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Contents

Federal Register
Vol. 85, No. 10
Wednesday, January 15, 2020

Separate Parts In This Issue

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 85, No. 10

Wednesday, January 15, 2020

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RIN 3209–AA49

2020 Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the U.S. Office of Government Ethics is issuing this final rule to make the 2020 annual adjustments to the Ethics in Government Act civil monetary penalties.

DATES: This final rule is effective January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Associate Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202–482–9300; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410). The 2015 Act required Federal agencies to make inflationary adjustments to the civil monetary penalties (CMPs) within their jurisdiction with an initial ''catch-up'' adjustment through an interim final rule effective no later than August 1, 2016, and further mandates that Federal agencies make subsequent annual inflationary adjustments of their CMPs, to be effective no later than January 15 of each year.

The Ethics in Government Act of 1978 as amended, 5 U.S.C. appendix (the Ethics Act) provides for five CMPs.[1] Specifically, the Ethics Act provides for penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations:

(1) Knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report, 5 U.S.C. appendix 104(a), 5 CFR 2634.701(b);

(2) knowing and willful breach of a qualified trust by trustees and interested parties, 5 U.S.C. appendix 102(f)(6)(C)(i), 5 CFR 2634.702(a);

(3) negligent breach of a qualified trust by trustees and interested parties, 5 U.S.C. appendix 102(f)(6)(C)(ii), 5 CFR 2634.702(b);

(4) misuse of a public report, 5 U.S.C. appendix 105(c)(2), 5 CFR 2634.703; and

(5) violation of outside employment/activities provisions, 5 U.S.C. appendix 504(a), 5 CFR 2636.104(a).

In compliance with the 2015 Act and guidance issued by the Office of Management and Budget (OMB), the U.S. Office of Government Ethics (OGE) made previous inflationary adjustments to the five Ethics Act CMPs, and is issuing this rulemaking to effectuate the 2020 annual inflationary adjustments to those CMPs. In accordance with the 2015 Act, these adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, and the prior year's October CPI–U. Pursuant to OMB guidance, the cost-of-living adjustment multiplier for 2020, based on the CPI–U for October 2019, not seasonally adjusted, is 1.01764. To calculate the 2020 annual adjustment, agencies must multiply the most recent penalty by the 1.01764 multiplier, and round to the nearest dollar.

Applying the formula established by the 2015 Act and OMB guidance, OGE is amending the Ethics Act CMPs through this rulemaking to:

(1) Increase the three penalties reflected in 5 CFR 2634.702(a), 5 CFR 2634.703, and 5 CFR 2636.104(a)—which were previously adjusted to a maximum of $20,134—to a maximum of $20,489;

(2) Increase the penalty reflected in 5 CFR 2634.702(b)—which was previously adjusted to a maximum of $10,067—to a maximum of $10,245; and

(3) Increase the penalty reflected in 5 CFR 2634.701(b)—which was previously adjusted to a maximum of $60,517—to a maximum of $61,585. These adjusted penalty amounts will apply to penalties assessed after January 15, 2020 (the effective date of this final rule) whose associated violations occurred after November 2, 2015.

OGE will continue to make future annual inflationary adjustments to the Ethics Act CMPs in accordance with the statutory formula set forth in the 2015 Act and OMB guidance.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

[1] OGE has previously determined, after consultation with the Department of Justice, that the $200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 104(d) of the Ethics Act, 5 U.S.C. appendix, 104(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a CMP as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it adjusted by OGE in previous CMP rulemakings), and will remain at its current amount of $200.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget has determined that rulemakings such as this implementing annual inflationary adjustments under the 2015 Act are not significant regulatory actions under Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: January 9, 2020.

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. app.; 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 and Sec. 701, Pub. L. 114–74; Pub. L. 112–105, 126 Stat. 291; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Section 2634.701 is amended by revising paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.701

Date of violation	Penalty
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015	$50,000
Violation occurring after Nov. 2, 2015	61,585

* * * * *

■ 3. Section 2634.702 is revised to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.702

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	20,489

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 2 to this section, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 2 TO § 2634.702

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$5,500
Violation occurring after Nov. 2, 2015	10,245

■ 4. Section 2634.703 is revised to read as follows:

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.703

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000

TABLE 1 TO § 2634.703—Continued

Date of violation	Penalty
Violation occurring after Nov. 2, 2015	20,489

(b) This remedy shall be in addition to any other remedy available under statutory or common law.

PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

■ 5. The authority citation for part 2636 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114–74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 6. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than the amounts set in Table 1 to this section, as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

TABLE 1 TO § 2636.104

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	20,489

* * * * *

[FR Doc. 2020–00479 Filed 1–14–20; 8:45 am]

BILLING CODE 6345–03–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC–2018–0048]

RIN 3150–AK11

Adjustment of Civil Penalties for Inflation for Fiscal Year 2020

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum civil monetary penalties it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The NRC is amending its regulations to adjust the maximum civil monetary penalty for a violation of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the Atomic Energy Act from $298,211 to $303,471 per violation, per day. Additionally, the NRC is amending provisions concerning program fraud civil penalties by adjusting the maximum civil monetary penalty under the Program Fraud Civil Remedies Act from $11,463 to $11,665 for each false claim or statement.

DATES: This final rule is effective on January 15, 2020.

ADDRESSES: Please refer to Docket ID NRC–2018–0048 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–2018–0048. 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, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *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: Eric Michel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0932; email: *Eric.Michel2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Background

Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) in 1990 to allow for regular adjustment for inflation of civil monetary penalties (CMPs), maintain the deterrent effect of such penalties and promote compliance with the law, and improve the collection of CMPs by the Federal Government (Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note). Pursuant to this authority, and as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–34, 110 Stat. 1321–373), the NRC increased via rulemaking the CMP amounts for violations of the Atomic Energy Act of 1954, as amended (AEA) (codified at § 2.205 of title 10 of the *Code of Federal Regulations* (10 CFR)) and Program Fraud Civil Remedies Act (codified at § 13.3) on four occasions between 1996 and 2008.[1]

On November 2, 2015, Congress amended the FCPIAA through the Federal Civil Penalties Inflation

[1] Adjustment of Civil Penalties for Inflation, (73 FR 54671; Sept. 23, 2008); Adjustment of Civil Penalties for Inflation, (69 FR 62393; Oct. 26, 2004); Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes, (65 FR 59270; Oct. 4, 2000); Adjustment of Civil Monetary Penalties for Inflation, (61 FR 53554; Oct. 11, 1996). An adjustment was not performed in 2012 because the FCPIAA at the time required agencies to round their CMP amounts to the nearest multiple of $1,000 or $10,000, depending on the size of the CMP amount, and the 2012 adjustments based on the statutory formula were small enough that no adjustment resulted.

Adjustment Act Improvements Act of 2015 (2015 Improvements Act) (Sec. 701, Pub. L. 114–74, 129 Stat. 599). The 2015 Improvements Act required that the head of each agency perform an initial ''catch-up'' adjustment via rulemaking, adjusting the CMPs enforced by that agency according to the percentage change in the Consumer Price Index (CPI) between the month of October 2015 and the month of October of the calendar year when the CMP amount was last established by Congress. The NRC performed this catch-up rulemaking on July 1, 2016 (81 FR 43019).

The 2015 Improvements Act also requires that the head of each agency continue to adjust CMP amounts, rounded to the nearest dollar, on an annual basis. Specifically, each CMP is to be adjusted based on the percentage change between the CPI for the previous month of October, and the CPI for the month of October in the year preceding that. The NRC most recently adjusted its civil penalties for inflation according to this statutory formula on February 7, 2019 (84 FR 2433). This year's adjustment is based on the percentage change between the CPI for October 2018 and October 2019.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the AEA to $100,000 per day, per violation (42 U.S.C. 2282). However, as discussed in Section I, ''Background,'' of this document, the NRC has increased this amount several times since 1996 per the FCPIAA, as amended. Using the formula in the 2015 Improvements Act, the $298,211 amount last established in February 2019 will increase by 1.764 percent, resulting in a new CMP amount of $303,471. This is based on the percentage change between the October 2018 CPI (252.885) and the October 2019 CPI (257.346). Therefore, the NRC is amending § 2.205 to reflect a new maximum CMP under the AEA in the amount of $303,471 per day, per violation. This represents an increase of $5,260.

Monetary penalties under the Program Fraud Civil Remedies Act were established in 1986 at $5,000 per claim (Pub. L. 99–509, 100 Stat. 1938; 31 U.S.C. 3802). The NRC also has adjusted this amount (currently set at $11,463) multiple times pursuant to the FCPIAA, as amended, since 1996. Using the formula in the 2015 Improvements Act, the $11,463 amount last established in February 2019 will also increase by 1.764 percent, resulting in a new CMP amount of $11,665. Therefore, the NRC is amending § 13.3 to reflect a new maximum CMP amount of $11,665 per claim or statement. This represents an increase of $202.

As permitted by the 2015 Improvements Act, the NRC may apply these increased CMP amounts to any penalties assessed by the agency after the effective date of this rulemaking (January 15, 2020), regardless of whether the associated violation occurred before or after this date (Pub. L. 114–74, 129 Stat. 600; 28 U.S.C. 2461 note). The NRC assesses civil penalty amounts for violations of the AEA based on the class of licensee and severity of the violation, in accordance with the NRC Enforcement Policy. A corresponding update to the NRC Enforcement Policy is being published today in the Rules section of the **Federal Register** to reflect the updated CMP amount in § 2.205 (Docket ID NRC–2019–0242).

III. Rulemaking Procedure

The 2015 Improvements Act expressly exempts this final rule from the notice and comment requirements of the Administrative Procedure Act, by directing agencies to adjust CMPs for inflation ''notwithstanding section 553 of title 5, United States Code'' (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this final rule is being issued without prior public notice or opportunity for public comment, with an effective date of January 15, 2020.

IV. Section-by-Section Analysis

§ 2.205 Civil Penalties

This final rule revises paragraph (j) by replacing ''$298,211'' with ''$303,471''.

§ 13.3 Basis for Civil Penalties and Assessments

This final rule revises paragraphs (a)(1)(iv) and (b)(1)(ii) by replacing ''$11,463'' with ''$11,665''.

V. Regulatory Analysis

This final rule adjusts for inflation the maximum CMPs the NRC may assess under the AEA and under the Program Fraud Civil Remedies Act of 1986. The formula for determining the amount of the adjustment is mandated by Congress in the FCPIAA, as amended by the 2015 Improvements Act (codified at 28 U.S.C. 2461 note). Congress passed this legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation diminishes the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Therefore, these are the anticipated impacts of this rulemaking. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement for violations of the AEA and regulations and orders issued under the AEA (§ 2.205), or those licensees or persons subjected to liability pursuant to the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and the NRC's implementing regulations (10 CFR part 13).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C 553(b), to publish a general notice of proposed rulemaking (5 U.S.C. 604). As discussed in this notice under Section III., ''Rulemaking Procedure,'' the NRC has determined that this final rule is exempt from the requirements of 5 U.S.C. 553(b) and notice and comment need not be provided. Accordingly, the NRC also determines that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

VII. Backfit and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. As mandated by Congress, this final rule increases CMP amounts for violations of already-existing NRC regulations and requirements. This final rule does not modify any licensee systems, structures, components, designs, approvals, or procedures required for the construction or operation of any facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

IX. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XI. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Environmental protection, Freedom of information, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Administrative practice and procedure, Claims, Fraud, Organization and function (Government agencies), Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; 28 U.S.C. 2461 note; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 13:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

§ 2.205 [Amended]

■ 2. In § 2.205(j), remove the amount ''$298,211'' and add in its place the amount ''$303.471''.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

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

Authority: 31 U.S.C. 3801 through 3812; 44 U.S.C. 3504 note.

