The proposal would amend §§ 192.305(b) and (c), 192.310(a), and 192.310(b) to clarify that the SEC, not the ''appropriate Federal banking agency,'' declares Federal savings association holding company offering circulars effective in mutual to stock conversions under part 192.

Offers and sales of stock. Section 192.340(d) states that any person who is found to have violated the restrictions in § 192.340(b) may face prosecution or other legal action. To clarify and make consistent the actions that may result from engaging in any of the prohibited activities listed in all of § 192.340, the OCC is proposing to amend § 192.340(d) to state that persons engaged in any of the activities listed in § 192.340(a) and all of § 192.340(b) may be subject to enforcement actions, civil money penalties, or criminal prosecution.

Priority of accounts. Twelve CFR 192.430 describes the requirements for charter amendments, charter cancellations, and new charters that apply to a savings association conducting a conversion under part 192. The OCC proposes to add a new paragraph in § 192.430 to require that, in any conversion pursuant to this section that involves a mutual holding company, the charter of each resulting subsidiary savings association of the holding company must contain a provision, specified in § 192.430(d), indicating that the claims of depositors of the savings association have the same priority as the claims of general creditors of the savings association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association. The former OTS regulation for mutual holding companies, 12 CFR 575.9(b) (2011), originally required the inclusion of a similar priority of accounts provision in the charters of subsidiary savings associations of mutual holding companies, regardless of whether the subsidiary had a State or Federal charter. When promulgating 12 CFR 575.9(b), the OTS stated that the purpose of the priority of accounts provision was to ensure that claims of depositors of the insured institution were not relegated to a lower priority due to the fact that the deposits confer

membership rights in the association's mutual holding company.[8] However, after the enactment of the Dodd-Frank Act, which transferred the holding company regulations of the former OTS to the Federal Reserve Board,[9] the Federal Reserve Board republished 12 CFR 575.9(b) as a Federal Reserve Board regulation without including this charter requirement because it related to savings associations and not mutual holding companies.[10] The OCC believes that the priority of accounts provision in the former OTS regulation protected member rights, and the proposed amendment reinstates this charter requirement for all savings association subsidiaries of a mutual holding company.[11] However, notwithstanding this provision, if a savings association is placed in conservatorship or receivership, its assets would be distributed in accordance with the FDIA, 12 U.S.C. 1811, *et seq.,* and the depositor preference provisions of section 11(d)(11) of the FDIA, 12 U.S.C. 1821(d)(11).

Liquidation account. Twelve CFR 192.460 sets forth how a savings association determines the initial balances of liquidation sub-accounts. The OCC proposes to revise § 192.460(a)(1) to provide that a savings association must calculate the initial liquidation sub-account balance of each eligible and supplemental eligible account holder at the time of the conversion. Because the current § 192.460 does not explain when a savings association must perform the calculation, this amendment would clarify that the initial liquidation sub-accounts must be calculated at the time of the conversion.

Section 192.460(a)(1) provides the calculation for a savings account held by an eligible account holder, which is to multiply the initial balance of the liquidation account by a fraction that has as its numerator the qualifying deposit in the savings account expressed in dollars on the eligibility record date and as its denominator the total qualifying deposits of all eligible account holders on the eligibility record date. Section 192.460(a)(2) provides the same calculation for a savings account held by a supplemental eligible account holder, except that the eligibility record date is replaced with the supplemental eligibility record date. However, the denominator used for the calculation of the initial sub-account balances for both eligible account holders and supplemental eligible account holders is incorrect because the denominator in the current regulation does not include both the deposits of eligible account holders and the deposits of the supplemental eligible account holders. This results in both eligible account holders and supplemental account holders having a greater claim than their appropriate portion of the liquidation account.

The proposed amendments would correct this error by inserting language in § 192.460 similar to that in the previous OTS regulation, renumbering the § 192.460(a)(1) and (2) calculations to be in § 192.460(a)(2) and (3), making the denominator in the fractions in § 192.460(a)(2) and (3) the total sub-account balances of eligible account holders *and* supplemental eligible account holders as calculated in proposed revised § 192.460(a)(5). As proposed, § 192.460(a)(5) provides that the denominator for calculating the initial sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in § 192.460(a)(2) through (4). These proposed changes would make clear that the eligible account holders and the supplemental eligible account holders would be allocated their proportionate shares of the liquidation account (the association's net worth, as defined in 12 CFR 192.455).

In addition, the 2002 OTS amendments to the liquidation account provision inadvertently removed language that addressed savings accounts that increased in value between the eligible record date and the supplemental eligibility record date.[12] As a result, the current regulation does not address accounts that increased in size between the two dates. Therefore, the OCC proposes to add language in § 192.460(a)(4) providing that for a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating the sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The initial sub-account is calculated by multiplying the liquidation account balance by the following fraction: The numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date and the denominator is the calculation in proposed added § 192.460(a)(5).

The OCC invites comment on whether the proposed changes to § 192.460 help to clarify the computation of liquidation sub-account balances. Do commenters have any alternative methods for clarifying these computations?

Contributions to charitable organizations. Twelve CFR 192.550 permits a savings association to contribute some of its conversion shares or proceeds to a charitable organization, provided certain requirements are met. One of these requirements, set forth at 12 CFR 192.575(a)(3), is that the charitable organization must annually provide the appropriate Federal banking agency with a copy of the annual report that it submitted to the IRS. The OCC proposes to remove this requirement because is often not used and, if necessary, the OCC may obtain it from the IRS or request it directly from the charitable organization.

Prohibition on self-dealing for charitable organizations. 12 CFR 192.575 (Other requirements for charitable organizations) provides that a charitable organization may not engage in self-dealing. The OCC proposes to amend § 192.575(a) to provide that a charitable organization *must* not engage in self-dealing, in order to emphasize the prohibition on self-dealing. The OCC also proposes to move the requirement that the charitable organization comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code to a new paragraph (a)(5) in § 192.575.

Voluntary supervisory conversions. Section 192.600 describes the purposes of subpart B to part 192, which governs voluntary supervisory mutual to stock conversions. A voluntary supervisory conversion is a transaction to recapitalize an eligible mutual savings association where the association's members have no rights of approval or participation and no rights to the

[8] *See* 56 FR 1126, 1133 (January 11, 1991).

[9] Section 312(b)(1), Public Law 111–203. 121 Stat. 1376 (July 21, 2010).

[10] *See* 76 FR 56508, 56523 (September 13, 2011) (''[This section] contains the provisions from section 575.9 concerning charters, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.'') *See also,* 12 CFR 239.13.

[11] Twelve CFR 5.21 requires all Federal mutual savings association charters to include this priority of accounts provision.

[12] *See* 67 FR 52009 (August 9, 2002). The pre-2002 OTS regulation at 12 CFR 563b.3(f)(4) stated ''The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings association on such dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such saving accounts on such record dates.''

continuance of any legal or beneficial ownership interest in the converted association pursuant to a plan of voluntary supervisory conversion approved by a majority of the board of directors of the converting savings association. The OCC proposes new language in § 192.600 to clarify that a voluntary supervisory mutual to stock conversion would be appropriate when the appropriate Federal banking agency and, in the case of a State-chartered savings association, the appropriate State banking regulator, determines that the savings association has demonstrated that it is unable to complete a standard mutual to stock conversion under subpart A to part 192.

Section 192.650 sets forth the information required to be included in a plan of voluntary supervisory conversion. Among other things, current § 192.650 requires the savings association's name and address; the name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares. The OCC proposes to remove the personal identifying information from the plan of voluntary supervisory conversion (*i.e.,* the name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares) as the OCC does not believe the inclusion of such information is necessary or appropriate. The plan is a publicly available document and the OCC believes that requiring this information raises privacy concerns. The OCC also proposes to amend § 192.650 to remove from the plan of voluntary supervisory conversion the title, per-unit par value, number, and per-unit and aggregate offering price of shares that the savings association will issue; and the number and percentage of shares that each investor will purchase. The OCC does not find this information to be necessary in the plan of voluntary supervisory conversion. In addition, the OCC proposes to move the information required in the plan by § 192.650(e) (the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase) to the application for voluntary supervisory conversion in § 192.660(d)(5). The OCC believes this information more appropriately belongs in the application, rather than the plan, because the OCC reviews these proposed purchases during the application review process and because the proposed purchases may change during the review of the application. As a result, under revised § 192.650, a plan for voluntary supervisory conversion would be required to contain a complete description of the proposed voluntary supervisory conversion that also describes plans for any liquidation account and certified copies of all resolutions relating to the conversion adopted by the savings association's board of directors.

Twelve CFR 192.660 specifies the information a savings association must include in its application for voluntary supervisory conversion. To assist in its review of these applications, the proposal would require the application to contain some additional information. As described in the preceding paragraph, the proposal would relocate the information contained in current § 192.650(e) (the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase) to § 192.660(d)(5). The proposal would add a new § 192.660(e)(3) to require that the voluntary supervisory conversion application include any securities offering circular and other securities disclosure materials that the savings association has prepared to use in connection with the proposed voluntary supervisory conversion. In addition, the proposal would require that the application include a statement indicating the role in the successor savings association each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion. The OCC finds that information on the role that each director, officer, affiliate, and associate will have after the conversion to be necessary for consideration of the decision factors in § 192.670(c) and (d).[13] Finally, the proposal would require as part of this application any other information requested by the OCC, as authorized by law.

Federal Home Loan Bank (FHLB) membership. The proposal would remove the references to FHLB membership in §§ 192.135(b)(12) and 192.660(g)(4) because Federal savings associations are no longer required to be members of the FHLB System.[14] The existing provisions of part 192 that reference FHLB membership were drafted when FHLB System membership was required for Federal savings associations. Whether the Federal savings association retains FHLB membership has no impact on the OCC's consideration of an application for a voluntary supervisory conversion in § 192.660(g)(4), nor would it be of interest to members as part of the notice in § 192.135(b)(12).

Technical amendments. The proposal would make several global technical changes to part 192. First, the proposed rule would change the text of part 192 from the OTS question and answer format to the standard format of the national bank rules in 12 CFR parts 1 through 50. Second, the proposed rule would add paragraph headings in compliance with **Federal Register** guidelines. Third, the proposed rule would clarify that calendar days are used for computations of time under part 192. Finally, the proposed rule replaces cross-references to the repealed 12 CFR part 197 (2017) (Securities offering disclosure rules) with cross-references to the OCC rule that now applies to Federal savings associations, 12 CFR part 16.

Furthermore, the proposed rule would make a number of technical changes to specific sections of part 192. First, the proposed rule would amend § 192.200 to remove the cross-reference to the FDIC's repealed capital rules in subpart Z to part 390. In addition, the proposed rule would remove from § 192.520(b) the cross-reference to part 167 and replace it with a cross-reference to integrated part 3. Finally, the proposed rule would amend § 192.660 by replacing an outdated cross-reference to the Thrift Financial Report with the Call Report.