Section 13.3 also issued under 28 U.S.C. 2461 note.

Section 13.13 also issued under 31 U.S.C. 3730.

§ 13.3 [Amended]

■ 4. In § 13.3(a)(1)(iv) and (b)(1)(ii), remove the amount ''$11,463'' and add in its place the amount ''$11,665''.

Dated in Rockville, Maryland, this 31st day of December 2019.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–00304 Filed 1–14–20; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1411

RIN 3055–AA16

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit System Insurance Corporation (FCSIC) may impose under the Farm Credit Act of 1971, as amended. These adjustments are required by 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990.

DATES:

Effective date: This regulation is effective on January 15, 2020.

Applicability date: The adjusted amounts of civil money penalties in this rule are applicable to penalties assessed on or after January 15, 2019, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lynn M. Powalski, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TTY (703) 883–4390.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) [1] to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act provides for the regular evaluation of CMPs and requires FCSIC, and every other Federal agency with authority to impose CMPs, to ensure that CMPs continue to maintain their deterrent values.[2]

FCSIC must enact regulations that annually adjust its CMPs pursuant to the inflation adjustment formula of the amended Inflation Adjustment Act and rounded using a method prescribed by the Inflation Adjustment Act. The new amounts are applicable to penalties assessed on or after January 15, 2019, for conduct occurring on or after November 2, 2015. Agencies do not have discretion in choosing whether to adjust a CMP, by how much to adjust a CMP, or the methods used to determine the adjustment.

II. CMPs Imposed Pursuant to Section 5.65 of the Farm Credit Act

First, section 5.65(c) of the Farm Credit Act, as amended (Act), provides that any insured Farm Credit System bank that willfully fails or refuses to file any certified statement or pay any required premium shall be subject to a penalty of not more than $100 for each day that such violations continue, which penalty FCSIC may recover for its use.[3] Second, section 5.65(d) of the Act provides that, except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any System institution.[4] For each willful violation of section 5.65(d), the institution involved shall be subject to a penalty of not more than

[1] Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990), as amended by Public Law 104–134, title III, sec. 31001(s)(1), 110 Stat. 1321–373 (Apr. 26, 1996); Public Law 105–362, title XIII, sec. 1301(a), 112 Stat. 3293 (Nov. 10, 1998); Public Law 114–74, title VII, sec. 701(b), 129 Stat. 599 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

[2] Under the amended Inflation Adjustment Act, a CMP is defined as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. All three requirements must be met for a fine to be considered a CMP.

[3] 12 U.S.C. 2277a–14(c).

[4] 12 U.S.C. 2277a–14(d).

$100 for each day during which the violation continues, which FCSIC may recover for its use.

FCSIC's current § 1411.1 provides that FCSIC can impose a maximum penalty of $210 per day for a violation under section 5.65(c) and (d) of the Act.

III. Required Adjustments

The 2015 Act requires agencies to make annual adjustments for inflation. Annual inflation adjustments are 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. Based on the CPI–U for October 2019, not seasonally adjusted, the cost-of-living adjustment multiplier for 2020 is 1.01764.[5] Multiplying 1.01764 times the current penalty amount of $210, after rounding to the nearest dollar as required by the 2015 Act, results in a new penalty amount of $214.

IV. Notice and Comment Not Required by Administrative Procedure Act

In accordance with the 2015 Act, Federal agencies shall adjust civil monetary penalties ''notwithstanding'' Section 553 of the Administrative Procedures Act. This means that public procedure generally required for agency rulemaking—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.

List of Subjects in 12 CFR Part 1411

Banks, banking, Civil money penalties, Penalties.

For the reasons stated in the preamble, part 1411 of chapter XIV, title 12 of the Code of Federal Regulations is amended as follows:

PART 1411—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1411 continues to read as follows:

Authority: 12 U.S.C. 2277a–7(10), 2277a–14(c) and (d); 28 U.S.C. 2461 *note.*

■ 2. Revise § 1411.1 to read as follows:

§ 1411.1 Inflation adjustment of civil money penalties for failure to file a certified statement, pay any premium required or obtain approval before employment of persons convicted of criminal offenses.

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, a civil money penalty imposed pursuant to section 5.65(c) or (d) of the Farm Credit Act of 1971, as amended, shall not exceed $214 per day for each day the violation continues.

Dated: January 9, 2020.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2020–00464 Filed 1–14–20; 8:45 am]

BILLING CODE 6710–01–P

[5] *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M–20–05, *Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 16, 2019).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6144; Product Identifier 2015–NM–088–AD; Amendment 39–21012; AD 2019–24–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus SAS Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; Model A330–200 and A330–200 Freighter series airplanes; Model A340–200 and –300 series airplanes; and Model A340–500 and –600 airplanes (except for airplanes equipped with flammability reduction means (FRM) approved by the FAA as compliant with the Fuel Tank Flammability Reduction (FTFR) rule). This AD was prompted by the FAA's analysis of the fuel system reviews on these models conducted by the manufacturer. This AD requires modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This AD also provides alternative actions for cargo airplanes. This AD does not apply to airplanes equipped with FRM approved by the FAA. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 19, 2020.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6144; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on May 3, 2016 (81 FR 26487). The NPRM was prompted by the FAA's analysis of fuel system reviews on these models conducted by the manufacturer. The NPRM proposed to require modifying the FQIS to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. The NPRM also provided alternative actions for cargo airplanes. The FAA is issuing this AD to address ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for NPRM

The Air Line Pilots Association, International (ALPA) and National Air Traffic Controllers Association (NATCA) supported the intent of the NPRM. Additional comments from NATCA are addressed below.

Request To Withdraw NPRM: EASA's Different Risk Assessment Policy

Airbus and the European Aviation Safety Agency (EASA) noted differences between EASA's risk assessment policy and that of the FAA. Based on its own criteria, EASA concluded that there is no unsafe condition, and that in the absence of a Transport Airplane Risk Assessment Methodology (TARAM) analysis, the NPRM was based on noncompliance with Special Federal Aviation Regulation (SFAR) 88, Fuel Tank System Fault Tolerance Evaluation Requirements, (66 FR 23086, May 7, 2001) to 14 CFR part 21, and, more specifically, with 14 CFR 25.981(a)(3), rather than a direct unsafe condition. The commenters asserted that Airbus has shown that the failure condition described in the NPRM is extremely improbable and not unsafe according to EASA policy. The commenters therefore considered the proposed corrective actions unnecessary.

The FAA infers that the commenters request that the agency withdraw the NPRM. The FAA disagrees with the request. The FAA does not agree that the NPRM was based simply on a noncompliance with 14 CFR 25.981(a) identified from the manufacturer's fuel system reviews. This final rule addresses an unsafe condition identified by the FAA. The FAA determined that an unsafe condition exists using the criteria in FAA Policy Memorandum ANM100–2003–112–15, ''SFAR 88—Mandatory Action Decision Criteria,'' dated February 25, 2003.[1] That policy was used to evaluate the noncompliant design areas identified in the manufacturer's fuel system reviews and determine which noncompliance issues were unsafe conditions that required corrective action under 14 CFR part 39. The FAA's unsafe condition determination was not based on an assessment of average risk or total fleet risk, but rather was driven by the qualitative identification of an unacceptable level of individual risk that exists on flights that are anticipated to occur with a preexisting latent in-tank failure condition and with a flammable center fuel tank. While EASA referenced SFAR 88 as a factor in determination of the unsafe condition, the FAA did not include SFAR 88 in the above response because SFAR 88 was a procedural rule that required re-examination of compliance with 14 CFR 25.981(a). Noncompliance to SFAR 88 is not submitting the analysis that shows the design complies with 14 CFR 25.981 and appendix H to part 25 (as amended at 66 FR 23086, May 7, 2001, amendment 25–102). For these reasons, and based on further detailed responses to similar comments in supplemental NPRM (SNPRM) Docket No. FAA–2012–0187 (80 FR 9400, February 23, 2015), and in AD 2016–07–07, Amendment 39–18452 (81 FR 19472, April 5, 2016) (''AD 2016–07–07''), which addressed the same unsafe condition for Model 757 airplanes, the FAA has determined that it is necessary to issue this final rule.

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/$FILE/Feb2503.pdf.*

Request To Withdraw NPRM: Combination of Failures Is Extremely Improbable

Airbus stated that the risk of ignition sources addressed by the NPRM results from combinations of the electrical fault conditions that have been demonstrated to be extremely improbable.

The FAA infers that Airbus would like the NPRM withdrawn. The FAA disagrees with the request to withdraw the NPRM. While the average risk per flight hour of a fuel tank ignition source may be extremely improbable, the actual risk is not evenly spread across all flight hours, and is instead almost completely concentrated on the subset of flights that occur with a latent failure in the fuel tank and experience flammable conditions. For those flights, a single additional failure that causes a hot short onto compromised fuel tank circuit wiring could cause an ignition source. Such flights do not provide an acceptable level of safety. As explained in the previous comment disposition, the FAA considered both average fleet risk and individual risk and determined an unsafe condition existed based on individual risk, rather than average fleet risk. Finally, the proposed requirements in the NPRM are consistent with the FAA's policy for the unsafe condition determinations related to SFAR 88 contained in FAA Policy Memorandum ANM100–2003–112–15, ''SFAR 88-Mandatory Action Decision Criteria,'' dated February 25, 2003. The FAA provided a detailed response to similar comments and described the FAA's risk assessment in a related SNPRM that addressed the same unsafe condition for Model 757 airplanes, in Docket No. FAA–2012–0187 (80 FR 9400, February 23, 2015); and in AD 2016–07–07. The FAA has therefore determined that it is necessary to issue this final rule.

Request To Withdraw NPRM: High Cost of Compliance

Air France reported that EASA has not mandated any FRM retrofit on the affected airplanes, and explained that EASA's adoption of similar rulemaking would have unbearable impact (heavy costs including labor) on the Air France fleet.

The FAA acknowledges the commenter's concerns about the cost of compliance with this AD, and the FAA infers that the commenter would like the NPRM withdrawn. The FAA considers it necessary to address this unsafe condition for the reasons discussed in the responses to the two comments above. The FAA considers these costs necessary to address the identified unsafe condition. The FAA has therefore determined that it is necessary to issue this final rule.

Request To Clarify Applicability: Limit to Airplanes Without FRM

Because of numerous queries from airlines about the applicability of the proposed AD, Airbus requested that the FAA revise the **SUMMARY** and ''Proposed AD Requirements'' section of the NPRM by clarifying that the proposed AD does not apply to airplanes equipped with FRM.

The FAA agrees to revise the **SUMMARY** of this final rule by highlighting the exception to the applicability, *i.e.,* that airplanes are not affected by this AD if they are equipped with FRM approved by the FAA as compliant with the FTFR rule (73 FR 42444, July 21, 2008) requirements of 14 CFR 25.981(b) or 14 CFR 26.33(c)(1). The applicability in paragraph (c) of the proposed AD, however, already excluded airplanes equipped with FRM; it is therefore unnecessary to change the regulatory language of this final rule to add this clarification.

Request To Clarify Number of Affected Airplanes

Airbus requested that the FAA clarify the Costs of Compliance section in the NPRM to emphasize that the number of affected airplanes is based on the FAA's analysis of the number of airplanes identified in the applicability that are currently registered in the U.S. and operated under 14 CFR part 91. Airbus considered that this change would further explain the scope of the applicability of the proposed AD.

The FAA agrees to clarify the affected airplanes. Although airplanes operated under 14 CFR part 91 are primarily affected by this AD and accounted for in the Costs of Compliance section of this AD, the applicability of this AD includes airplanes that are not equipped with FRM, operated under all potential 14 CFR operating requirements. It is clearer to apply the requirements based on the airplane type design rather than intended operating requirements. No change to the final rule is necessary regarding this issue.

Request To Revise Applicability: Add Model A321

Airbus stated that there is no valid rationale for excluding Model A321 series airplanes from the applicability of the proposed AD.

The FAA agrees that the unsafe condition identified in the NPRM also applies to Model A321 series airplanes without FRM approved by the FAA as compliant with the FTFR rule requirements of 14 CFR 25.981(b) or 14 CFR 26.33(c)(1). The addition of an airplane model to a final rule typically requires prior notice and opportunity for comment on that addition. However, section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. There are currently no Model A321 series airplanes on the U.S. Register that do not have FRM approved by the FAA. Therefore, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). The FAA has revised paragraph (c) of this AD to include FAA-certificated Model A321 series airplanes that are not equipped with FRM.

Request To Revise Applicability: Remove Model A330–300

Airbus requested that the FAA revise the applicability of the proposed AD to remove Model A330–300 airplanes, because those airplanes are either not fitted with a center tank or, if fitted with a center tank, are compliant with 14 CFR 25.981(a)(3), as amended at 66 FR 23086, May 7, 2001, amendment 25–102. Airbus added that Model A330–300 series airplanes fitted with a center wing tank will all have been delivered with compliant FRM.

The FAA agrees with the commenter's request. Model A330–300 series airplanes were originally produced with no center fuel tank; therefore, those airplanes were not subject to the unsafe condition. Model A330–300 series airplanes have been redesigned and are now equipped with an optional center fuel tank that is compliant with 14 CFR 25.981(a)(3). Because of this unique design and production history, the FAA does not anticipate that any Model A330–300 series airplanes with a center fuel tank installed will be operated without a compliant FRM. The FAA therefore has removed Model A330–300 series airplanes from the applicability of this AD.

Request To Remove Paragraph (g)

United Airlines noted that the overall applicability of the proposed AD was limited to airplanes without FRM, and requested that the FAA delete paragraph (g) of the proposed AD, since FRM will have been installed on all affected airplanes in passenger configuration by December 26, 2018—well ahead of the compliance deadline of the proposed AD.

The FAA infers that the commenter has assumed that the requirements of paragraph (g) of this AD apply only to passenger-carrying airplanes in air carrier operations. The FAA disagrees with the request to remove paragraph (g) of this AD. There are other passenger-carrying airplanes operated under 14 CFR part 91 that are not required to install FRM. (The requirement to install FRM on all passenger-carrying airplanes operated by air carriers is in 14 CFR 121.1117.) Paragraph (g) of this AD is the main requirement for all affected airplanes, which includes both passenger-carrying (regardless of operations) and cargo-only airplanes. Paragraph (h) of this AD provides alternative actions for cargo-only airplanes. The FAA has not changed this AD regarding this issue.

Request To Limit Modification Requirements to Certain Airplanes

As an alternative to removing paragraph (g) of the proposed AD, United Airlines requested that the FAA instead revise that paragraph to limit the affected airplanes to those in cargo configurations that do not have FRM installed, and non-U.S. registered airplanes for which the FRM rule is not mandatory.

The FAA disagrees with this request. Paragraph (g) of this AD is intended to include passenger-carrying airplanes with the unsafe condition, but the commenter's proposed change to the airplanes affected by paragraph (g) of this AD would not include those airplanes. As previously discussed, there are passenger-carrying airplanes operated under 14 CFR part 91 that are not required to install FRM. As with all ADs, this AD does not apply to non-U.S.-registered airplanes. Therefore, the FAA has not changed this AD regarding this issue.

Request To Identify Compliant FRM as Acceptable

Airbus requested that the FAA clearly identify the installation of FRM as an acceptable way to comply with the proposed AD requirements. Airbus noted that there are no FQIS or wiring modifications being designed for retrofit for the single-aisle/long range models, but FRM that is compliant with the FTFR rule is available (with possibly some necessary customization adaptations) for all concerned models, including potential future passenger-to-cargo conversions. Airbus noted that the FAA could have addressed the unsafe condition through means other than an AD, such as revising 14 CFR part 91 or mandating installation of an FRM on future passenger-to-freighter conversions by amended type certificate or supplemental type certificate.

The FAA acknowledges the commenter's request. However, the FAA has determined that it is not necessary to identify FRM as acceptable for compliance with this AD, since this issue is already addressed in the AD applicability. Airplanes equipped with FAA-approved FRM that meets the requirements of 14 CFR 25.981(b) or 26.33(c)(1) are not affected by this AD. It is therefore unnecessary to include FRM installation as an alternative way to comply with the requirements of this AD. The FAA has not changed this AD regarding this issue.

Request To Delay AD Pending Approved Procedures

All Nippon Airways (ANA) noted that paragraph (g) of the proposed AD would require modifying the FQIS, but does not describe that modification. ANA therefore requested that the FAA delay issuance of the final rule until a specific procedure for operators to follow is available. ANA expressed concern that absent a clear description of the specific procedure that operators should follow, it will be difficult for operators to comply with the proposed requirements.

The FAA infers that ANA is referring to specific service information for the operator to follow that will address the unsafe condition on the affected airplanes, since the NPRM does not specify service information. The FAA disagrees with the commenter's request. Since the FAA has determined that an unsafe condition exists and that affected airplanes must be modified to ensure continued safety, further delay of this action would be inappropriate. Because of the additional delay due to litigation on the similar AD for Model 757 airplanes, AD 2016–07–07, and the compliance time extension to 72 months, which is discussed in the comment disposition below, the FAA finds that sufficient time exists for manufacturers to develop service information to support operator compliance with the requirements of this AD. If service information is developed, approved, and available in the future, operators may request approval under the provisions of paragraph (i) of this AD to use approved service instructions, as an alternative method of compliance (AMOC) for the requirements of this AD, or the FAA may approve the service information as a global AMOC for this AD.

Request To Change Compliance Time

Airbus requested that the FAA extend the compliance time from 60 months to 72 months, based on the compliance time in AD 2016–07–07, which has a similar unsafe condition and similar corrective actions.

Conversely, NATCA recommended that the FAA reject requests for a compliance time longer than 5 years as proposed. Assuming final rule issuance in 2016, NATCA stated that a 5-year compliance time would result in required compliance by 2021—25 years after the TWA Flight 800 fuel tank explosion that led to the requirements in SFAR 88, and 20 years after issuance of SFAR 88.

The FAA agrees with the request to extend the compliance time, and disagrees with NATCA's request. The FAA received similar requests to extend the compliance time from several commenters regarding the NPRMs for the FQIS modification on other airplanes. The FAA has determined that a 72-month compliance time is appropriate and will provide operators adequate time to prepare for and perform the required modifications without excessive disruption of operations. The FAA has determined that the requested moderate increase in compliance time will continue to provide an acceptable level of safety. The FAA has changed paragraphs (g) and (h)(2) of this AD accordingly.

Request To Clarify Certification Basis for Modification Requirements

NATCA recommended that the FAA revise paragraph (g) of the proposed AD to clearly state that the required FQIS design changes must comply with the fail-safe requirements of 14 CFR 25.901(c), as amended by 43 FR 50597, October 30, 1978, amendment 25–46, and 14 CFR 25.981(a) and (b), as amended by 66 FR 23086, May 7, 2001, amendment 25–102; NATCA added that these provisions are required by SFAR 88.

The FAA infers that NATCA is proposing that the certification basis of the design changes to the FQIS system design be at the amendment levels cited above. The FAA further infers that NATCA proposes that the FAA require the entire FQIS system design to comply at those amendment levels rather than allowing only a portion of the system to comply with those amendments. The FAA partially agrees with NATCA's request. The FAA agrees that the design change must comply with the applicable certification basis, because design changes are required to comply with the applicable certification basis under part 21. The FAA disagrees, however, with identifying the specific certification basis in this AD, because it varies by design. In addition, the FAA previously identified in the SNPRM for AD 2016–07–07, in the response to comments under ''Requests To Withdraw NPRM (77 FR 12506, March 1, 2012). Based on Applicability'' that the option for cargo airplanes will require a partial exemption from 14 CFR 25.901(c) and 25.981(a)(3). The partial exemption is needed because portions of the FQIS would remain unmodified, and the overall system would therefore still not fully comply with those regulations. The FAA has already granted such exemptions for other airplane models. Identifying these amendments as required would also not take into account exceptions (reversions to earlier versions of regulations) granted in the certification basis under 14 CFR 21.101. The FAA has not changed this AD regarding this issue.

Request To Address Unsafe Condition on All Fuel Tanks

NATCA recommended that the FAA require design changes that eliminate unsafe FQIS failure conditions on all fuel tanks on the affected models, regardless of fuel tank location or the percentage of time the fuel tank is flammable. NATCA referred to four fuel tank explosions in low-flammability exposure time fuel tanks identified by the FAA during FTFR rulemaking. NATCA stated that neither FRM nor alternative actions for cargo airplanes (*e.g.,* BITE checks (checks of built-in test equipment) followed by applicable repairs before further flight and modification of the center fuel tank FQIS wiring within 72 months) would bring the airplane into full regulatory compliance. NATCA added that the combination of failures described in the NPRM meets the criteria for ''known combinations'' of failures that require corrective action in Policy Memorandum ANM100–2003–112–15.

The FAA disagrees with the commenter's request. The FAA has determined that according to Policy Memorandum ANM100–2003–112–15, this failure condition for the airplanes affected by this AD should not be classified as a ''known combination.'' While the FQIS design architecture is similar to that of the early Boeing Model 747 configuration that is suspected of contributing to the TWA Flight 800 fuel tank explosion, significant differences exist in the design of FQIS components and wire installations between the affected Airbus SAS models and the early Model 747 airplanes such that the intent of the ''known combinations'' provision for low flammability fuel tanks in the policy memorandum is not applicable. Therefore, this AD affects only the identified Airbus airplanes with high flammability exposure time fuel tanks, as specified in paragraph (c) of this AD. The FAA provided a detailed response to similar comments in AD 2016–07–07. The FAA has not changed this final rule regarding this issue.