Miscellaneous technical amendments. The proposal would amend subpart J to 12 CFR part 3 to correct an out-of-date cross-reference. Currently, at 12 CFR 3.601(b), OCC regulations provide, in part, that a capital directive (*i.e.,* an order issued by the OCC to a national bank or Federal savings association to take certain actions to achieve and/or maintain a specified capital ratio) is enforceable in the same manner and to the same extent as a final cease and desist order as defined under 12 U.S.C. 1818(k). Because section 1818(k) has been repealed, the OCC is amending this provision to provide instead that a capital directive is enforceable under section 1818(i) in the same manner and to the same extent as an effective and

[13] Under § 192.670(c) and (d), the appropriate Federal banking agency will generally approve a voluntary supervisory conversion application unless it determines the savings association or its acquiror, or the controlling parties or directors and officers of the savings association or its acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion, or the savings association fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control.

[14] In 1999, HOLA was amended to no longer require Federal savings associations to become FHLB members. *See* 12 U.S.C. 1464(f); Public Law 106–102 section 603 (1999).

outstanding cease and desist order issued pursuant to section 1818(b) that has become final. This revision is consistent with the OCC's existing authority as set forth under the International Lending Supervision Act at 12 U.S.C. 3907(b) and is not intended to have any substantive impact on the procedures for the enforcement of a capital directive.

The proposal would amend 12 CFR 4.14(a)(9) to remove cross-references to 12 CFR parts 194 (2017) and 197, which have been repealed. The requirements in former parts 194 and 197 have been added to parts 11 and 16, respectively, and the cross-references to those parts have been added to § 4.14(a)(9) accordingly.

The proposal would amend 12 CFR 4.34(c)(2), 4.37(a)(2)(ii), 108.6(d), 108.7(c) and (d), and 112.4 to change ''the OCC's Enforcement and Compliance Division'' to ''the OCC's Law Department.'' Similarly, the proposal would amend 12 CFR 11.3(a), 16.17(a) and (f), and 16.30(a) by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and replacing it with ''the OCC's Law Department.''

The proposal would amend 12 CFR 23.6 to change an incorrect singular subject and verb to the correct plural subject and verb.

The proposal would amend 12 CFR 26.6(b)(4) to correct a cross-reference. The cross-reference to § 5.51(c)(6) is incorrect; the correct cross-reference is § 5.51(c)(7).

The proposal also removes a number of definitions in the OCC's rules for Federal and State savings associations that are no longer necessary. These definitions are currently included in 12 CFR part 141 (Definition for regulations affecting Federal savings associations) and 12 CFR part 161 (Definitions for regulations affecting all savings associations). These definitions apply only to the OCC's rules in parts 100 through 195, which the former OTS originally issued and the OCC republished as OCC rules pursuant to the Dodd-Frank Act. Because the OCC has integrated and amended a number of these rules, many of the terms defined in parts 141 and 161 are no longer used in parts 100 through 195 and, therefore, these definitions are no longer necessary. Specifically, the OCC proposes to remove the definitions of ''Act,'' ''debit card,'' ''improved nonresidential real estate,'' ''improved residential real estate,'' ''interim Federal savings association,'' ''interim state savings association,'' ''unimproved real estate,'' ''withdrawal value of a savings account,'' ''accountholder,'' ''audit period,'' ''land loan,'' ''low-rent housing,'' ''Money Market Deposit Accounts,'' ''Negotiable Order of Withdrawal (NOW) accounts,'' '' nonresidential construction loan,'' ''nonwithdrawable account,'' ''parent company,'' ''principal office,'' ''service corporation,'' and ''subordinated debt security.''

The OCC also proposes to amend the definition of ''state'' in § 161.50 so that it is identical to the definition of this term in section 3 of the FDIA (12 U.S.C. 1813(a)(3)). Specifically, the proposed definition would include any territory of the United States, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, in addition to a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

The proposal would amend 12 CFR 160.60(b)(3) to remove a cross-reference to the repealed § 163.43 and replace with § 31.2. The proposed rule also would amend parts 160 and 163 to define ''OCC'' as the Office of the Comptroller of the Currency in the text of §§ 160.1 and 163.47, and to define ''FDIC'' as the Federal Deposit Insurance Corporation in § 163.80.

Finally, the OCC proposes to update the authority citation for 12 CFR 195.11(a) to include a citation to section 312 of the Dodd-Frank Act (12 U.S.C. 5412(b)(2)(B)).

III. Request for Comments

The OCC encourages comment on any aspect of this proposal and especially on those issues noted in this preamble.

IV. Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total revenue of $41.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 886 small entities, of which 258 are Federal savings associations.[15] The proposed rule would place one new mandate on Federal savings associations to submit additional information to the OCC as part of their voluntary supervisory conversion applications to convert from mutual to stock form pursuant to 12 CFR 192.660. Because the additional reporting requirement for Federal savings associations that are converting from mutual to stock form through a voluntary supervisory conversion would likely require minimal additional effort relative to the overall conversion application, the additional cost of collecting this additional information would likely be *de minimis.* Therefore, the OCC certifies that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Unfunded Mandates Reform Act of 1995

Consistent with the Unfunded Mandates Reform Act, the OCC's review considers whether the mandates imposed by the proposed rule may result in an expenditure of $100 million or more (adjusted for inflation) by state, local, and tribal governments, or by the private sector, in any one year. The proposed rule would place one new mandate on Federal savings associations to submit additional information to the OCC as part of their voluntary supervisory conversion applications to convert from mutual to stock form pursuant to 12 CFR 192.660. This additional requirement for Federal savings associations to submit additional information to the OCC would likely result in a *de minimis* increase in costs. Therefore, we conclude that the proposed rule would not result in the expenditure of $100 million or more annually (adjusted for inflation) by state, local, and tribal governments, or by the private sector.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995,[16] the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC has submitted the information

[15] 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 we should classify an OCC-supervised institution a small entity. The OCC uses December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[16] 44 U.S.C. 3501 *et seq.*

collection requirements imposed by this proposal to OMB for review.

The proposal would add a new § 192.660(e)(3) to require that the voluntary supervisory conversion application include a statement indicating the role in the successor savings association each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion. This burden for this requirement will be added to the existing information collection for OCC's Licensing Manual.

Title: Voluntary Supervisory Conversion Application: Successor Savings Association Roles.

OMB Control No.: 1557–NEW.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Burden per Respondent: 2 hours.

Estimated Total Annual Burden: 2 hours.

Please submit comments using the instructions in the **ADDRESSES** section of this document. Comments are invited on:

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

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

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

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

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

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, banking, Federal Reserve System, Investments, National banks.

12 CFR Part 4

Administrative practice and procedure, Freedom of Information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 11

Business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 19

Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 23

Banks, Banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 26

Antitrust, Holding companies, National banks.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 108

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 112

Administrative practice and procedure, Investigations.

12 CFR Part 141

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 161

Administrative practice and procedure, Savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of the Comptroller of the Currency proposes to amend 12 CFR chapter I 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).

§ 3.2 [Amended]

■ 2. Section 3.2 is amended in the definition of *Qualifying master netting agreement* in paragraph (2)(i)(A) by removing ''; or'' and adding a period in its place.

■ 3. Section 3.601 is amended by revising paragraph (b) to read as follows:

§ 3.601 Purpose and Scope.

* * * * *

(b) A directive issued under this rule, including a plan submitted under a directive, is enforceable under the provisions of 12 U.S.C. 1818(i) in the same manner and to the same extent as an effective and outstanding cease and desist order issued pursuant to 12 U.S.C. 1818(b) that has become final. Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

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

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.,* 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

§ 4.14 [Amended]

■ 5. Section 4.14 is amended in paragraph (a)(9) by removing the phrase ''parts 11, 16, 194 or 197 of this chapter'' and adding in its place ''part 11 or 16 of this chapter''.

§ 4.34 [Amended]

■ 6. Section 4.34 is amended in paragraph (c)(2) by removing the phrase ''and Compliance''.

§ 4.37 [Amended]

■ 7. Section 4.37 is amended in paragraph (a)(2)(ii) by removing the phrase ''and Compliance''.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 8. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464 and 5412(b)(2)(B); 15 U.S.C. 78j–1(m), 78m, 78n, 78p, 78w, 78l, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

§ 11.3 [Amended]

■ 9. Section 11.3 is amended:
■ a. In paragraph (a)(1)(i) and the second sentence of paragraph (a)(1)(ii) by removing the phrase ''the Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department in its place; and
■ b. In the first sentence of paragraph (a)(1)(ii) by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 10. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 1462a, 1463, 1464, and 5412(b)(2)(B).

§ 16.15 [Amended]

■ 11. Section 16.15 is amended in paragraph (e) by adding the phrase ''or as part of its offering statement for the offer and sale of its securities pursuant to 12 CFR 16.8,'' after ''registration statement for the offer and sale of its securities,''.
■ 12. Section 16.17 is amended by:
■ a. Removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place in paragraph (a);
■ b. Adding a sentence at the end of paragraph (b); and
■ c. Removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place in the first and second sentences of paragraph (f).

The addition reads as follows:

§ 16.17 Filing requirements and inspection of documents.

* * * * *

(b) * * * All registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to 12 CFR part 192 must be filed with the appropriate OCC Licensing office at *http://www.banknet.gov/.*

* * * * *

§ 16.30 [Amended]

■ 13. Section 16.30 is amended in paragraph (a) by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place.

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 14. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 481, 504, 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108(a), 3110, 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

§ 19.241 [Amended]

■ 15. Section 19.241 is amended in paragraph (a) by:
■ a. Removing the phrase ''Federal Deposit Insurance Act (FDI Act)'' and adding in its place ''FDIA'';
■ b. Removing the phrase ''section 36 of the FDI Act'' and adding in its place ''section 36 of the FDIA''; and
■ c. Removing the phrase ''insured national banks and Federal branches and agencies of foreign banks'' and adding in its place the phrase ''insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks''.

§ 19.242 [Amended]

■ 16. Section 19.242 is amended by:
■ a. Removing the word ''shall'' in the introductory text; and
■ b. Adding the phrase ''(12 U.S.C. 1831m)'' after the phrase ''section 36 of the FDIA'' in paragraph (b).
■ 17. Section 19.243 is amended by:
■ a. Adding ''(12 U.S.C. 1831m)'' after ''section 36 of the FDIA'' in paragraph (a)(1) introductory text;
■ b. Adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks'' in paragraph (a)(1) introductory text;
■ c. Removing the phrase ''particular national bank or class of national banks'' and adding in its place the phrase ''particular insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank, or class of insured national banks, insured Federal savings associations, or insured Federal branches of foreign banks'' in paragraph (a)(3);
■ d. In paragraph (b)(2):
■ i. Removing the word ''shall'' and adding in its place the word ''will''; and
■ ii. Adding the phrase '', subject to the limitations in § 19.243(c)(4)'' at the end of the second sentence;
■ e. Adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks'' in paragraph (c)(1) introductory text;
■ f. Revising the last sentence of paragraph (c)(3);
■ g. In paragraph (c)(4):
■ i. Removing the phrase ''who shall fix a place'' in the first sentence and adding in its place the phrase ''who will fix a place'';
■ ii. Removing the phrase ''unless extended'' in the first sentence and adding in its place the phrase ''unless further time is allowed by the presiding officer'';
■ iii. Removing the phrase ''there shall be no discovery'' in the last sentence and adding in its place the phrase ''there will be no discovery''; and
■ iv. Removing the phrase ''of this part shall apply'' and adding in its place ''of this part apply'';
■ h. Removing the word ''shall'' in the first sentence and adding in its place the word ''will'' in paragraph (c)(5); and
■ i. Removing the word ''shall'' each time that it appears and adding in its place the word ''will'' in paragraph (c)(6).