Request To Require Modifications on All Production Airplanes

NATCA recommended that the FAA require designs that comply with 14 CFR 25.901(c) and 25.981(a)(3) on all newly produced transport airplanes. NATCA stated that continuing to grant exemptions to 14 CFR 25.901(c), as amended by 42 FR 15042, March 17, 1977, amendment 25–40; and 14 CFR 25.981(a)(3), as amended by 66 FR 23086, May 7, 2001, amendment 25–102; has allowed continued production of thousands of airplanes with this known unsafe condition.

The FAA disagrees with the commenter's request. This AD applies to airplanes, including newly produced airplanes, as specified in paragraph (c) of this AD. The recommendation to require production airplanes of existing designs to fully comply with 25.901(c) and 25.981(a)(3) is outside the scope of this rulemaking. The FAA has not changed this final rule regarding this issue.

Request To Require Design Changes From Manufacturers

NATCA recommended that the FAA follow the agency's compliance and enforcement policy to require manufacturers to develop the necessary design changes soon enough to support operators' ability to comply with the proposed requirements. NATCA noted that SFAR 88 required manufacturers to develop all design changes for unsafe conditions identified by their SFAR 88 design reviews by December 2002, or within an additional 18 months if the FAA granted an extension.

The FAA acknowledges the commenter's concerns. However, any enforcement action is outside the scope of this rulemaking. The FAA has not changed this final rule regarding this issue.

Request To Clarify Cost Estimate

Air France noted that the cost section of the NPRM provided both 1,200- and 74-work-hour estimates, and questioned which figure applied to the wire separation modification.

The FAA agrees that clarification is needed, and has revised the Costs of Compliance section to specify 1,200 work-hours for the modification required by paragraph (g) of this AD, and 74 work-hours for the alternative wire separation modification provided by paragraph (h)(2) of this AD.

Clarification of BITE Check Compliance Time

The FAA has revised paragraph (h)(1) of this AD to clarify the compliance time for the BITE check relative to the requirement to record the fault codes. The FAA recognized that operators might interpret the proposed requirements for alternative actions for cargo airplanes as allowing additional flights prior to performing the BITE check after first recording the fault codes. The FAA intended for operators to perform the BITE check immediately after recording the fault codes to address both the fault codes that exist prior to performing the BITE check as well as any new codes that are identified during the BITE check.

Additional Compliance Time Change

For consistency with similar ADs related to FQIS, the FAA has changed the repetitive interval for recording the existing fault codes stored in the fuel quantity indicating (FQI) computer and BITE check from ''not to exceed 650 flights hours'' to ''not to exceed 750 flights hours.'' The FAA has determined that this change continues to provide an acceptable level of safety.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Costs of Compliance

The FAA estimates that this AD affects 1 airplane of U.S. registry.

The FAA also estimates that it takes about 1,200 work-hours per product to comply with the basic modification requirements of paragraph (g) of this AD. The average labor rate is $85 per work-hour. The FAA received no definitive data that would enable the agency to provide cost estimates for the parts needed to do the actions specified in this AD. Based on these figures, the FAA estimates the labor cost of this AD on U.S. operators to be $102,000.

The FAA has not received definitive information on the costs for the alternative wire separation modification specified in paragraph (h)(2) of this AD. The cost for this action in similar rulemaking on other airplanes, however, suggests that this modification could take about 74 work-hours with parts costing about $10,000, for a total estimated cost to U.S. operators of $16,290 per product.

The FAA estimates that the repetitive FQIS tank circuit checks associated with the alternative wire separation modification would take about 1 work-hour per check. The FAA estimates the cost of this check on U.S. operators to be $85 per product, per check.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–24–01 Airbus SAS: Amendment 39–21012; Docket No. FAA–2016–6144; Product Identifier 2015–NM–088–AD.

(a) Effective Date

This AD is effective February 19, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (6) of this AD, except airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the Fuel Tank Flammability Reduction (FTFR) requirements of 14 CFR 25.981(b) or 14 CFR 26.33(c)(1).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –231, –212, –213, and –232 airplanes.

(5) Model A330–201, –202, –203, –223, –223F, –243, and –243F airplanes.

(6) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by the FAA's analysis of fuel system reviews on the affected airplanes conducted by the manufacturer. The FAA is issuing this AD to address ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification

Within 72 months after the effective date of this AD, modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions, using a method approved by the Manager, International Section, Transport Standard Branch, FAA.

(h) Alternative Actions for Cargo Airplanes

For airplanes used exclusively for cargo operations: As an alternative to the requirements of paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD. To exercise this alternative, operators must perform the first inspection required under paragraph (h)(1) of this AD within 6 months after the effective date of this AD. To exercise this alternative for airplanes returned to service after conversion of the airplane from a passenger configuration to an all-cargo configuration more than 6 months after the effective date of this AD, operators must perform the first inspection required by paragraph (h)(1) of this AD prior to further flight after the conversion.

(1) Within 6 months after the effective date of this AD, record the existing fault codes stored in the fuel quantity indicating (FQI) computer, and before further flight thereafter, do a BITE check (check of built-in test equipment) of the FQI computer, using a method approved by the Manager, International Section, Transport Standards Branch, FAA. If any fault code is recorded prior to the BITE check or as a result of the BITE check, before further flight, do all applicable repairs and repeat the BITE check until a successful test is performed with no fault found, using a method approved by the Manager, International Section, Transport Standards Branch, FAA. Repeat these actions thereafter at intervals not to exceed 750 flight hours. Modification as specified in paragraph (h)(2) of this AD does not terminate the repetitive BITE check requirement of this paragraph.

(2) Within 72 months after the effective date of this AD, modify the airplane by separating FQIS wiring that runs between the FQI computer and the center fuel tank wall penetrations, including any circuits that might pass through a main fuel tank, from other airplane wiring that is not intrinsically safe, using methods approved by the Manager, International Section, Transport Standards Branch, FAA.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD.

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

(j) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(k) Material Incorporated by Reference

None.

Issued in Des Moines, Washington, on December 4, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27884 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0679; Airspace Docket No. 18–ANM–18]

RIN 2120–AA66

Amendment of Class E Airspace; Walla Walla, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace designated as an extension to a Class D or Class E surface area. This action also modifies Class E airspace extending upward from 700 feet above the surface. This action also removes a large area of Class E airspace extending upward from 700 feet above the surface east of the Walla Walla Regional Airport, Walla Walla, WA. Further, this action implements administrative corrections to the airport's Class D and Class E legal descriptions.

DATES: Effective 0901 UTC, March 26, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Walla Walla Regional Airport, Walla Walla, WA, to ensure safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 54526; October 10, 2019) for Docket No. FAA–2019–0679 to amend Class E airspace at Walla Walla Regional Airport, Walla Walla, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D, Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace designated as an extension to a Class D or Class E surface area as follows: that airspace extending upward from the surface within 2.4 miles each side of the 036° bearing, extending from the 4.3-mile radius to 11.6 miles northeast of the Walla Walla Regional Airport. This action also removes Class E airspace designated as an extension to a Class D or Class E surface area southwest of the airport.

Additionally, this action amends Class E airspace extending upward from 700 feet above the surface by resizing the airspace as follows: that airspace extending upward from 700 feet above the surface within 4 miles each side of the 216° bearing, extending from the 4.3-mile radius to 12.5 miles southwest of the airport, and within 4 miles east and 8 miles west of the 037° bearing, extending from 6 miles northeast of the airport to 22.2 miles northeast of the Walla Walla Regional Airport. This action also removes a large area of Class E airspace extending upward from 700 feet above the surface east of the airport.

Further, this action implements administrative corrections to the Class D and Class E airspace areas legal description. This action replaces ''Airport/Facility Directory'' with ''Chart Supplement.''. Subsequent to the publication of the NPRM, the FAA discovered that the geographic coordinates of the Walla Walla Airport's Class D and Class E airspace, designated as a surface area, needed to be updated. These corrections were inadvertently omitted from the NPRM. As these changes are administrative in nature and do not amend the airspace itself, the amendment to the Class D and Class E airspace, designated as a surface area, for Walla Walla, WA, are included in this action.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05′33″ N, long. 118°17′03″ W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.3-mile radius of the Walla Walla Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM WA E2 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05′33″ N, long. 118°17′03″ W)

That airspace extending upward from the surface within a 4.3-mile radius of the Walla Walla Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM WA E4 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05′33″ N, long. 118°17′03″ W)

That airspace extending upward from the surface within 2.4 miles each side of the 036° bearing, extending from the 4.3-mile radius to 11.6 miles northeast of the Walla Walla Regional Airport.

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

* * * * *

ANM WA E5 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05′33″ N, long. 118°17′03″ W)

That airspace extending upward from 700 feet above the surface within 4 miles each side of the 216° bearing, extending from the 4.3-mile radius to 12.5 miles southwest of the airport, and within 4 miles east and 8 miles west of the 037° bearing, extending from 6 miles northeast of the airport to 22.2 miles northeast of the Walla Walla Regional Airport.

Issued in Seattle, Washington, on January 8, 2020.

Byron Chew,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–00411 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0637; Airspace Docket No. 19–ANM–4]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Eagle County, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D at the Eagle County Regional Airport in Eagle, CO. It also amends the Class E airspace area designated as a surface area. Additionally, it amends Class E airspace by adding an area designated as an extension to the Class D and Class E2 surface areas. Further, it amends the Class E airspace extending from 700 feet above the surface of the earth. Lastly, it updates the geographic coordinates of the airport to match the FAA's database.

DATES: Effective 0901 UTC, March 26, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D and Class E airspace at Eagle County Regional Airport, CO, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 54053; October 9, 2019) for Docket No. FAA–2019–0637 to amend Class D and Class E airspace at Eagle County Regional Airport, Eagle County, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in support of the airspace action.

Class D, Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2018, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace at Eagle County Regional Airport, as follows: That airspace extending upward from the surface to and including 9,100 feet MSL within a 4.4-mile radius and extending from the 4.4-mile radius to a 6.5-mile radius along a 199° bearing clockwise to a 277° bearing and extending from the 4.4-mile radius to a 6.5-mile radius along a 45° bearing clockwise to a 103° bearing from the Eagle County Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

It also modifies the Class E airspace area designated as a surface area as follows: That airspace extending upward from the surface within a 4.4-mile radius and extending from the 4.4-mile radius to a 6.5-mile radius along a 199° bearing clockwise to a 277° bearing and extending from the 4.4-mile radius to a 6.5-mile radius along a 45° bearing clockwise to a 103° bearing from the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Additionally, it modifies Class E airspace by adding an areas designated as an extension to a Class D or Class E surface area as follows: That airspace extending upward from the surface within 1.0 mile each side of the 079° bearing extending from the 6.5-mile radius to the 8.7-mile radius east of the Eagle County Regional Airport.

Further, it modifies the Class E airspace extending upward from 700 feet above the surface as the airports as follows: That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the airport, and within 1.3 miles each side of a 079° bearing, extending from the 8.7-mile radius to 11.6 miles east of the Eagle County Regional Airport.

Lastly, this amendment updates the airport's geographic coordinates to match the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ANM CO D Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from the surface to and including 9,100 feet MSL within a 4.4-mile radius, and extending from the 4.4-mile radius to a 6.5-mile radius along the 199° bearing, thence clockwise to the 277° bearing, and extending from the 4.4-mile radius to a 6.5-mile radius along the 45° bearing, thence clockwise to the 103° bearing from the Eagle County Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM CO E2 Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from the surface within a 4.4-mile radius, and extending from the 4.4-mile radius to a 6.5-mile radius along the 199° bearing, thence clockwise to the 277° bearing, and extending from the 4.4-mile radius to a 6.5-mile radius along the 45° bearing, thence clockwise to the 103° bearing from the Eagle County Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E.

* * * * *

ANM CO E4 Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from the surface within 1.0 mile each side of the 079° bearing, extending from the 6.5-mile radius to the 8.7-mile radius east of the Eagle County Regional Airport.

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

* * * * *

ANM CO E5 Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the airport, and within 1.3 miles each side of a 079° bearing, extending from the 8.7-mile radius to 11.6 miles east of the Eagle County Regional Airport.

Issued in Seattle, Washington, on January 8, 2020.

Byron Chew,

Group Manager, Western Service Center Operations Support Group.

[FR Doc. 2020–00412 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Office of Workers' Compensation Programs

20 CFR Parts 702, 725, and 726

Wage and Hour Division

29 CFR Parts 500, 501, 503, 530, 570, 578, 579, 801, and 825

Occupational Safety and Health Administration

29 CFR Part 1903

Employee Benefits Security Administration

29 CFR Part 2560, 2575, and 2590

Mine Safety and Health Administration

30 CFR Part 100

RIN 1290–AA38

Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2020

AGENCY: Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Employee Benefits Security Administration, and Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (Department) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Department, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015 (Inflation Adjustment Act). The Inflation Adjustment Act requires the Department to annually adjust its civil money penalty levels for inflation no later than January 15 of each year. The Inflation Adjustment Act provides that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the civil penalties. Accordingly, this final rule sets forth the Department's 2020 annual adjustments for inflation to its civil monetary penalties.

DATES: This final rule is effective on January 15, 2020. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5076 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Background

On November 2, 2015, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (collectively, the ''Prior Inflation Adjustment Act''), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation no later than January 15 of each year.

On July 1, 2016, the Department published an IFR that established the initial catch-up adjustment for most civil penalties that the Department administers and requested comments. *See* 81 FR 43430 (DOL IFR). On January 18, 2017, the Department published the final rule establishing the 2017 Annual Adjustment for those civil monetary penalties adjusted in the DOL IFR. *See* 82 FR 5373 (DOL 2017 Annual Adjustment). On July 1, 2016, the U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) (collectively, ''the Departments'') jointly published an IFR that established the initial catch-up adjustment for civil monetary penalties assessed or enforced in connection with the employment of temporary nonimmigrant workers under the H–2B program. *See* 81 FR 42983 (Joint IFR). On March 17, 2017, the Departments jointly published the final rule establishing the 2017 Annual Adjustment for the H–2B civil monetary penalties. *See* 82 FR 14147 (Joint 2017 Annual Adjustment). The Joint 2017 Annual Adjustment also explained that DOL would make future adjustments to the H–2B civil monetary penalties consistent with DOL's delegated authority under 8 U.S.C. 1184(c)(14), Immigration and Nationality Act section 214(c)(14), and the Inflation Adjustment Act. *See* 82 FR 14147–48. On January 2, 2018, the Department published the final rule establishing the 2018 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 83 FR 7 (DOL 2018 Annual Adjustment). On January 23, 2019, the Department published the final rule establishing the 2019 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 84 FR 213 (DOL 2019 Annual Adjustment).

This rule implements the 2020 annual inflation adjustments, as required by the Inflation Adjustment Act, for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties.[1] The Inflation Adjustment Act provides that the increased penalty levels apply to any penalties assessed after the effective date of the increase. Pursuant to the Inflation Adjustment Act, this final rule is published notwithstanding Section 553 of the APA.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

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

II. Adjustment for 2020

The Department has undertaken a thorough review of civil penalties administered by its various components pursuant to the Inflation Adjustment Act and in accordance with guidance issued by the Office of Management and Budget.[2]

The Department first identified the most recent penalty amount, which is the amount established by the 2019 annual adjustment as set forth in the DOL 2019 Annual Adjustment published on January 23, 2019. The Department is required to calculate the annual adjustment based on the Consumer Price Index for all Urban Consumers (CPI–U). Annual inflation adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U; in this case, the percent change between the October 2019 CPI–U and the October 2018 CPI–U. The cost-of-living adjustment multiplier for 2020, based on the Consumer Price Index (CPI–U) for the month of October 2019, not seasonally adjusted, is 1.01764.[3] In

[1] The Department is also responsible for administering and enforcing a newly-enacted civil monetary penalty under the Fair Labor Standards Act (*see* Pub. L. 115–141, section 1201 (2018)) and proposed regulations to codify this civil monetary penalty in the Code of Federal Regulations on October 8, 2019. See Tip Regulations Under the Fair Labor Standards Act (FLSA), 84 FR 53956 (proposed Oct. 8, 2019).

[2] M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2019).

[3] OMB provided the year-over-year multiplier, rounded to 5 decimal points. *Id.* at 1.

order to compute the 2020 annual adjustment, the Department multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.01764, and rounded to the nearest dollar. This resulted in increases to all but four of the penalties administered by the Department, as set forth in the Appendix.

As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule.[4] Accordingly, for penalties assessed after January 15, 2020, whose associated violations occurred after November 2, 2015, the higher penalty amounts outlined in this rule will apply. The tables below demonstrate the penalty amounts that apply:

CIVIL MONETARY PENALTIES FOR THE H–2B TEMPORARY NON-AGRICULTURAL WORKER PROGRAM

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels.
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels.
After November 2, 2015	After August 1, 2016, but on or before March 17, 2017.	August 1, 2016 levels.
After November 2, 2015	After March 17, 2017 but on or before January 2, 2018.	March 17, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019.	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020.	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020	January 15, 2020 levels.

CIVIL MONETARY PENALTIES FOR OTHER DOL PROGRAMS

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels.
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels.
After November 2, 2015	After August 1, 2016, but on or before January 13, 2017.	August 1, 2016 levels.
After November 2, 2015	After January 13, 2017 but on or before January 2, 2018.	January 13, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019.	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020.	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020	January 15, 2020 levels.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this final rule does not require any collection of information.

IV. Administrative Procedure Act

The Inflation Adjustment Act provides that agencies shall annually adjust civil monetary penalties for inflation notwithstanding Section 553 of the APA. Additionally, the Inflation Adjustment Act provides a nondiscretionary cost-of-living formula for annual adjustment of the civil monetary penalties. For these reasons, the requirements in sections 553(b), (c), and (d) of the APA, relating to notice and comment and requiring that a rule be effective 30 days after publication in the **Federal Register**, are inapplicable.

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

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a ''significant regulatory action'' is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues.

The Department has determined that this final rule is not a ''significant'' regulatory action and a cost-benefit and economic analysis is not required. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the Inflation Adjustment Act, and has no impact on disclosure or compliance costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the incentive for the regulated community to comply with the laws enforced by the Department, and not allowing the incentive to be diminished by inflation.

Executive Order 13563 directs 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 to minimize burden.

The Inflation Adjustment Act directed the Department to issue the annual

[4] Appendix 1 consists of a table that provides ready access to key information about each penalty.

adjustments without regard to Section 553 of the APA. In that context, Congress has already determined that any possible increase in costs is justified by the overall benefits of such adjustments. This final rule makes only the statutory changes outlined herein; thus there are no alternatives or further analysis required by Executive Order 13563.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b). This final rule is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Department to issue the annual adjustments without regard to Section 553 of the APA. Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this rule. Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. This Final Rule will not result in such an expenditure. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Executive Order 13132: Federalism

Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 667) requires Occupational Safety and Health Administration (OSHA)-approved State Plans to have standards and an enforcement program that are at least as effective as federal OSHA's standards and enforcement program. OSHA-approved State Plans must have maximum and minimum penalty levels that are at least as effective as federal OSHA's per Section 18(c)(2) of the OSH Act. *See also* 29 CFR 1902.4(c)(2)(xi); 1902.37(b)(12). State Plans are required to increase their penalties in alignment with OSHA's penalty increases to maintain at least as effective penalty levels.

State Plans are not required to impose monetary penalties on state and local government employers. *See* § 1956.11(c)(2)(x). Five (5) states and one territory have State Plans that cover only state and local government employees: Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands. Therefore, the requirements to increase the penalty levels do not apply to these State Plans. Twenty-one states and one U.S. territory have State Plans that cover both private sector employees and state and local government employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. They must increase their penalties for private-sector employers.

Other than as listed above, this final rule does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

C. Executive Order 13175: Indian Tribal Governments

This final rule does not have ''tribal implications'' because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

D. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This final rule will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

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

This final rule will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Environmental Impact Assessment

A review of this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR part 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the final rule will not have a significant impact on the quality of the human environment. As a result, there is no corresponding environmental assessment or an environmental impact statement.

G. Executive Order 13211: Energy Supply

This final rule has been reviewed for its impact on the supply, distribution, and use of energy because it applies, in part, to the coal mining and uranium industries. Mine Safety and Health Administration (MSHA) has concluded that the adjustment of civil monetary penalties to keep pace with inflation and thus maintain the incentive for operators to maintain safe and healthful workplaces is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This final rule has not been identified to have other impacts on energy supply. Accordingly, Executive Order 13211 requires no further Agency action or analysis.

H. Executive Order 12630: Constitutionally Protected Property Rights

This final rule will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

I. Executive Order 12988: Civil Justice Reform Analysis

This final rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. The Department has determined that this final rule meets the applicable standards provided in section 3 of Executive Order 12988.

List of Subjects

20 CFR Part 655

Immigration, Labor, Penalties.

20 CFR Part 702

Administrative practice and procedure, Longshore and harbor workers, Penalties, Reporting and recordkeeping requirements, Workers' compensation.

20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Coal miners, Penalties, Reporting and recordkeeping requirements.

20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Coal miners, Mines, Penalties.

29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 503

Administrative practice and procedure, Aliens, Employment, Housing, Immigration, Labor, Penalties, Transportation, Wages.

29 CFR Part 530

Administrative practice and procedure, Clothing, Homeworkers, Indians—arts and crafts, Penalties, Reporting and recordkeeping requirements, Surety bonds, Watches and jewelry.

29 CFR Part 570

Child labor, Law enforcement, Penalties.

29 CFR Part 578

Penalties, Wages.

29 CFR Part 579

Child labor, Penalties.

29 CFR Part 801

Administrative practice and procedure, Employment, Lie detector tests, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Reporting and recordkeeping requirements, Teachers.

29 CFR Part 1903

Intergovernmental relations, Law enforcement, Occupational Safety and Health, Penalties.