The revision reads as follows:

§ 19.243 Removal, suspension, or debarment.

* * * * *

(c) * * *

(3) * * * If no petition is filed within 10 calendar days, the right to a petition is waived and the immediate suspension remains in effect pursuant to paragraph (c)(2).

* * * * *

■ 18. Section 19.244 is amended by:
■ a. Revising the section heading;
■ b. Adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks'' in paragraph (a) introductory text;
■ b. In paragraph (a)(1):
■ i. Adding the word ''former'' before the phrase ''Office of Thrift Supervision''; and
■ ii. Adding ''(12 U.S.C. 1831m)'' after the phrase ''section 36 of the FDIA'';
■ c. In paragraph (b):
■ i. Adding the word ''insured'' before the phrase ''national banks'';
■ ii. Adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks''; and
■ iii. Removing the word ''shall'' and adding in its place the word ''must''.

The revision reads as follows:

§ 19.244 Automatic removal, suspension, or debarment.

* * * * *

§ 19.245 [Amended]

■ 19. Section 19.245 is amended by:
■ a. Adding a comma after the word ''suspension'' in the section heading;
■ b. Removing the word ''shall'' and adding in its place the word ''will'' in paragraph (a);

■ c. In paragraph (b) introductory text:
■ i. Adding the word ''insured'' before the phrase ''national bank ''; and
■ ii. Adding the phrase '', insured Federal savings association, or insured Federal branch of a foreign bank'' after the phrase ''national bank'';
■ d. Removing the phrase ''Sarbanes-Oxley Act)'' and adding in its place the phrase ''Sarbanes-Oxley Act'' in paragraph (b)(2); and
■ e. Removing the word ''shall'' and adding in its place the word ''must'' in paragraph (c).

§ 19.246 [Amended]

■ 20. Section 19.246 is amended by:
■ a. Removing the word ''shall'' and adding in its place the word ''must'' in paragraph (a);
■ b. In paragraph (b):
■ i. Removing the phrase ''shall bear'' each time it appears and adding in its place the word ''bears''; and
■ ii. In the penultimate and last sentences, removing the word ''shall'' and adding in its place the word ''will''.

PART 23—LEASING

■ 21. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 24(Tenth), and 93a.

§ 23.6 [Amended]

■ 22. Section 23.6 is amended by:
■ a. Removing the word ''lease'' before the phrase ''entered into pursuant to this part'' and adding in its place the word ''leases''; and
■ b. Removing the word ''is'' before the phrase ''subject to the lending limits prescribed'' and adding in its place the word ''are''.

PART 26—MANAGEMENT INTERLOCKS

■ 23. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 3201–3208, 5412(b)(2)(B).

§ 26.6 [Amended]

■ 24. Section 26.6 is amended in paragraph (b)(4) by removing ''5.51(c)(6)'' and adding in its place ''5.51(c)(7)''.

PART 32—LENDING LIMITS

■ 25. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 26. Section 32.2 is amended by revising paragraphs (cc) and (dd) to read as follows:

§ 32.2 Definitions.

* * * * *

(cc) *Small business loans* means loans or extensions of credit ''secured by nonfarm nonresidential properties'' or ''commercial and industrial loans'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(dd) *Small farm loans or extensions of credit* means ''loans secured by farmland'' or ''loans to finance agricultural production and other loans to farmers'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

* * * * *

§ 32.7 [Amended]

■ 27. Section 32.7 is amended in paragraph (d) by removing the phrase ''Federal banking agency'' each time it appears and adding in its place ''supervisory office''.

PART 108—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

■ 28. The authority citation for part 108 continues to read as follows:

Authority: 12 U.S.C. 1464, 1818, 5412(b)(2)(B).

§ 108.6 [Amended]

■ 29. Section 108.6 is amended in paragraph (d) by removing the phrase ''and Compliance''.

§ 108.7 [Amended]

■ 30. Section 108.7 is amended in the first sentence of paragraph (c) and in paragraph (d) by removing the phrase ''and Compliance''.

§ 108.13 [Amended]

■ 31. Section 108.13 is amended in paragraph (c) by removing the phrase ''and Compliance''.

PART 112—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

■ 32. The authority citation for part 112 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467, 1467a, 1813, 1817(j), 1818(n), 1820(c), 5412(b)(2)(B); 15 U.S.C. 78*l.*

§ 112.4 [Amended]

■ 33. Section 112.4 is amended in the second sentence by removing the phrase ''and Compliance''.

PART 141—DEFINITIONS FOR REGULATIONS AFFECTING FEDERAL SAVINGS ASSOCIATIONS

■ 34. The authority citation for part 141 continues to read as follows:

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

§§ 141.2, 141.8, 141.15, 141.16, 141.18, 141.19, 141.27, 141.28 [Removed and Reserved]

■ 35. Sections 141.2, 141.8, 141.15, 141.16, 141.18, 141.19, 141.27, and 141.28 are removed and reserved.

PART 160—LENDING AND INVESTMENT

■ 36. The authority for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.1 [Amended]

■ 37. Section 160.1 is amended in paragraph (a) by removing ''OCC'' and adding in its place the phrase ''Office of the Comptroller of the Currency (OCC)''.

§ 160.60 [Amended]

■ 38. Section 160.60 is amended in paragraph (b)(3) by removing the phrase ''12 CFR part 32 and § 163.43 of this chapter'' and adding in its place ''12 CFR 31.2 and part 32 of this chapter''.

PART 161—DEFINITIONS FOR REGULATIONS AFFECTING All SAVINGS ASSOCIATIONS

■ 39. The authority citation for part 161 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

§§ 161.3, 161.6, 161.26, 161.27, 161.28. 161.29, 161.30, and 161.31 [Removed and Reserved]

■ 40. Sections 161.3, 161.6, 161.26, 161.27, 161.28, 161.29, 161.30, and 161.31 are removed and reserved.

§ 161.37 [Amended]

■ 41. Section 161.37 is amended by removing the first sentence.

§§ 161.39 and 161.45 [Removed and Reserved]

■ 42. Sections 161.39 and 161.45 are removed and reserved.
■ 43. Section 161.50 is revised to read as follows:

§ 161.50 State.

The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific

Islands, the Virgin Islands, and the Northern Mariana Islands.

§ 161.51 [Removed and Reserved]

■ 44. Section 161.51 is removed and reserved.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 45. The authority for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.,* 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.39 [Removed and Reserved]

■ 46. Section 163.39 is removed and reserved.

§ 163.47 [Amended]

■ 47. Section 163.47 is amended in paragraph (d) by removing ''OCC'' and adding in its place the phrase ''Office of the Comptroller of the Currency (OCC)''.

§ 163.76 [Amended]

■ 48. Section 163.76 is amended:

■ a. In paragraph (b), by removing the phrase ''§ 197.10 of this chapter'' and adding in its place ''§ 16.32 of this chapter''; and

■ b. In paragraph (c), in the second paragraph of the Form of Certification, by removing '']'' after ''I should call the Office of the Comptroller of the Currency''.

§ 163.80 [Amended]

■ 49. Section 163.80 is amended in paragraph (c) by removing the phrase ''FDIC'' and adding in its place the phrase ''Federal Deposit Insurance Corporation (FDIC)''.

§ 163.180 [Amended]

■ 50. In section 163.180, remove the first paragraph (d)(12)(i)(A) paragraph designation and subject heading ''(A) General rule'' and redesignate the paragraph as paragraph (d)(12)(i) introductory text.

■ 51. Part 192 is revised to read as follows:

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.
192.5 Purpose, prescribed forms, waiver.
192.7 Electronic filing.
192.8 Computation of time.
192.10 Forming a holding company upon conversion.
192.15 Forming a charitable organization upon conversion.
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192.25 Definitions.

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192.105 Information required in business plan.
192.110 Review of business plan by chief executive officer and board of directors.
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192.125 Adoption of plan of conversion by board of directors.
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192.135 Notifying members of adopted plan of conversion.
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192.155 Filing an application for conversion.
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192.200 Review, approval, or denial of application for conversion.
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192.260 Previously executed proxies.
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192.355 Subscription rights for eligible account holders and supplemental eligible account holders.
192.360 Officers, directors, and associates as eligible account holders.
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192.375 Allocation of oversubscribed conversion shares.
192.380 Purchase of conversion shares by employee stock ownership plan.
192.385 Purchase limitations.
192.390 Community offering of conversion shares.
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192.460 Initial balance of liquidation sub-account.
192.465 Retention of voting rights based on liquidation sub-accounts.
192.470 Required adjustments to liquidation sub-accounts.
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Appropriate Federal Banking Agency Review of the Voluntary Supervisory Conversion Application

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192.680 Offer and sale of shares in a voluntary supervisory conversion.

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192.690 Restrictions on acquisition of additional shares after voluntary supervisory conversion.

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.,* 5412(b)(2)(B); 15 U.S.C. 78c, 78*l,* 78m, 78n, 78w.

§ 192.5 Purpose, prescribed forms, waiver.

(a) *General.* This part governs how a savings association may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual-to-stock conversions. Subpart B of this part governs voluntary supervisory mutual-to-stock conversions. This part supersedes all inconsistent charter and bylaw provisions of Federal savings associations converting to stock form.

(b) *Prescribed forms.* A savings association must use the forms prescribed under this part and part 16 and provide such information as the appropriate Federal banking agency may require under the forms and by regulation. The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); Form OF (Order Form); and the applicable form for a registration statement under 12 CFR 16.15. Forms AC, PS, OC, and OF are available on the website of the Office of the Comptroller of the Currency (OCC) at *http://www.occ.gov.*

(c) *Waivers.* The appropriate Federal banking agency may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, a savings association must file a written request with the appropriate Federal banking agency that:

(1) Specifies the requirement(s) or provision(s) the savings association wants the appropriate Federal banking agency to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to the savings association, its account holders, or other savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

(d) *Financial statements.* The form and content of financial statements and related financial data in a filing under this part must be prepared and presented in accordance with U. S. generally accepted accounting principles and other applicable accounting guidance and requirements as specified by the OCC in the forms required under paragraph (b) of this section.

§ 192.7 Electronic filing.

For Federal savings associations, the OCC encourages the electronic filing of all applications, notices, or other documents required by this part through *http://www.banknet.gov/.* The Comptroller's Licensing Manual describes the OCC's electronic filing procedures.

§ 192.8 Computation of time.

In computing the period of days, the OCC excludes the day of the act or event (*e.g.,* the date an application is received by the OCC) from when the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 192.10 Forming a holding company upon conversion.

A savings association may convert to the stock form of ownership as part of a transaction where the savings association organizes a holding company to acquire all of the savings association's shares upon their issuance. In this transaction, the savings association's holding company will offer rights to purchase its shares instead of the savings association's shares. Regulations of the Board of Governors of the Federal Reserve System address holding company application requirements.

§ 192.15 Forming a charitable organization upon conversion.

When a savings association converts to the stock form, it may form a charitable organization. A savings association's contributions to the charitable organization are governed by the requirements of §§ 192.550 through 192.575.