29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Penalties, Pensions, Reporting and recordkeeping.

29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Health care, Penalties, Pensions.

29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Penalties, Pensions, Reporting and recordkeeping.

30 CFR Part 100

Mine safety and health, Penalties.

For the reasons set out in the preamble, 20 CFR chapters V and VI, 29 CFR subtitle A and chapters V, XVII, and XXV, and 30 CFR chapter I are amended as follows.

DEPARTMENT OF LABOR

Employment and Training Administration

Title 20—Employees' Benefits

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–128, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

§§ 655.620, 655.801, and 655.810 [Amended]

■ 2. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 655.620(a)	$9,472	$9,639
§ 655.801(b)	7,710	7,846
§ 655.810(b)(1) introductory text	1,895	1,928
§ 655.810(b)(2) introductory text	7,710	7,846
§ 655.810(b)(3) introductory text	53,969	54,921

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

PART 702—ADMINISTRATION AND PROCEDURE

■ 3. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

§§ 702.204, 702.236, and 702.271 [Amended]

■ 4. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the section or paragraph and add in its place the dollar amount or date indicated in the right column.

Section/paragraph	Remove	Add
§ 702.204	$24,017	$24,441.
§ 702.204	January 23, 2019	January 15, 2020.
§ 702.236	$292	$297.
§ 702.236	January 23, 2019	January 15, 2020.
§ 702.271(a)(2)	January 23, 2019	January 15, 2020.
§ 702.271(a)(2)	$2,402	$2,444.
§ 702.271(a)(2)	$12,007	$12,219.

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 5. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.*, 902(f), 921, 932, 936; 30 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

§ 725.621 [Amended]

■ 6. In § 725.621, amend paragraph (d) by removing ''January 23, 2019'' and adding in its place ''January 15, 2020'' and by removing ''$1,462'' and adding in its place ''$1,488''.

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 7. The authority citation for part 726 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*, 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.;* 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

§ 726.302 [Amended]

■ 8. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
§ 726.302(c)(2)(i) table Introductory text	January 23, 2019	January 15, 2020.
§ 726.302(c)(2)(i) table	$143	$146.
§ 726.302(c)(2)(i) table	285	290.
§ 726.302(c)(2)(i) table	428	436.
§ 726.302(c)(2)(i) table	569	579.
§ 726.302(c)(4)	January 23, 2019	January 15, 2020.
§ 726.302(c)(4)	$143	$146.
§ 726.302(c)(5)	January 23, 2019	January 15, 2020.
§ 726.302(c)(5)	$428	$436.
§ 726.302(c)(6)	January 23, 2019	January 15, 2020.
§ 726.302(c)(6)	$2,924	$2,976.

DEPARTMENT OF LABOR

Wage and Hour Division

Title 29—Labor

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 9. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

§ 500.1 [Amended]

■ 10. In § 500.1, amend paragraph (e) by removing ''$2,505'' and adding in its place ''$2,549''.

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

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

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

§ 501.19 [Amended]

■ 12. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 501.19(c) introductory text	$1,735	$1,766
§ 501.19(c)(1)	5,839	5,942
§ 501.19(c)(2)	57,813	58,833
§ 501.19(c)(4)	115,624	117,664
§ 501.19(d)	5,839	5,942
§ 501.19(e)	17,344	17,650
§ 501.19(f)	17,344	17,650

PART 503—ENFORCEMENT OF OBLIGATIONS FOR TEMPORARY NONIMMIGRANT NON-AGRICULTURAL WORKERS DESCRIBED IN THE IMMIGRATION AND NATIONALITY ACT

■ 13. The authority citation for part 503 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184; 8 CFR 214.2(h); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701.

§ 503.23 [Amended]

■ 14. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph, and add in its place the dollar amount indicated in the right column:

Paragraph	Remove	Add
§ 503.23(b)	$12,695	$12,919
§ 503.23(c)	12,695	12,919
§ 503.23(d)	12,695	12,919

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 15. The authority citation for part 530 continues to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

■ 16. In § 530.302, amend paragraph (a) by removing ''$1,052'' and adding in its place ''$1,071'' and revise paragraph (b).

The revision reads as follows:

§ 530.302 Amounts of civil penalties.

* * * * *

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$21–214	$214–428	$428–1,071
Monetary violations	21–214	214–428	
Employment of homeworkers without a certificate		214–428	428–1,071
Other violations of statutes, regulations or employer assurances	21–214	214–428	428–1,071

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

■ 17. The authority citation for subpart G of part 570 continues to read as follows:

Authority: 52 Stat. 1060–1069, as amended; 29 U.S.C. 201–219; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701.

§ 570.140 [Amended]

■ 18. In § 570.140, amend paragraph (b)(1) by removing ''$12,845'' and adding in its place ''$13,072'' and paragraph (b)(2) by removing ''$58,383'' and adding in its place ''$59,413''.

PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 19. The authority citation for part 578 continues to read as follows:

Authority: Sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29 (29 U.S.C. 216(e)), Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, 1321–373, and Pub. L. 114–74, 129 Stat 584.

§ 578.3 [Amended]

■ 20. In § 578.3, amend paragraph (a) by removing ''$2,014'' and adding in its place ''$2,050''.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 21. The authority citation for part 579 continues to read as follows:

Authority: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–7, 129 Stat 584.

§ 579.1 [Amended]

■ 22. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 579.1(a)(1)(i)(A)	$12,845	$13,072
§ 579.1(a)(1)(i)(B)	58,383	59,413
§ 579.1(a)(2)	2,014	2,050

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

■ 23. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 801.42 [Amended]

■ 24. In § 801.42 amend paragraph (a) introductory text by removing ''$21,039'' and adding in its place ''$21,410''.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 25. The authority citation for part 825 continues to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

§ 825.300 [Amended]

■ 26. In § 825.300 amend paragraph (a)(1) by removing ''$173'' and adding in its place ''$176''.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Title 29—Labor

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

■ 27. The authority citation for part 1903 continues to read as follows:

Authority: Secs. 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Section 701, Pub. L. 114–74; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

§ 1903.15 [Amended]

■ 28. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
§ 1903.15(d) introductory text	January 23, 2019	January 15, 2020.
§ 1903.15(d)(1)	$9,472	$9,639.
§ 1903.15(d)(1)	$132,598	$134,937.
§ 1903.15(d)(2)	$132,598	$134,937.
§ 1903.15(d)(3)	$13,260	$13,494.
§ 1903.15(d)(4)	$13,260	$13,494.
§ 1903.15(d)(5)	$13,260	$13,494.
§ 1903.15(d)(6)	$13,260	$13,494.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Title 30—Mineral Resources

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

■ 29. The authority citation for part 100 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 815, 820, 957; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

■ 30. In § 100.3, amend paragraph (a)(1) introductory text by removing ''72,620'' and adding in its place ''73,901'' and in paragraph (g) by revising Table XIV—Penalty Conversion Table.

The revision reads as follows:

§ 100.3 Determination of penalty amount; regular assessment.

* * * * *

(g) * * *

TABLE XIV—PENALTY CONVERSION TABLE

Points	Penalty ($)
60 or fewer	137
61	150
62	161
63	175
64	190
65	206
66	222
67	242
68	261
69	283
70	306
71	332
72	361
73	390
74	421
75	458
76	498
77	536
78	582
79	631
80	684
81	740
82	801
83	869
84	941
85	1,021
86	1,105
87	1,196
88	1,296
89	1,404
90	1,521
91	1,648
92	1,784
93	1,932
94	2,094
95	2,268
96	2,457
97	2,661
98	2,884
99	3,124
100	3,385
101	3,666
102	3,971
103	4,302
104	4,660
105	5,049
106	5,469
107	5,925
108	6,418
109	6,953
110	7,532
111	8,157
112	8,839
113	9,575
114	10,373
115	11,236
116	12,171
117	13,186
118	14,284
119	15,474
120	16,762
121	18,159
122	19,670
123	21,309
124	23,085
125	25,004
126	27,089
127	29,346
128	31,789
129	34,437
130	37,306
131	40,413
132	43,778
133	47,423
134	51,207
135	54,988
136	58,773
137	62,553
138	66,337
139	70,118
140 or more	73,901

* * * * *

§§ 100.4 and 100.5 [Amended]

■ 31. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph, and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 100.4(a)	$2,421	$2,464
§ 100.4(b)	4,840	4,925
§ 100.4(c) introductory text	6,052	6,159
§ 100.4(c) introductory text	72,620	73,901
§ 100.5(c)	7,867	8,006
§ 100.5(d)	332	338
§ 100.5(e)	266,275	270,972

Note: The following Appendix will not appear in the Code of Federal Regulations.

Agency	Law	Name/description	CFR citation	2019		2020	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Regular Assessment	30 CFR 100.3(a)		$72,620		$73,901

Agency	Law	Name/description	CFR citation	2019 Min penalty (rounded to nearest dollar)	2019 Max penalty (rounded to nearest dollar)	2020 Min penalty (rounded to nearest dollar)	2020 Max penalty (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty Conversion Table	30 CFR 100.3(g)	$135	$72,620	$137	$73,901
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum Penalty for any order issued under 104(d)(1) of the Mine Act.	30 CFR 100.4(a)	2,421		$2,464	
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum penalty for any order issued under 104(d)(2) of the Mine Act.	30 CFR 100.4(b)	4,840		$4,925	
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty for failure to provide timely notification under 103(j) of the Mine Act.	39 CFR 100.4(c)	6,052	$72,620	$6,159	$73,901
MSHA	Federal Mine Safety & Health Act of 1977.	Any operator who fails to correct a violation for which a citation or order was issued under 104(a) of the Mine Act.	30 CFR 100.5(c)		$7,867		$8,006
MSHA	Federal Mine Safety & Health Act of 1977.	Violation of mandatory safety standards related to smoking standards.	30 CFR 100.5(d)		$332		$338
MSHA	Federal Mine Safety & Health Act of 1977.	Flagrant violations under 110(b)(2) of the Mine Act.	30 CFR 100.5(e)		$266,275		$270,972
EBSA	Employee Retirement Income Security Act.	Section 209(b): Per plan year for failure to furnish reports (e.g., pension benefit statements) to certain former employees or maintain employee records each employee a separate violation..	29 CFR 2575.1–3		$30		$31
EBSA	Employee Retirement Income Security Act.	Section 502(c)(2)—Per day for failure/refusal to properly file plan annual report.	29 CFR 2575.1–3		$2,194		$2,233
EBSA	Employee Retirement Income Security Act.	Section 502(c)(4)—Per day for failure to disclose certain documents upon request under ERISA 101(k) and (l); failure to furnish notices under 101(j) and 514(e)(3)—each statutory recipient a separate violation.	29 CFR 2575.1–3		$1,736		$1,767
EBSA	Employee Retirement Income Security Act.	Section 502(c)(5)—Per day for each failure to file annual report for Multiple Employer Welfare Arrangements (MEWAs) under 101(g).	29 CFR 2575.1–3		$1,597		$1,625
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(6)—Per day for each failure to provide Secretary of Labor requested documentation not to exceed a per-request maximum.	29 CFR 2575.1–3		$156 per day, not to exceed $1,566 per request.		$159 per day, not to exceed $1,594 per request.
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(7)—Per day for each failure to provide notices of blackout periods and of right to divest employer securities– each statutory recipient a separate violation.	29 CFR 2575.1–3		$139		$141
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(8)—Per each failure by an endangered status multiemployer plan to adopt a funding improvement plan or meet benchmarks; or failure of a critical status multiemployer plan to adopt a rehabilitation plan.	29 CFR 2575.1–3		$1,378		$1,402
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(A)—Per day for each failure by an employer to inform employees of CHIP coverage opportunities under Section 701(f)(3)(B)(i)(l)—each employee a separate violation.	29 CFR 2575.1–3		$117		$119
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(B)—Per day for each failure by a plan to timely provide to any State information required to be disclosed under Section 701(f)(3)(B)(ii), as added by CHIP regarding coverage coordination—each participant/beneficiary a separate violation.	29 CFR 2575.1–3		$117		$119