§ 192.20 Acquiring another insured depository institution upon conversion.

When a savings association converts to stock form, it may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 192.25 Definitions.

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in 12 CFR 5.50(d)(2). The rebuttable presumptions of 12 CFR 5.50(f)(2), other than 12 CFR 5.50(f)(2)(ii)(A) and (B), apply to the share purchase limitations at §§ 192.355 through 192.395.

Affiliate of, or a person *affiliated with,* a specified person is a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified person.

Appropriate Federal banking agency means appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

Associate of a person is:

(1) A corporation or organization (other than a savings association or its majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 192.370 through 192.395 and 192.505, a person who has a substantial beneficial interest in a savings association's tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of § 192.370, a savings association's tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is the saving association's director or senior officer, or a director or senior officer of the saving association's holding company or its subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Community offering means the offer to sell to the members of the general public in the savings association's community the securities not subscribed for in the subscription offering. The community offering may occur concurrently with the subscription offering and any syndicated community offering, or upon conclusion of the subscription offering.

Control (including *controlling, controlled by,* and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described in 12 CFR 5.50.

Demand accounts means non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date a savings association's board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

Federal savings association means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464).

IRS is the Internal Revenue Service.

Local community includes:

(1) Every county, parish, or similar governmental subdivision in which a savings association has a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in a savings association's Community Reinvestment Act assessment area; and

(4) Any other area or category that a savings association sets out in its plan of conversion, as approved by the appropriate Federal banking agency.

Offer, offer to sell, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with a savings association, are not offers, offers to sell, or offers for sale.

Offering circular means the securities offering materials for the conversion.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or *buy* includes every contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. A savings association's plan of conversion may provide that only savings accounts with total deposit balances of $50 or more will qualify.

Sale or *sell* includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the appropriate Federal banking agency is not a sale.

Savings account means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

Savings association means a savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)).

Solicitation and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause a savings association's members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

State means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

State savings association means a State savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)).

Subscription offering is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under § 192.355;

(2) Tax-qualified employee stock ownership plans under § 192.380;

(3) Supplemental eligible account holders under § 192.355; and

(4) Other voting members under § 192.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the appropriate Federal banking agency approves a savings association's conversion and will only occur if such agency has not approved such conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except a savings association's officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).

Underwriter is any person who purchases any securities from a savings association with a view to distributing the securities, offers or sells securities for a savings association in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and

customary distributor's or seller's commission from an underwriter or dealer.

Voluntary supervisory conversion is a mutual to stock conversion for a savings association that is unable to complete a standard mutual to stock conversion under part 192, subpart A, and that meets the eligibility requirements of § 192.625.

Subpart A—Standard Conversions

Prior to Conversion

§ 192.100 Preparing for a conversion.

(a) *Meeting with appropriate Federal banking agency prior to passing plan.* A savings association's board, or a subcommittee of its board, must meet, in person or electronically, with the appropriate Federal banking agency before the savings association passes its plan of conversion. At this meeting the savings association must provide the appropriate Federal banking agency with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) *Consultation with appropriate Federal banking agency before filing application.* A savings association also should consult with the appropriate Federal banking agency before filing its application for conversion. The appropriate Federal banking agency will discuss the information that the savings association must include in the application for conversion, general issues that it may confront in the conversion process, and any other pertinent issues.

§ 192.105 Information required in business plan.

(a) *Minimum requirements.* Prior to filing an application for conversion, a savings association must adopt a business plan reflecting its intended plans for deployment of the proposed conversion proceeds. The savings association's business plan is required, under § 192.150, to be included in its application for conversion. At a minimum, the business plan must address:

(1) The savings association's projected operations and activities for three years following the conversion. These projections must include how the savings association will accomplish the following by the final year of the business plan:

(i) Deploy the conversion proceeds at the converted savings association (and holding company, if applicable);

(ii) What opportunities are available to reasonably achieve its planned deployment of conversion proceeds in the proposed market areas; and

(iii) How the deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms. The savings association must include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. The appropriate Federal banking agency may require that a larger percentage of proceeds remain in the institution.

(2) The savings association's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas. The appropriate Federal banking agencies strongly discourage business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion or as part of a properly managed leverage strategy.

(3) The risks associated with the saving association's plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) The expertise of the savings association's management and board of directors, or plans for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in the business plan.

(b) *Prohibited information.* The savings association may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

§ 192.110 Review of business plan by chief executive officer and board of directors.

(a) *Review and approval.* A savings association's chief executive officer and members of the board of directors must review, and at least two-thirds of the board of directors must approve, the business plan.

(b) *Certification.* A savings association's chief executive officer and at least two-thirds of the board of directors must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The savings association must submit these certifications with its business plan, as part of its application for conversion under § 192.150.

§ 192.115 Review of business plan by the appropriate Federal banking agency.

(a) *Agency review.* The appropriate Federal banking agency will review the savings association's business plan to determine that it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of the application for conversion. In making its determination, the appropriate Federal banking agency will consider how the savings association has addressed the applicable factors of § 192.105. No single factor will be determinative.

(b) *Filing of business plan.* A savings association must file its business plan as a separate confidential exhibit to the Form AC with the appropriate OCC licensing office if it is a Federal savings association, or with the appropriate Federal Deposit Insurance Corporation (FDIC) region if it is a State savings association. The appropriate Federal banking agency may request additional information, if necessary, to support its determination under paragraph (a) of this section.

(c) *Operation within business plan.* If the appropriate Federal banking agency approves a savings association's application for conversion and the conversion is completed, the savings association must operate within the parameters of its business plan. The savings association must obtain the prior written approval of the appropriate Federal banking agency for any material deviations from its business plan.

§ 192.120 Confidentiality of conversion information.

(a) *Permitted disclosure.* A savings association may discuss information about its conversion with individuals that the savings association authorizes to prepare documents for its conversion.

(b) *Confidential information.* Except as permitted under paragraph (a) of this section, a savings association must keep all information about its conversion confidential until its board of directors adopts the plan of conversion.

(c) *Violations of confidentiality.* If a savings association violates this section, the appropriate Federal banking agency may require the savings association to take remedial action. For example, the appropriate Federal banking agency may require the savings association to take any or all of the following actions:

(1) Publicly announce that the savings association is considering a conversion;

(2) Set an eligibility record date acceptable to the appropriate Federal banking agency;

(3) Limit the subscription rights of any person who violates or aids a violation of this section; or

(4) Any other action to assure that the conversion is fair and equitable.

Plan of Conversion

§ 192.125 Adoption of plan of conversion by board of directors.

Prior to filing an application for conversion, a savings association's board of directors must adopt a plan of conversion that conforms to §§ 192.320 through 192.485 and 192.505. The savings association's board of directors must adopt the plan by at least a two-thirds vote. Pursuant to § 192.150, the savings association must include the plan of conversion in the application for conversion.

§ 192.130 Information required in plan of conversion.

A savings association must include the information included in §§ 192.320 through 192.485 and 192.505 in its plan of conversion. The appropriate Federal banking agency may require the savings association to delete or revise any provision in its plan of conversion if it determines the provision is inequitable; is detrimental to the savings association, its account holders, or other savings associations; or is contrary to public interest.

§ 192.135 Notifying members of adopted plan of conversion.

(a) *Notice.* A savings association must promptly notify its members that the board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in the savings association's home office and in its branch offices. The savings association must provide this notice by sending to each member a letter, through the mail or electronically if the member receives electronic communication, or by publishing a notice in the local newspaper in every local community where the savings association has an office. The savings association also may issue a press release and may make this notice available on its website. The appropriate Federal banking agency may require broader publication, if necessary, to ensure adequate notice to the savings association's members.

(b) *Contents of notice.* The savings association may include only the following statements and descriptions in the letter, notice, or press release.

(1) The savings association's board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) The savings association will send its members a proxy statement with detailed information on the proposed conversion before the savings association convenes a members' meeting to vote on the conversion.

(3) The savings association's members will have an opportunity to approve or disapprove the proposed conversion at a meeting. A majority of the eligible votes must approve the conversion.

(4) The savings association will not vote existing proxies to approve or disapprove the conversion. The savings association will solicit new proxies for voting on the proposed conversion.

(5) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, must approve the conversion before the conversion will be effective. The savings association's members will have an opportunity to file written comments, including objections and materials supporting the objections, with the appropriate Federal banking agency.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of the savings association's conversion before the appropriate Federal banking agency will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(7) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. The FDIC will continue to insure the accounts.

(9) The savings association's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) The savings association's business of accepting deposits and making loans will continue without interruption.

(11) The savings association's current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) The savings association may substantively amend its proposed plan of conversion before the members' meeting.

(13) The savings association may terminate the proposed conversion.

(14) After the appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, approves the proposed conversion, the savings association will send proxy materials providing additional information. After the savings association sends proxy materials, members may telephone or write to the savings association with additional questions.

(15) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the savings association's shares.

(16) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase the savings association's shares.

(17) A brief description of how voting members may participate in the conversion.

(18) A brief description of how directors, officers, and employees will participate in the conversion.

(19) A brief description of the proposed plan of conversion.

(20) The par value (if any) and approximate number of shares the savings association will issue and sell in the conversion.

(c) *Other requirements.* (1) The savings association may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of its shares upon conversion in the letter, notice, or press release.

(2) If the savings association responds to inquiries about the conversion, it may address only the matters listed in paragraph (b) of this section.

§ 192.140 Amendments to plan of conversion.

A savings association may amend its plan of conversion before it solicits proxies. After the savings association solicits proxies, it may amend the plan of conversion only if the appropriate Federal banking agency concurs.

Filing Requirements

§ 192.150 Information required in an application for conversion.

(a) *Required information.* A savings association's application for conversion must include all of the following information.

(1) The savings association's plan of conversion.

(2) Pricing materials meeting the requirements of § 192.200(b).

(3) Proxy soliciting materials under § 192.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 192.255; and

(iii) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that the savings association plans to use or furnish to its members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(4) An offering circular described in § 192.300.

(5) The documents and information required by Form AC. The savings association may obtain Form AC from the appropriate Federal banking agency.

(6) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. *See* Form AC, instructions.

(7) The savings association's business plan, submitted as a separately bound, confidential exhibit. *See* § 192.160.

(8) Any additional information that the appropriate Federal banking agency requests.

(b) *Rejection of filing.* The appropriate Federal banking agency will not accept for filing, and may return, any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

§ 192.155 Filing an application for conversion.

A Federal savings association must file Form AC with the appropriate OCC licensing office. A State savings association must file its application with the appropriate FDIC region.

§ 192.160 Request for confidential treatment.

(a) *In general.* The appropriate Federal banking agency makes all filings under this part available to the public, but may keep portions of the application for conversion confidential under paragraph (b) of this section.

(b) *Requests for confidential treatment.* A savings association may request that the appropriate Federal banking agency keep portions of the savings association's application confidential. To make this request, the savings association must clearly designate as ''confidential'' any portion of its application for conversion that it deems confidential. The savings association must provide a written statement specifying the grounds supporting its request for confidentiality. The appropriate Federal banking agency will not treat as confidential the portion of a savings association's application describing how it plans to meet Community Reinvestment Act (CRA) objectives. The CRA portion of a savings association's application may not incorporate by reference information contained in the confidential portion of the application.

(c) *Determination of confidential treatment.* The appropriate Federal banking agency will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and 12 CFR part 4 or 12 CFR part 309, as appropriate. The appropriate Federal banking agency will advise the savings association before it makes information designated as ''confidential'' available to the public.

§ 192.165 Amendments to an application for conversion.

To amend its application for conversion, a savings association must:

(a) File an amendment with an appropriate facing sheet;

(b) Number each amendment consecutively;

(c) Respond to all issues raised by the appropriate Federal banking agency; and

(d) Demonstrate that the amendment conforms to all applicable regulations.

Notice of Filing of Application and Comment Process

§ 192.180 Public notice of an application for conversion.

(a) *In general.* A Federal savings association must publish a public notice of the application in accordance with the procedures in 12 CFR 5.8. The Federal savings association must simultaneously prominently post the notice in its home office and all branch offices and may also make this notice available on its website.

(b) *Additional notice.* If the appropriate Federal banking agency does not accept a savings association's application for conversion under § 192.200 and requires the savings association to file a new application, the savings association must publish and post a new notice and allow an additional 30 calendar days for comment.

§ 192.185 Public comment on application for conversion.

Commenters may submit comments on a Federal savings association's application in accordance with the procedures in 12 CFR 5.10.

Agency Review of the Application for Conversion

§ 192.200 Review, approval, or denial of application for conversion.

(a) *Standards for review of application.* The appropriate Federal banking agency may approve an application for conversion only if:

(1) The conversion complies with this part;

(2) The savings association will meet its regulatory capital requirements under 12 CFR part 3 or part 324, as applicable, after the conversion; and

(3) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) *Standards for review of appraisal.* The appropriate Federal banking agency will review the appraisal required by § 192.150(a)(2) in determining whether to approve the application. The appropriate Federal banking agency will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to the appropriate Federal banking agency, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if the savings association ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of the savings association's pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of the savings association's shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) The appropriate Federal banking agency may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) A savings association may not represent or imply that the appropriate

Federal banking agency approved the appraisal.

(c) *Compliance with the Community Reinvestment Act.* The appropriate Federal banking agency will review the savings association's compliance record under 12 CFR part 195 and its business plan to determine how the savings association will serve the convenience and needs of its communities after the conversion.

(1) Based on this review, the appropriate Federal banking agency may approve the application, deny the application, or approve the application on the condition that the savings association will improve its CRA performance or that the savings association will address the particular credit or lending needs of the communities that it will serve.

(2) The appropriate Federal banking agency may deny the application if the savings association's business plan does not demonstrate that its proposed use of conversion proceeds will help the savings association to meet the credit and lending needs of the communities that it will serve.

(d) *Additional information.* The appropriate Federal banking agency may request that a savings association amend its application if further explanation is necessary, material is missing, or material needs correction.

(e) *Denial of application.* The appropriate Federal banking agency will deny an application if the application does not meet the requirements of this subpart, unless the appropriate Federal banking agency waives the requirement under § 192.5(c).

§ 192.205 Court review of final action on application for conversion.

(a) *In general.* Any person aggrieved by the appropriate Federal banking agency's final action on a savings association's application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) *Filing procedures.* To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final appropriate Federal banking agency action. The aggrieved person must file the petition with the court within the later of 30 calendar days after the appropriate Federal agency publishes notice of its final action in the **Federal Register** or 30 calendar days after the savings association mails the proxy statement to its members under § 192.235.

Vote by Members

§ 192.225 Approval of plan of conversion by members.

(a) *In general.* After the appropriate Federal banking agency approves a plan of conversion, the savings association must submit the plan of conversion to its members for approval. The savings association must obtain this approval at a meeting of its members, which may be a special or annual meeting, unless the savings association is State-chartered and State law requires approval via an annual meeting.

(b) *Approval.* The savings association's members must approve the plan of conversion by a majority of the total outstanding votes, unless the savings association is State-chartered and State law prescribes a higher percentage.

(c) *Voting method.* Savings association members may vote in person or by proxy.

(d) *Notification to non-voting members.* The savings association may notify eligible account holders or supplemental eligible account holders who are not voting members of its proposed conversion. The savings association may include only the information in § 192.135 in its notice.

§ 192.230 Members' voting eligibility.

A savings association determines members' eligibility to vote by setting a voting record date. The savings association must set a voting record date that is not more than 60 calendar days nor less than 20 calendar days before its meeting, unless the savings association is State-chartered and State law requires a different voting record date.

§ 192.235 Notice of members' meeting.

(a) *In general.* A savings association must notify its members of the meeting to consider its conversion by sending the members a proxy statement cleared by the appropriate Federal banking agency.

(b) *Timing of notice.* The savings association must notify its members 20 to 45 calendar days before the meeting, unless the savings association is State-chartered and State law requires a different notice period.

(c) *Notice to beneficial account holders.* The savings association must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If the savings association is a Federal savings association, and the name of the beneficial holder is disclosed on the savings association's records; or

(2) If the savings association is a State-chartered savings association and the beneficial holder possesses voting rights under State law.

§ 192.240 Submission of documents to the appropriate Federal banking agency after the members' meeting.

(a) *Filings after members' meeting.* Promptly after the members' meeting, a savings association must file all of the following information with the appropriate OCC licensing office, if the savings association is Federally-chartered, and with the appropriate FDIC region if the savings association is State-chartered.

(1) A certified copy of each adopted resolution on the conversion.

(2) The total votes eligible to be cast.

(3) The total votes represented in person or by proxy.

(4) The total votes cast in favor of and against each matter.

(5) The percentage of votes necessary to approve each matter.

(6) An opinion of counsel that the savings association conducted the members' meeting in compliance with all applicable State or Federal laws and regulations.

(b) *Filing after conversion.* Promptly after completion of the conversion, the savings association must submit an opinion of counsel that it complied with all laws applicable to the conversion.

Proxy Solicitation

§ 192.250 Compliance with proxy solicitation provisions.

(a) *Savings association compliance.* A savings association must comply with these proxy solicitation provisions when it provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(b) *Member compliance.* Members of the savings association must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to § 192.280, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on the savings association's behalf; or

(2) The member solicits proxies through newspaper advertisements after the savings association's board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(i) The name of the savings association;

(ii) The reason for the advertisement;

(iii) The proposal or proposals to be voted upon;

(iv) Where a member may obtain a copy of the proxy solicitation material; and

(v) A request for the savings association's members to vote at the meeting.

§ 192.255 Form of proxy requirements.

The form of proxy must include all of the following:

(a) A statement in bold face type stating that management is soliciting the proxy.

(b) Blank spaces where the member must date and sign the proxy.

(c) Clear and impartial identification of each matter or group of related matters that members will vote upon. The savings association must include any proposed charitable contribution as an item to be voted on separately.

(d) The phrase ''Revocable Proxy'' in bold face type (at least 18 point).

(e) A description of any charter or State law requirement that restricts or conditions votes by proxy.

(f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(g) The date, time, and the place of the meeting, when available.

(h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(i) A statement that management will vote the proxy in accordance with the member's specifications.

(j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 192.260 Previously executed proxies.

A savings association may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the savings association may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

§ 192.265 Proxies executed under this part.

A savings association may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. The savings association may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

§ 192.270 Proxy statement requirements.

(a) *Content requirements.* A savings association must prepare its proxy statement in compliance with this part and Form PS.

(b) *Other requirements.* (1) The appropriate Federal banking agency will review the proxy solicitation material when it reviews the application for conversion and will clear the proxy solicitation material.

(2) The savings association must provide a cleared written proxy statement to its members before or at the same time it provides any other soliciting material. The savings association must mail cleared proxy solicitation material to its members within 10 calendar days after the appropriate Federal banking agency clears the solicitation.

§ 192.275 Filing revised proxy materials.

(a) *In general.* A savings association must file revised proxy solicitation materials as an amendment to its application for conversion. The proxy solicitation materials must be in the form in which it furnished the materials to its members.

(b) *Content of filing.* To revise its proxy solicitation materials, the savings association must file:

(1) Its revised proxy materials as required by Form PS;

(2) Its revised form of proxy, if applicable;

(3) Any additional proxy solicitation material subject to § 192.270; and

(4) A copy of the revised proxy solicitation materials marked to clearly indicate changes from the prior filing.

(c) *When to file.* The savings association must file no later than the date that it sends or gives the proxy solicitation material to its members. The savings association must indicate the date that it will release the materials.

(d) *Material not required to be filed.* Unless requested by the appropriate Federal banking agency, the savings association does not have to file copies of replies to inquiries from its members or copies of communications that merely request members to sign and return proxy forms.

§ 192.280 Mailing member's proxy solicitation materials.

(a) *In general.* A savings association must mail the member's cleared proxy solicitation material if:

(1) The savings association's board of directors adopted a plan of conversion;

(2) A member requests in writing that the savings association mail the proxy solicitation material;

(3) The appropriate Federal banking agency has cleared the member's proxy solicitation; and

(4) The member agrees to defray the savings association's reasonable expenses.

(b) *Required information.* As soon as practicable after the savings association receives a request under paragraph (a) of this section, it must mail or otherwise furnish the following information to the member:

(1) The approximate number of members that the savings association solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(2) The estimated cost of mailing the proxy solicitation material for the member.

(c) *Timing.* The savings association must mail cleared proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the savings association.

(d) *Content.* The savings association is not responsible for the content of a member's proxy solicitation material.

(e) *Sharing of proxy material.* A member may furnish other members its own proxy solicitation material, cleared by the appropriate Federal banking agency, subject to the rules in this section.

§ 192.285 Prohibited solicitations.

(a) *False or misleading statements.* (1) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(i) Is false or misleading with respect to any material fact;

(ii) Omits any material fact that is necessary to make the statements not false or misleading; or

(iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that the appropriate Federal banking agency determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

(1) An undated or post-dated proxy;

(2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

§ 192.290 Remedial measures for prohibited solicitations.

(a) *In general.* If a solicitation violates § 192.285, the appropriate Federal banking agency may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) *Other action.* The appropriate Federal banking agency also may bring an enforcement action against the violator.

§ 192.295 Re-solicitation of proxies.

If a savings association amends its application for conversion, the appropriate Federal banking agency may require the savings association to re-solicit proxies for its members' meeting as a condition of approval of the amendment.

Offering Circular

§ 192.300 Offering circular requirements.

(a) *Content and filing requirements.* A savings association must prepare and file its offering circular in compliance with this part, Form OC, and the applicable SEC registration statement form required under 12 CFR 16.15. A Federal savings association must file its offering circular with the appropriate OCC licensing office and a State savings association must file its offering circular with the appropriate FDIC region. If filing an amendment, the savings association also must comply with §§ 192.155 and 192.165.

(b) *Member approval.* A savings association must condition its stock offering upon member approval of its plan of conversion.

(c) *Agency review.* The appropriate Federal banking agency will review the offering circular and may comment on the included disclosures and financial statements. The appropriate Federal banking agency will not approve the adequacy or accuracy of the offering circular or the disclosures.

(d) *Revised filings.* A savings association must file any revised offering circular, final offering circular, and any post-effective amendment to the final offering circular in accordance with the procedures in §§ 192.155 and 192.165.