Agency	Law	Name/description	CFR citation	2019 Min penalty (rounded to nearest dollar)	2019 Max penalty (rounded to nearest dollar)	2020 Min penalty (rounded to nearest dollar)	2020 Max penalty (rounded to nearest dollar)
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—Failure by any plan sponsor of group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of Sections 702(a)(1)(F), (b)(3), (c) or (d); or Section 701; or Section 702(b)(1) with respect to genetic information—daily per participant and beneficiary during non-compliance period.	29 CFR 2575.1–3		$117		$119
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected de minimis violation.	29 CFR 2575.1–3	$2,919		$2,970	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected violations that are not de minimis.	29 CFR 2575.1–3	$17,515		$17,824	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—unintentional failure maximum cap.	29 CFR 2575.1–3		$583,830		$594,129
EBSA	Employee Retirement Income Security Act.	Section 502(c)(12)—Per day for each failure of a CSEC plan in restoration status to adopt a restoration plan.	29CFR 2575.1–3		$107		$109
EBSA	Employee Retirement Income Security Act.	Section 502 (m)—Failure of fiduciary to make a proper distribution from a defined benefit plan under section 206(e) of ERISA.	29 CFR 2575.1–3		$16,915		$17,213
EBSA	Employee Retirement Income Security Act.	Failure to provide Summary of Benefits Coverage under PHS Act section 2715(f), as incorporated in ERISA section 715 and 29 CFR 2590.715–2715(e).	29 CFR 2575.1–3		$1,156		$1,176
OSHA	Occupational Safety and Health Act.	Serious Violation	29 CFR 1903.15(d)(3).		$13,260		$13,494
OSHA	Occupational Safety and Health Act.	Other-Than-Serious	29 CFR 1903.15(d)(4).		$13,260		$13,494
OSHA	Occupational Safety and Health Act.	Willful	29 CFR 1903.15(d)(1).	9,472	$132,598	$9,639	$134,937
OSHA	Occupational Safety and Health Act.	Repeated	29 CFR 1903.15(d)(2).		$132,598		$134,937
OSHA	Occupational Safety and Health Act.	Posting Requirement	29 CFR 1903.15(d)(6).		$13,260		$13,494
OSHA	Occupational Safety and Health Act.	Failure to Abate	29 CFR 1903.15(d)(5).		$13,260 per day.		$13,494 per day.
WHD	Family and Medical Leave Act.	FMLA	29 CFR 825.300(a)(1).		$173		$176
WHD	Fair Labor Standards Act.	FLSA	29 CFR 578.3(a)		$2,014		$2,050
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(2)		$2,014		$2,050
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 570.140(b)(1).		$12,845		$13,072
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(1)(i)(A).		$12,845		$13,072
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 570.140(b)(2).		$58,383		$59,413
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 579.1(a)(1)(i)(B).		$58,383		$59,413
WHD	Fair Labor Standards Act.	Child Labor willful or repeated that causes serious injury or death (penalty amount doubled).	29 CFR 570.140(b)(2); 29 CFR 579.1(a)(1)(i)(B) Doubled.		$116,766		$118,826
WHD	Migrant and Seasonal Agricultural Worker Protection Act.	MSPA	29 CFR 500.1(e)		$2,505		$2,549
WHD	Immigration & Nationality Act.	H1B	20 CFR 655.810(b)(1).		$1,895		$1,928
WHD	Immigration & Nationality Act.	H1B retaliation	20 CFR 655.801(b)		$7,710		$7,846
WHD	Immigration & Nationality Act.	H1B willful or discrimination	20 CFR 655.810(b)(2).		$7,710		$7,846
WHD	Immigration & Nationality Act.	H1B willful that resulted in displacement of a US worker.	20 CFR 655.810(b)(3).		$53,969		$54,921

Agency	Law	Name/description	CFR citation	2019		2020	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
WHD	Immigration & Nationality Act.	D–1	20 CFR 655.620(a)		$9,472		$9,639
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.5(b)(2)		$27		$27
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.8(a)		$27		$27
WHD	Walsh-Healey Public Contracts Act.	Walsh-Healey	41 CFR 50–201.3(e)		$27		$27
WHD	Employee Polygraph Protection Act.	EPPA	29 CFR 801.42(a)		$21,039		$21,410
WHD	Immigration & Nationality Act.	H2A	29 CFR 501.19(c)		$1,735		$1,766
WHD	Immigration & Nationality Act.	H2A willful or discrimination	29 CFR 501.19(c)(1)		$5,839		$5,942
WHD	Immigration & Nationality Act.	H2A Safety or health resulting in serious injury or death.	29 CFR 501.19(c)(2)		$57,813		$58,833
WHD	Immigration & Nationality Act.	H2A willful or repeated safety or health resulting in serious injury or death.	29 CFR 501.19(c)(4)		$115,624		$117,664
WHD	Immigration & Nationality Act.	H2A failing to cooperate in an investigation.	29 CFR 501.19(d)		$5,839		$5,942
WHD	Immigration & Nationality Act.	H2A displacing a US worker	29 CFR 501.19(e)		$17,344		$17,650
WHD	Immigration & Nationality Act.	H2A improperly rejecting a US worker	29 CFR 501.19(f)		$17,344		$17,650
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(b)		$12,695		$12,919
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(c)		$12,695		$12,919
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(d)		$12,695		$12,919
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(a)		$1,052.00		$1,071
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(b)	21	$1,052.00	$21	$1,071
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to file first report of injury or filing a false statement or misrepresentation in first report.	20 CFR 702.204		$24,017		$24,441
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to report termination of payments	20 CFR 702.236		$292		$297
OWCP	Longshore and Harbor Workers' Compensation Act.	Discrimination against employees who claim compensation or testify in a LHWCA proceeding.	20 CFR 702.271(a)(2).	2,402	$12,007	$2,444	$12,219
OWCP	Black Lung Benefits Act.	Failure to report termination of payments	20 CFR 725.621 (d)		$1,462		$1,488
OWCP	Black Lung Benefits Act.	Failure to file required reports	20 CFR 725.621(d)		$1,462		$1,488
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with fewer than 25 employees.	20 CFR 726.302(c)(2)(i).	143		$146	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 25–50 employees.	20 CFR 726.302(c)(2)(i).	285		$290	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 51–100 employees.	20 CFR 726.302(c)(2)(i).	428		$436	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with more than 100 employees.	20 CFR 726.302(c)(2)(i).	569		$579	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits after 10th day of notice.	20 CFR 726.302(c)(4).	143		$146	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for repeat offenders.	20 CFR 726.302(c)(5).	428		$436	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits	20 CFR 726.302(c)(5).		$2,924		$2,976

Signed at Washington, DC, this 9th day of January, 2020.

Eugene Scalia,

Secretary, U.S. Department of Labor.

[FR Doc. 2020–00486 Filed 1–14–20; 8:45 am]

BILLING CODE 4510–HL–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe certain interest assumptions under the regulation for plans with valuation dates in February 2020. These interest assumptions are used for paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective February 1, 2020.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400 ext. 3829. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for February 2020 measurement dates.

The February 2020 lump sum interest assumptions will be 0.25 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for January 2020, these assumptions represent no change in the immediate rate and are otherwise unchanged.

PBGC updates appendices B and C each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available for plans that rely on our publication of them each month to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during February 2020, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, rate set 316 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*		*	*
316	2–1–20	3–1–20	0.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, rate set 316 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * * * *								
316	2–1–20	3–1–20	0.25	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–00332 Filed 1–14–20; 8:45 am]

BILLING CODE 7709–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4071 and 4302

RIN 1212–AB45

Adjustment of Civil Penalties for Inflation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is required to amend its regulations annually to adjust for inflation the maximum civil penalty for failure to provide certain notices or other material information and for failure to provide certain multiemployer plan notices.

DATES:

Effective date: This rule is effective on January 15, 2020.

Applicability date: The increases in the civil monetary penalties under sections 4071 and 4302 of the Employee Retirement Income Security Act provided for in this rule apply to such penalties assessed after January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Cibinic, Deputy Assistant General Counsel for Regulatory Affairs (*cibinic.stephanie@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6352. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–229–6352.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This rule is needed to carry out the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance M–20–05. The rule adjusts, as required for 2020, the maximum civil penalties under 29 CFR part 4071 and 29 CFR part 4302 that the Pension Benefit Guaranty Corporation (PBGC) may assess for failure to provide certain notices or other material information and certain multiemployer plan notices.

PBGC's legal authority for this action comes from the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and from sections 4002(b)(3), 4071, and 4302 of the Employee Retirement Income Security Act of 1974 (ERISA).

Major Provisions of the Regulatory Action

This rule adjusts as required by law the maximum civil penalties that PBGC may assess under sections 4071 and 4302 of ERISA. The new maximum amounts are $2,233 for section 4071 penalties and $297 for section 4302 penalties.

Background

PBGC administers title IV of ERISA. Title IV has two provisions that authorize PBGC to assess civil monetary penalties.[1] Section 4302, added to ERISA by the Multiemployer Pension Plan Amendments Act of 1980, authorizes PBGC to assess a civil penalty of up to $100 a day for failure to provide a notice under subtitle E of title IV of ERISA (dealing with multiemployer plans). Section 4071, added to ERISA by the Omnibus Budget Reconciliation Act of 1987, authorizes PBGC to assess a civil penalty of up to $1,000 a day for failure to provide a notice or other material information under subtitles A, B, and C of title IV and sections 303(k)(4) and 306(g)(4) of title I of ERISA.

Adjustment of Civil Penalties

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[2] which requires agencies to adjust civil monetary penalties for inflation and to publish the adjustments in the **Federal Register**. An initial adjustment was required to be made by interim final rule published by July 1, 2016, and effective by August 1, 2016. Subsequent adjustments must be published by January 15 each year after 2016.

On December 16, 2019, the Office of Management and Budget issued memorandum M–20–05 on implementation of the 2020 annual inflation adjustment pursuant to the 2015 act.[3] The memorandum provides agencies with the cost-of-living adjustment multiplier for 2020, which is based on the Consumer Price Index (CPI–U) for the month of October 2019, not seasonally adjusted. The multiplier for 2020 is 1.01764. The adjusted maximum amounts are $2,233 for section 4071 penalties and $297 for section 4302 penalties.