(e) *Request for effectiveness.* After a savings association satisfactorily addresses the appropriate Federal banking agency's comments, the savings association must request that the appropriate Federal banking agency declare the offering circular effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of the savings association's shares under § 192.400.

§ 192.305 Distribution of offering circular.

(a) *Preliminary offering circular.* A savings association may distribute a preliminary offering circular at the same time as or after it mails the proxy statement to its members.

(b) *Early distribution prohibited.* A savings association may not distribute a final offering circular for stock issued in the transaction until after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective. The savings association must have the offering circular delivered in accordance with this part.

(c) *Effective offering circular.* A savings association must distribute a final offering circular for stock issued in the transaction to persons listed in its plan of conversion within 10 calendar days after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective.

§ 192.310 Filing a post-effective amendment to an offering circular.

(a) *In general.* A savings association must file a post-effective amendment to the offering circular with the appropriate Federal banking agency or have its proposed stock holding company file a post-effective amendment to its registration statement for the offering circular with the Securities and Exchange Commission, when a material event or change of circumstances occurs.

(b) *Timing of delivery.* After the appropriate Federal banking agency or the Securities and Exchange Commission declares the post-effective amendment effective, the savings association must immediately have the amendment to the offering circular delivered to each person who subscribed for or ordered shares in the offering.

(c) *Content.* The post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) *Post-effective offering period.* The post-effective offering period must remain open no less than 10 calendar days nor more than 20 calendar days, unless the appropriate Federal banking agency approves a longer rescission period.

Offers and Sales of Stock

§ 192.320 Order of priority to purchase conversion shares.

A savings association must offer to sell its shares in the following order:

(a) Eligible account holders.

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) The savings association's community, its community and the general public, or the general public.

§ 192.325 Timing of offer to sell conversion shares.

(a) *In general.* A savings association may offer to sell its conversion shares after the appropriate Federal banking agency approves the conversion, clears the proxy statement, and declares the offering circular effective.

(b) *Timing.* The offer may commence at the same time the savings association starts the proxy solicitation of its members.

§ 192.330 Pricing of conversion shares.

(a) *In general.* A savings association must sell its conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of its shares after the conversion.

(b) *Maximum price.* The maximum price must be no more than 15 percent above the midpoint of the estimated price range in the savings association's offering circular.

(c) *Minimum price.* The minimum price must be no more than 15 percent below the midpoint of the estimated price range in the savings association's offering circular.

(d) *Increase in price.* If the appropriate Federal banking agency permits, the savings association may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) *Price range.* The maximum price must be between $5 and $50 per share.

(f) *Inclusion in preliminary offering circular.* The savings association must include the estimated price in any preliminary offering circular.

§ 192.335 Procedures for the sale of conversion shares.

(a) *Distribution of order forms.* A savings association must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. The savings association may either send the order forms with its offering circular or after the savings association distributes its offering circular.

(b) *Sale of shares.* A savings association may sell its conversion shares in a community offering, a public offering, or both. The savings association may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) *Underwriting commissions and fees.* A savings association may pay underwriting commissions (including underwriting discounts). The appropriate Federal banking agency may object to the payment of unreasonable commissions. The savings association may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, the savings association may pay an underwriter a consulting fee. The appropriate Federal banking agency may object to the payment of unreasonable consulting fees.

(d) *Sequence of order fulfillment.* If a savings association conducts the community offering, the public offering, or both at the same time as the subscription offering, the savings association must fill all subscription orders first.

(e) *Preparation of order form.* A savings association must prepare its order form in compliance with this part and Form OF.

§ 192.340 Prohibited sales practices.

(a) *Offers, sales, or purchases of conversion shares.* In connection with offers, sales, or purchases of conversion shares under this part, a savings association and its directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) *Conversion.* During the conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for the savings association's conversion shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of the savings association's conversion shares from anyone but the savings association; or

(3) Knowingly acquire more than the maximum purchase allowable under the savings association's plan of conversion.

(c) *Exceptions.* The restrictions in paragraphs (b)(1) and (2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on the savings association's behalf, that makes the offer with a view toward public resale; or

(2) One or more of the savings association's tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of the savings association's equity securities in the aggregate.

(d) *Violations.* Any person found to have violated the restrictions in paragraphs (a) or (b) of this section may become subject to an enforcement action, civil money penalties, criminal prosecution, or other legal action.

§ 192.345 Permissible forms of subscriber payment.

(a) *In general.* A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, the savings association may not assess a penalty for the withdrawal.

(b) *Prohibition.* A savings association may not extend credit to any person to purchase the savings association's conversion shares.

§ 192.350 Interest on payments for conversion shares.

(a) *In general.* A savings association must pay interest from the date the savings association receives a payment for conversion shares until the date the savings association completes or terminates the conversion. The savings association must pay interest at no less than its passbook rate for amounts paid in cash, check, or money order.

(b) *Interest on withdrawals from savings accounts.* If a subscriber withdraws money from a savings account to purchase conversion shares, the savings association must pay interest on the payment until the savings association completes or terminates the conversion as if the withdrawn amount remained in the account.

(c) *Interest on withdrawals from certificates of deposit.* If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, the savings association may cancel the certificate and pay interest at no less than its passbook rate on any remaining balance.

§ 192.355 Subscription rights for eligible account holders and supplemental eligible account holders.

(a) *Eligible account holders.* A savings association must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 192.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: The total number of conversion shares that the savings association will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. The savings association must round down the product of this multiplied fraction to the next whole number.

(b) *Supplemental eligible account holders.* The savings association must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that the savings association must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 192.360 Officers, directors, and associates as eligible account holders.

A savings association's officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, the savings association must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 192.365 Purchase of conversion shares by other voting members.

(a) *In general.* A savings association must give rights to purchase its conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. The savings association must allocate rights to each

voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 192.395; or

(2) One-tenth of one percent of the total stock offering.

(b) *Subordination of voting rights.* The savings association must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 192.370 Limits on aggregate purchases by officers, directors, and associates.

(a) *In general.* When a savings association converts, its officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of the savings association's total stock offering:

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(b) *Exception.* The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to the savings association's officers, directors, and their associates.

§ 192.375 Allocation of oversubscribed conversion shares.

(a) *Eligible account holders.* If a savings association's conversion shares are oversubscribed by its eligible account holders, the savings association must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) *Supplemental eligible account holders.* If a savings association's conversion shares are oversubscribed by its supplemental eligible account holders, the savings association must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) *Eligible and supplemental eligible account holders.* If a person is an eligible account holder and a supplemental eligible account holder, the savings association must include the eligible account holder's allocation in determining the number of conversion shares that the savings association may allocate to the person as a supplemental eligible account holder.

(d) *Additional allocations.* For conversion shares that the savings association does not allocate under paragraphs (a) and (b) of this section, the savings association must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. The savings association must describe this method of allocation in its plan of conversion.

(e) *Oversubscription.* If shares remain after the savings association has allocated shares as provided in paragraphs (a) and (b) of this section, and if the savings association's voting members oversubscribe, the savings association must allocate its conversion shares among those members equitably. The savings association must describe the method of allocation in its plan of conversion.

§ 192.380 Purchase of conversion shares by employee stock ownership plan.

(a) *In general.* A savings association's tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of the savings association's conversion shares.

(b) *Revised stock valuation range.* If the appropriate Federal banking agency approves a revised stock valuation range as described in § 192.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, a savings association may allocate conversion shares to its tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) *Open market purchase.* If a savings association's tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior appropriate Federal banking agency approval and appropriate disclosure in the savings association's offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(d) *Charitable organizations.* A savings association may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless the appropriate Federal banking agency objects on supervisory grounds.

§ 192.385 Purchase limitations.

(a) *In general.* A savings association may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(b) *Modification of purchase limit.* If a savings association sets a limit of five percent under paragraph (a) of this section, the savings association may modify that limit with appropriate Federal banking agency approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and 10 percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(c) *Minimum purchase.* A savings association may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a $500 subscription or 25 shares.

(d) *Aggregation.* In setting purchase limitations under this section, a savings association may not aggregate conversion shares attributed to a person in the savings association's tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 192.390 Community offering of conversion shares.

(a) *Purchase preference in subscription offering.* In a subscription offering, a savings association may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in its local community.

(b) *Purchase preference in community offering.* In a community offering, a savings association must give a purchase preference to natural persons residing in its local community.

§ 192.395 Other conditions for community and public offerings.

A savings association must offer and sell its stock to achieve a widespread distribution of the stock. If a savings association offers shares in a community offering, a public offering, or both, it must first fill orders for its stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The savings association must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

Completion of the Offering

§ 192.400 Time period for completion of sale of stock.

A savings association must complete all sales of its stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 192.405.

§ 192.405 Extension of the offering period.

(a) *In general.* A savings association must submit a request in writing to the appropriate Federal banking agency for an extension of any offering period. The appropriate Federal banking agency will not grant any single extension of more than 90 calendar days.

(b) *Post-effective amendment to offering circular.* If the appropriate Federal banking agency grants a savings association's request for an extension of time, the savings association must provide a post-effective amendment to the offering circular under § 192.310 to each person who subscribed for or ordered stock. The amendment must indicate that the appropriate Federal banking agency extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

Completion of the Conversion

§ 192.420 Time period for completion of conversion.

In its plan of conversion, a savings association must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the savings association's members approve the plan of conversion. The date, once set, may not be extended by the savings association or by the appropriate Federal banking agency. The savings association must terminate the conversion if it is not completed by that date. The conversion is complete on the date that the savings association accepts the offers for its stock.

§ 192.425 Termination of conversion.

A conversion may be terminated by:

(a) A savings association's members failing to approve the conversion at its members' meeting;

(b) A savings association before its members' meeting; or

(c) A savings association after the members' meeting, but only if the appropriate Federal banking agency concurs.

§ 192.430 Charter amendments.

(a) *Conversion from Federally-chartered mutual savings association or savings bank to Federally-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings bank and it converts to a Federally-chartered stock savings association or savings bank, it must apply to the OCC to amend its charter and bylaws consistent with 12 CFR 5.22, as part of the savings association's application for conversion. The savings association may only include OCC pre-approved anti-takeover provisions in its amended charter and bylaws. *See* 12 CFR 5.22(g)(7).

(b) *Conversion from Federally-chartered mutual savings association or savings bank to State-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings bank and is converting to a State-chartered stock savings association under this part, the savings association must surrender its charter to the OCC for cancellation promptly after the State issues its new State stock charter. The savings association must promptly file a copy of its new State stock charter with the FDIC.

(c) *Conversion from State-chartered mutual savings association or savings bank to Federally State-chartered stock savings association or savings bank.* If the savings association is a State-chartered mutual savings association or savings bank, and is converting to a Federally chartered stock savings association or savings bank, it must apply to the OCC for a new charter and bylaws consistent with 12 CFR 5.22. The savings association may only include OCC pre-approved anti-takeover provisions in its charter and bylaws. *See* 12 CFR 5.22(g)(7).

(d) *Priority of accounts.* In any conversion described in this section that involves a mutual holding company, the charter of each resulting subsidiary savings association of the holding company must contain the following provision:

> In any situation in which the priority of the accounts of the association is in controversy, all such accounts must, to the extent of their withdrawable value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

(e) *Liquidation account.* The savings association's new or amended charter must require the savings association to establish and maintain a liquidation account for eligible and supplemental eligible account holders under § 192.450.

§ 192.435 Corporate existence after conversion.

A savings association's corporate existence will continue following its conversion, unless it converts to a State-chartered stock savings association and State law prescribes otherwise.

§ 192.440 Stockholder voting rights after conversion.

A savings association must provide its stockholders with exclusive voting rights, except as provided in § 192.445(c).

§ 192.445 Savings account holder's account after conversion.

(a) *In general.* The savings association must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before the conversion.

(b) *Liquidation account.* The savings association must provide a liquidation account for each eligible and supplemental eligible account holder under § 192.450.

(c) *Voting rights.* If the savings association is State-chartered and State law requires the savings association to provide voting rights to savings account holders or borrowers, the charter must:

(1) Limit these voting rights to the minimum required by State law; and

(2) Require the savings association to solicit proxies from the savings account holders and borrowers in the same manner that the savings association solicits proxies from its stockholders.

Liquidation Account

§ 192.450 Liquidation accounts.

(a) *In general.* A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the savings association's net worth at the time of conversion. A savings association must maintain a sub-account to reflect the interest of each account holder.

(b) *Distribution of liquidation.* Before a savings association may provide a liquidation distribution to common stockholders, it must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) *Recording of liquidation account in financial statements.* A savings association may not record the liquidation account in its financial statements. The savings association must disclose the liquidation account in

the footnotes to the savings association's financial statements.

§ 192.455 Initial balance of liquidation account.

The initial balance of the liquidation account is the savings association's net worth in the statement of financial condition included in the final offering circular.

§ 192.460 Initial balance of liquidation sub-account.

(a) *General rule.* (1) A savings association must calculate the initial liquidation sub-account balance of each eligible and supplemental eligible account holder at the time of the conversion.

(2) The initial liquidation sub-account balance for a savings account held by an eligible account holder, for a savings account not held by the eligible account holder on the supplemental eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(3) The initial liquidation sub-account balance for a savings account held by a supplemental eligible account holder, for a savings account not held by the supplemental eligible account holder on the eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(4) For a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating the initial liquidation sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The initial liquidation sub-account balance is calculated by multiplying the liquidation account balance by the following fraction: The numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(5) The denominator for calculating the initial liquidation sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in paragraphs (a)(2) through (4) of this section.

(b) *Balance increases and decreases.* A savings association must not increase the initial liquidation and sub-account balances. It must decrease the initial liquidation account and the sub-account balances under § 192.470 as depositors reduce or close their savings accounts.

§ 192.465 Retention of voting rights based on liquidation sub-accounts.

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 192.470 Required adjustments to liquidation sub-accounts.

(a) *Reductions.* (1) A savings association must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the savings association's fiscal year end, after the relevant eligibility record dates is less than:

(i) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(ii) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(2) The reduction must be proportionate to the reduction in the deposit balance.

(b) *Prohibition on increases.* If a savings association reduces the balance of a liquidation sub-account, it may not subsequently increase it if the deposit balance increases.

(c) *Liquidation account adjustments.* A savings association is not required to adjust the liquidation account and sub-account balances at each annual closing date if the savings association maintains sufficient records to make the computations if a liquidation subsequently occurs.

(d) *Maintenance of liquidation sub-account.* A savings association must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number.

(e) *Complete liquidation.* If there is a complete liquidation, the savings association must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

§ 192.475 Definition of liquidation.

(a) *In general.* A liquidation is a sale of a saving association's assets and settlement of its liabilities with the intent to cease operations and close. Upon liquidation, a savings association must return its charter to the governmental agency that issued it. The government agency must cancel the savings association's charter.

(b) *Other transactions.* A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If a savings association is involved in such a transaction, the surviving institution must assume the liquidation account.

§ 192.480 Effect of liquidation account on net worth.

The liquidation account does not affect a saving association's net worth.

§ 192.485 Required liquidation account provision in new Federal charter.

If a savings association converts to Federal stock form, it must include the following provision in its new charter: ''Liquidation Account. Under appropriate Federal banking agency regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of ____. If the association undergoes a complete liquidation, it must comply with appropriate Federal banking agency regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights.''

Post-Conversion

§ 192.500 Permissible management stock benefit plans after conversion.

(a) *In general.* During the 12 months after its conversion, a savings association may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided that the savings association meets all of the following requirements:

(1) The savings association discloses the plans in its proxy statement and offering circular and indicates in its offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The savings association's ESOP must be tax-qualified.

(2) The savings association's Option Plan does not encompass more than 10 percent of the number of shares that the

savings association issued in the conversion.

(3)(i) The savings association's ESOP and MRP do not encompass, in the aggregate, more than 10 percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more following the conversion, the appropriate Federal banking agency may permit the ESOP and MRP to encompass, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(ii) The savings association's MRP does not encompass more than three percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more after the conversion, the appropriate Federal banking agency may permit the MRP to encompass up to four percent of the number of shares that the savings association issued in the conversion.

(4) No individual receives more than 25 percent of the shares under any plan.

(5) The savings association's directors who are not officers of the savings association do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(6) The savings association's shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before the savings association establishes or implements the plan. The savings association may not hold this meeting until six months after its conversion.

(7) When the savings association distributes proxies or related material to shareholders in connection with the vote on a plan, the savings association states that the plan complies with the appropriate Federal banking agency's regulations and that the appropriate Federal banking agency does not endorse or approve the plan in any way. The savings association may not make any written or oral representations to the contrary.

(8) The savings association does not grant stock options at less than the market price at the time of grant.

(9) The savings association does not fund the Option Plan or the MRP at the time of the conversion.

(10) The savings association's plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(11) The savings association's plan permits accelerated vesting only for disability or death, or if the savings association undergoes a change of control.

(12) The saving association's plan provides that its executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in 12 CFR 6.4 or 324.403, as applicable), is subject to appropriate Federal banking agency enforcement action, or receives a capital directive under 12 CFR part 6, subpart B or 12 CFR 308.201, as applicable.

(13) The savings association files a copy of the proposed Option Plan or MRP with the appropriate Federal banking agency and certify to such agency that the plan approved by the shareholders is the same plan that the savings association filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(14) The savings association files the plan and the certification with the appropriate Federal banking agency within five calendar days after its shareholders approve the plan.

(b) *Stock splits or other adjustments.* The savings association may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to its stock in the ESOP, MRP, and Option Plan.

(c) *Plans implemented more than 12 months after conversion.* The restrictions in paragraph (a) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a) of this section is amended more than 12 months following the conversion, shareholders must ratify any material deviations to the requirements in paragraph (a).

§ 192.505 Restrictions on the trading of shares by directors, officers, and associates.

(a) *Sales restriction.* Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) *Notice of sales restriction on stock certificate.* The savings association must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) *Stock purchase restrictions.* For three years after the conversion, the savings association's officers, directors, and their associates may purchase the savings association's stock only from a broker or dealer registered with the Securities and Exchange Commission. However, the savings association's officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the savings association's outstanding stock, and may purchase stock through any of the savings association's management or employee stock benefit plans.

(d) *Communication of restrictions with transfer agent.* The savings association must instruct its stock transfer agent about the transfer restrictions in this section.

§ 192.510 Repurchase of shares after conversion.

(a) *Repurchases during first year after conversion.* A savings association may not repurchase its shares in the first year after the conversion except:

(1) In extraordinary circumstances, a savings association may make open market repurchases of up to five percent of its outstanding stock in the first year after the conversion if the savings association files a notice under § 192.515(a) and the appropriate Federal banking agency does not disapprove the repurchase. The appropriate Federal banking agency will not approve such repurchases unless the repurchase meets the standards in § 192.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) A savings association may repurchase qualifying shares of a director or conduct an appropriate Federal banking agency-approved repurchase pursuant to an offer made to all shareholders of the savings association.

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to the appropriate Federal banking agency.

(4) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(b) *Repurchases following first year after conversion.* After the first year, a savings association may repurchase its shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) *Restrictions on all repurchases.* All stock repurchases are subject to the following restrictions.

(1) A savings association may not repurchase its shares if the repurchase will reduce the savings association's regulatory capital below the amount required for its liquidation account under § 192.450. The savings association must comply with the capital distribution requirements at 12 CFR 5.55.

(2) The restrictions on share repurchases apply to a charitable organization under § 192.550. A savings association must aggregate purchases of shares by the charitable organization with the savings association's repurchases.

§ 192.515 Information to be filed with Federal banking agency prior to repurchase of shares.

(a) *Notice requirement.* To repurchase stock in the first year following conversion, other than repurchases under § 192.510(a)(3) or (4), a savings association must file a written notice with the appropriate OCC licensing office if Federally chartered, and with the appropriate FDIC region if State-chartered. The savings association must provide the following information:

(1) The proposed repurchase program;

(2) The effect of the repurchases on the savings association's regulatory capital; and

(3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) *Filing of notice.* A Federal savings association must file its notice with the appropriate OCC licensing office, and a State savings association must file its notice with the appropriate regional director of the FDIC, at least 10 calendar days before the savings association begins its repurchase program.

(c) *Agency review.* A savings association may not repurchase its shares if the appropriate Federal banking agency objects to the repurchase program. The appropriate Federal banking agency will not object to a repurchase program if:

(1) The repurchase program will not adversely affect the savings association's financial condition;

(2) The savings association submits sufficient information to evaluate the proposed repurchases;

(3) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) The repurchase program would not be contrary to other applicable regulations.

§ 192.520 Declaring and paying dividends after the conversion.

A savings association may declare or pay a dividend on its shares after the conversion if:

(a) The dividend will not reduce the savings association's regulatory capital below the amount required for the liquidation account under § 192.450;

(b) The savings association complies with all capital requirements under 12 CFR part 3 after it declares or pays dividends;

(c) The savings association complies with the capital distribution requirements under 12 CFR 5.55; and

(d) The savings association does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

§ 192.525 Restrictions on acquisition of shares after conversion.

(a) *Prior agency approval.* For three years after conversion, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than 10 percent of any class of the savings association's equity securities without the appropriate Federal banking agency's prior written approval. If a person violates this prohibition, the savings association may not permit the person to vote shares in excess of 10 percent, and may not count the shares in excess of 10 percent in any shareholder vote.

(b) *Beneficial ownership.* A person acquires beneficial ownership of more than 10 percent of a class of shares when he or she holds any combination of the savings association's stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under 12 CFR 5.50. The appropriate Federal banking agency will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) *Exceptions.* Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to the savings association, to the underwriters, or to a selling group acting on the savings association's behalf.

(2) Unless the appropriate Federal banking agency objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as the savings association's ownership may acquire or offer to acquire more than 10 percent of the savings association's common stock, if it makes the offer or acquisition more than one year after the saving association's conversion.

(4) One or more of the savings association's tax-qualified employee stock benefit plans may acquire the savings association's shares, if the plan or plans do not beneficially own more than 25 percent of any class of the savings association's shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain the appropriate Federal banking agency's approval under paragraph (a) of this section if the acquiror files an application under 12 CFR 5.50 that specifically addresses the criteria listed under paragraph (d) of this section and the savings association does not oppose the proposed acquisition.

(d) *Factors for agency denial.* The appropriate Federal banking agency may deny an application under paragraph (a) of this section if the proposed acquisition:

(1) Is contrary to the purposes of this part;

(2) Is manipulative or deceptive;

(3) Subverts the fairness of the conversion;

(4) Is likely to injure the savings association;

(5) Is inconsistent with the savings association's plan to meet the credit and lending needs of its proposed market area;

(6) Otherwise violates laws or regulations; or

(7) Does not prudently deploy the savings association's conversion proceeds.

§ 192.530 Other post-conversion requirements.

After a savings association converts, it must:

(a) Promptly register its shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). The savings association may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for its shares. A market maker for a security is a dealer who:

(1) Regularly publishes bona fide competitive bid and offer quotations for

the security in a recognized inter-dealer quotation system;

(2) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use its best efforts to list its shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that the appropriate Federal banking agency requires.

Contributions to Charitable Organizations

§ 192.550 Donating conversion shares or conversion proceeds to a charitable organization.

A savings association may contribute some of its conversion shares or proceeds to a charitable organization if:

(a) The savings association's plan of conversion provides for the proposed contribution;

(b) The savings association's members approve the proposed contribution; and

(c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 192.555 Member approval of charitable contributions.

At the meeting to consider the conversion, a savings association's members must separately approve, by a majority of the total eligible votes, a charitable contribution of conversion shares or proceeds. If the savings association is in mutual holding company form and adding a charitable contribution as part of a second step stock conversion, the savings association must also have its minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

§ 192.560 Limitations on charitable contributions.

A savings association may contribute a reasonable amount of conversion shares or proceeds to a charitable organization if such contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the appropriate Federal banking agency does not object on supervisory grounds. If the savings association is well-capitalized, the appropriate Federal banking agency generally will not object if the savings association contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 192.565 Contents of organizational documents of charitable organization.

The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(a) The charitable organization's primary purpose is to serve and make grants in the savings association's local community;

(b) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the savings association's shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the savings association's local community. This director may not be an officer, director, or employee of the savings association or of an affiliate of the savings association, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the savings association's board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the savings association.

§ 192.570 Conflicts of interest among directors.

(a) *In general.* A person is subject to 12 CFR 163.200 if that person:

(1) Is a director, officer, or employee of the savings association; has the power to direct the savings association's management or policies; or otherwise owes a fiduciary duty to the savings association (for example, holding company directors); and

(2) Will serve as an officer, director, or employee of the charitable organization. *See* Form AC for further information on operating plans and conflict of interest plans.

(b) *Identification and recusal of directors.* Before the savings association's board of directors may adopt a plan of conversion that includes a charitable organization, the savings association must identify its directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 192.575 Other requirements for charitable organizations.

(a) *Charter and gift instrument requirements.* The charitable organization's charter (or trust agreement) and the gift instrument for the contribution must provide that:

(1) The appropriate Federal banking agency may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that the appropriate Federal banking agency imposes;

(3) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy;

(4) The charitable organization must not engage in self-dealing; and

(5) The charitable organization must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) *Stock certificate requirement.* The savings association must include the following legend in the stock certificates of shares that the savings association contributes to the charitable organization or that the charitable organization otherwise acquires: ''The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization.''

(c) *Voting ratio.* As long as the charitable organization controls shares, the savings association must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the savings association's shareholders.

(d) *Filing requirement.* After the savings association completes its stock offering, it must submit copies of the following documents to the appropriate OCC licensing office if it is a Federal savings association or with the appropriate FDIC region if it is a State savings association:

(1) The charitable organization's charter and bylaws (or trust agreement);

(2) The charitable organization's operating plan (within six months after the savings association's stock offering);

(3) The charitable organization's conflict of interest policy; and

(4) The gift instrument for the contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 192.600 Voluntary supervisory conversions.

(a) *In general.* A savings association must comply with this subpart and part 16 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of HOLA, 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) *Application of subpart A.* Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

§ 192.605 Conducting a voluntary supervisory conversion.

A savings association may conduct a voluntary supervisory conversion through one of the following methods:

(a) A savings association may sell its shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) A savings association may convert to stock form by merging into an interim Federal- or State-chartered stock association.

(c) A savings association may sell its shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.

(d) A savings association may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 192.610 Member rights in a voluntary supervisory conversion.

Savings association members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the appropriate Federal banking agency provides otherwise. Savings association members may have interests in a liquidation account, if one is established.

Eligibility

§ 192.625 Eligibility for a voluntary supervisory conversion.

(a) *Eligibility.* An insured savings association may be eligible to convert under this subpart B if:

(1) The savings association is significantly undercapitalized (or undercapitalized and a standard conversion that would make the savings association adequately capitalized is not feasible) and the savings association will be a viable entity following the conversion;

(2) Severe financial conditions threaten the savings association's stability and a conversion is likely to improve its financial condition;

(3) The FDIC will assist the savings association under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(4) The savings association is in receivership and a conversion will assist the savings association.

(b) *Requirements for viability after conversion.* The savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) The savings association will be adequately capitalized as a result of the conversion;

(2) The savings association, its proposed conversion, and its acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in the savings association's best interest, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the savings association, the Deposit Insurance Fund, or the public interest.

§ 192.630 Eligibility of State-chartered savings bank for voluntary supervisory conversion.

A State-chartered savings bank may be eligible to convert to a Federal stock savings bank under this subpart if:

(a) The FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten the savings bank's stability and that the voluntary supervisory conversion is likely to improve its financial condition; or

(b) The savings bank meet the following conditions:

(1) The savings bank's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the savings bank is a going concern; and

(2) The savings bank will issue a sufficient amount of permanent capital stock to meet its applicable FDIC capital requirement immediately upon completion of the conversion, or the FDIC determines that the savings bank will achieve an acceptable capital level within an acceptable time period.

Plan of Supervisory Conversion

§ 192.650 Contents of plan of voluntary supervisory conversion.

A majority of the board of directors of the savings association must adopt a plan of voluntary supervisory conversion. The savings association must include all of the following information in its plan of voluntary supervisory conversion.

(a) The savings association's name and address.

(b) A complete description of the proposed voluntary supervisory conversion transaction that also describes plans for any liquidation account.

(c) Certified copies of all resolutions relating to the conversion adopted by the board of directors of the savings association.

Voluntary Supervisory Conversion Application

§ 192.660 Contents of voluntary supervisory conversion application.

A savings association must include all of the following information and documents in a voluntary supervisory conversion application to the appropriate OCC licensing office if it is a Federal savings association and to the appropriate FDIC region if it is a State savings association under this subpart:

(a) *Eligibility.* (1) Evidence establishing that the savings association meets the eligibility requirements under § 192.625 or § 192.630.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(3) An opinion of independent counsel indicating that applicable State law authorizes the voluntary supervisory conversion, if the conversion involves a State-chartered savings association converting to State stock form.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 192.650.

(c) *Business plan.* A business plan that complies with § 192.105, when required by the appropriate Federal banking agency.

(d) *Financial data.* (1) The savings association's most recent audited financial statements and Consolidated Reports of Condition and Income or Call Report, as appropriate. The savings association must explain how its current capital levels make the savings association eligible to engage in a voluntary supervisory conversion under § 192.625 or § 192.630.

(2) A description of the savings association's estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the appropriate Federal banking agency and the non-cash assets must meet all other appropriate Federal banking agency policy guidelines.

(4) Pro forma financial statements that reflect the effects of the transaction. The savings association must identify its tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The savings association must prepare its pro forma statements in conformance with the appropriate Federal banking agency's regulations and the applicable accounting requirements.

(5) A statement describing the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(e) *Proposed documents.* (1) The savings association's proposed charter and bylaws.

(2) The savings association's proposed stock certificate form.

(3) Any securities offering circular and other securities disclosure materials to be used in connection with the proposed voluntary supervisory conversion.

(f) *Agreements.* (1) A copy of any agreements between the savings association and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. The savings association must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related filings and applications.* (1) All filings required under the securities offering rules of 12 CFR parts 16 and 192.

(2) Any required Change in Bank Control Act notice and rebuttal of control submissions under 12 U.S.C. 1817(j) and 12 CFR 5.50, or copies of any Holding Company Act applications, including prior-conduct certifications listed under the appropriate Federal banking agency's regulatory guidance.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under Federal or State banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the appropriate Federal banking agency, copies of the applications and related documents.

(h) *Other information.* (1) A statement indicating the role each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion.

(2) Any additional information requested by the OCC, as authorized by law.

(i) *Waiver request.* A description of any of the features of the savings association's application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

Appropriate Federal Banking Agency Review of the Voluntary Supervisory Conversion Application

§ 192.670 Approval of voluntary supervisory conversion application.

The appropriate Federal banking agency will generally approve a savings association's application to engage in a voluntary supervisory conversion unless it determines:

(a) The savings association does not meet the eligibility requirements for a voluntary supervisory conversion under § 192.625 or § 192.630 or because the proceeds from the sale of conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to the savings association or the Deposit Insurance Fund or is contrary to the public interest;

(c) The savings association or its acquiror, or the controlling parties or directors and officers of the savings association or its acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) The savings association fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the appropriate Federal banking agency generally will not approve employment contracts of more than one year for existing management.

§ 192.675 Conditions imposed upon approval of voluntary supervisory conversion application.

(a) *Required condition.* The appropriate Federal banking agency will condition approval of a voluntary supervisory conversion application on all of the following.

(1) The savings association must complete the conversion stock sale within three months after the appropriate Federal banking agency approves the application. The appropriate Federal banking agency may grant an extension for good cause.

(2) The savings association must comply with all filing requirements of this part, and 12 CFR part 16.

(3) The savings association must submit an opinion of independent legal counsel indicating that the sale of its shares complies with all applicable State securities law requirements.

(4) The savings association must comply with all applicable laws, rules, and regulations.

(5) The savings association must satisfy any other requirements or conditions the appropriate Federal banking agency may impose.

(b) *Discretionary conditions.* The appropriate Federal banking agency may condition approval of a voluntary supervisory application for conversion on either of the following:

(1) The savings association must satisfy any conditions and restrictions the appropriate Federal banking agency imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the savings association before and after the conversion. The appropriate Federal banking agency may impose these conditions and restrictions on the savings association (before and after the conversion) or, as appropriate, the savings association's acquiror, controlling parties, or its directors and officers; or

(2) The savings association must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

Offers and Sales of Stock

§ 192.680 Offer and sale of shares in a voluntary supervisory conversion.

If a savings association converts under this subpart, it must offer and sell its shares in accordance with the applicable requirements of 12 CFR parts 16 and 192.

Post-Conversion

§ 192.690 Restrictions on acquisition of additional shares after voluntary supervisory conversion.

For three years after the completion of a voluntary supervisory conversion, neither the savings association nor its controlling shareholder(s) may acquire shares from minority shareholders without the appropriate Federal banking agency's prior approval.

PART 195—COMMUNITY REINVESTMENT

■ 52. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 53. Section 195.11 is amended by revising paragraph (a) to read as follows:

§ 195.11 Authority, purposes, and scope.

(a) *Authority.* This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, and 4, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, and 1464); sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)); and section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412(b)(2)(B)).

* * * * *

Dated: December 20, 2019.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

[FR Doc. 2019–28074 Filed 1–7–20; 8:45 am]

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