Compliance With Regulatory Requirements

The Office of Management and Budget has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866 and therefore not subject to its review. As this is not a significant regulatory action under E.O. 12866, it is not considered an E.O. 13771 regulatory action.

The Office of Management and Budget also has determined that notice and public comment on this final rule are unnecessary because the adjustment of civil penalties implemented in the rule is required by law. See 5 U.S.C. 553(b).

Because no general notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

[1] Under the Federal Civil Penalties Inflation Adjustment Act of 1990, a penalty is a civil monetary penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. Title IV also provides (in section 4007) for penalties for late payment of premiums, but those penalties are neither in a specified amount nor subject to a specified maximum amount.

[2] Sec. 701, Public Law 114–74, 129 Stat. 599–601 (Bipartisan Budget Act of 2015).

[3] See M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, *https://www.whitehouse.gov/omb/information-for-agencies/memoranda/*.

List of Subjects

29 CFR Part 4071

Penalties.

29 CFR Part 4302

Penalties.

In consideration of the foregoing, PBGC amends 29 CFR parts 4071 and 4302 as follows:

PART 4071—PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION

■ 1. The authority citation for part 4071 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1371.

§ 4071.3 [Amended]

■ 2. In § 4071.3, the figures ''$2,194'' are removed and the figures ''$2,233'' are added in their place.

PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

■ 3. The authority citation for part 4302 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1452.

§ 4302.3 [Amended]

■ 4. In § 4302.3, the figures ''$292'' are removed and the figures ''$297'' are added in their place.

Issued in Washington DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–00222 Filed 1–14–20; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0118]

RIN 1625–AA11

Regulated Navigation Area; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area for certain waters of the Monongahela, Allegheny, and Ohio Rivers at Pittsburgh, Pennsylvania. This action is necessary to provide for the safety of persons, vessels, and the marine environment on these navigable waters due to the high volume of vessels navigating the area. This rule will prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting more than 100 feet from any river bank in the regulated navigation area unless authorized in order to reduce vessel congestion and provide for safe passage of transiting vessels in the center of the rivers. It will also prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes the safe passage of another vessel to any launching ramp, marine, or fleeting area unless authorized.

DATES: This rule is effective February 14, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0118 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email ENS William Russell, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *William.W.Russell@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

During a Passenger Vessel Association Rivers Region Meeting in November of 2016, participants notified Coast Guard Marine Safety Unit (MSU) Pittsburgh of navigation and safety issues involving vessel congestion near the Point of Pittsburgh during the summer months. As a result, MSU Pittsburgh formed a Congested Waterways Committee that meets monthly to investigate the congestion issue and discuss concerns regarding use of the waterway. The committee includes: Tow boat operators, commercial passenger vessel operators, port executives, safe boating council members, industry representatives, and members from local recreational boat associations, along with representatives of the Coast Guard Auxiliary, United States Army Corps of Engineers (USACE), and city and state law enforcement officials.

MSU Pittsburgh learned that during summer months, especially on weekends, large numbers of recreational vessels anchor or drift in the vicinity of the Point of Pittsburgh, which created an unsafe navigation situation for the larger commercial vessels utilizing the waterway. Some of the participants discussed several near misses between commercial and recreational vessels, but currently there is no standard definition of a near miss as it pertains to this issue, nor has it been tracked. MSU Pittsburgh received comments about the dangers of recreational vessels anchoring or drifting near the sailing line,[1] and conversely, about the dangers of commercial vessels that seem to expect vessels to give way as a matter of course. The local ferries also expressed concerns regarding vessels blocking the approaches to their loading areas.

During the summer of 2018, MSU Pittsburgh was notified of two outdoor concerts at Heinz Field. Due to the proximity of the stadium to the Ohio River, large concentrations of recreational vessels were anticipated throughout concert weekends. To mitigate the navigational impact, MSU Pittsburgh permitted these concerts as marine events and established temporary Special Local Regulations to maintain a safe and clear navigation area during the concert weekends.

Both temporary Special Local Regulations prohibited persons and vessels from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank or act in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. In advance of the concert weekends, MSU Pittsburgh conducted outreach/education. MSU Pittsburgh provided flyers to the three locks and dams of the Pitt Pool to be given to boaters entering the pool throughout the concert weekends. Coast Guard and Coast Guard Auxiliary patrols also provided flyers to boaters in the Pitt Pool during the concerts. MSU Pittsburgh personnel participated in news media interviews with two local TV stations and one local newspaper. According to the USACE, 529 recreational and 133 commercial vessels transited through the locks of the Pitt Pool throughout the concert weekends. Additionally, 316 passenger vessel trips were conducted in close proximity to Heinz Field. Despite the concentration of vessels, both recreational and

[1] The phrase ''sailing line'' is defined as the middle of the river as marked on the USACE river charts.

commercial vessels were able to transit safely throughout the weekend, and positive feedback was received from industry, other government agencies, and recreational representatives.

On July 1, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Regulated Navigation Area; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh, PA'' (84 FR 31273). The rulemaking proposed establishing a Regulated Navigation Area that would prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting more than 100 feet from any river bank in the regulated navigation area unless authorized in order to reduce vessel congestion and provide for safe passage of transiting vessels in the center of the rivers. It also proposed to prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes the safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized. There we invited comments on our proposed regulatory action related to this Regulated Navigation Area. During the comment period that ended July 31, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231). The purpose of this rulemaking is to ensure the safety of persons, vessels, and the marine environment on the navigable waters of the Monongahela, Allegheny, and Ohio Rivers at Pittsburgh, Pennsylvania due to high vessel traffic volume. The Commander of the Eighth Coast Guard District has determined that potential hazards associated with the risk of collision in this area is a safety concern for any vessel loitering, anchoring, stopping, or drifting more than 100 feet from a riverbank or in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 1, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and impact of the regulated navigation area. The regulated navigation area uses minimally intrusive guidelines for vessel operation designed to improve the safety of navigation on the waters of the area. This regulated navigation area does not meet any of the criteria for a significant regulatory action under Executive Order 12866.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area that prohibits loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.823 to read as follows:

§ 165.823 Allegheny River, Monongahela River, and Ohio River, Pittsburgh, Pennsylvania; Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area (RNA): The waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8 on the Allegheny River, Fort Pitt Highway Bridge at MM 0.22 on the Monongahela River, and West End-North Side Highway Bridge at MM 0.8 on the Ohio River.

(b) *Applicability.* This section applies to any vessel operating within the RNA, including a naval or public vessel, except a vessel engaged in:

(1) Law enforcement;

(2) Servicing aids to navigation; or

(3) Surveying, maintaining, or improving waters within the RNA.

(c) *Regulations.* (1) No vessel shall loiter, anchor, stop, moor, remain or drift at any time more than 100 feet from any river bank within the RNA without permission of the Captain of the Port (COTP), or any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(2) No vessel shall loiter, anchor, stop, moor, remain or drift in any manner as to impede safe passage of another vessel to any launching ramp, marina, or fleeting area.

Dated: January 3, 2020.

John P. Nadeau,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2020–00198 Filed 1–14–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0614]

RIN 1625–AA00

Safety Zone; Neches River, Beaumont, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone on the navigable waters of the Neches River extending 500-feet on either side of the Kansas City Southern Railroad Bridge that crosses the Neches River in Beaumont, TX. The safety zone is necessary to protect the bridge as well as persons and property on or near the bridge from potential damage from passing vessels until missing and/or damaged fendering systems are repaired or replaced. Entry of certain vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative.

DATES: This rule is effective from February 1, 2020, through December 31, 2020.

ADDRESSES: To view documents mentioned in this preamble as being in the docket, go to *https://www.regulations.gov,* type USCG–2019–0614 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *Scott.K.Whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Port Arthur
DHS Department of Homeland Security
FR Federal Register
KCS Kansas City Southern Railroad Company
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
VTS Vessel Traffic Service

II. Background, Purpose, and Legal Basis

On April 19, 2018, the Coast Guard was notified that the wood fendering systems designed to protect bridge support columns of the Kansas City Southern Railroad Company's bridge (KSC) from strikes by vessels transiting under the bridge had been damaged or destroyed by Hurricane Harvey. The south bank column protection fenders are missing and the north bank column protection fenders are severely damaged. KCS indicated that strikes to the support columns could compromise the bridge structure. In response, on May 7, 2018, the Coast Guard published a temporary final rule; request for comment titled *Safety Zone; Neches River, Beaumont, TX* (83 FR 19965). During the comment period that ended on May 29, 2018, we received no comments. The safety zone was established on May 7, 2018, extended on September 5, 2018 (83 FR 45047), extended again on January 31, 2019 (84 FR 530), and extended again on October 1, 2019 (84 FR 51031) via temporary final rule titled *Safety Zone; Neches River, Beaumont, TX.* The zone is scheduled to expire on January 31, 2020. Repairs are not yet completed leaving the bridge structural columns vulnerable to vessel strikes. On August

27, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Neches River, Beaumont, TX'' (84 FR 44794). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the vulnerable bridge. During the comment period that ended on September 11, 2019, we received no comments.

The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards posed by the unprotected bridge columns are a safety concern to the KCS Bridge and to persons and property on or near the bridge. The purpose of this rule is to provide for the safety of the KCS Bridge and persons and property on or near the bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to continue to respond to potential safety hazards posed by and to passing vessel traffic and to the unprotected bridge columns supporting the KCS Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards posed by the unprotected bridge columns are a safety concern to the KCS Bridge and to persons and property on or near the bridge. The purpose of this rule is to provide for the safety of the KCS Bridge and persons and property on or near the bridge.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 27, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule extends the duration of a temporary safety zone from February 1, 2020, through December 31, 2020, or until missing or damaged fendering systems are repaired or replaced, whichever occurs first. The safety zone extends 500-feet on either side of the KCS Bridge that crosses the Neches River in Beaumont, TX in approximate location 30°04′54.8″ N 094°05′29.4″ W. The duration of the zone is intended to protect the bridge support columns as well as persons and property on or near the bridge until the bridge fendering is repaired or replaced. Only vessels less than 65 feet in length and not engaged in towing are authorized to enter the zone, unless otherwise permitted by the COTP or a designated representative to enter the safety zone.

Persons and vessels desiring to enter the safety zone must request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 65A or 13 VHF–FM, or by telephone at (409) 719–5070.

Permission to transit through the bridge will be based on weather, tide and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone shall comply with the lawful orders or directions given to them by COTP or a designated representative.

Intentional or unintentional contact with any part of the bridge or associated structure, including fendering systems, support columns, spans or any other portion of the bridge, is strictly prohibited. Report any contact with the bridge or associated structures immediately to VTS Port Arthur on channels 65A, 13 or 16 VHF–FM or by telephone at (409) 719–5070.

The Coast Guard will inform the public through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the nature of vessel traffic in the area and the location, and duration of the safety zone. This rule will only affect certain vessels transiting the upper reaches of the Neches River in Beaumont, TX, and will terminate once the necessary repairs are completed for the bridge. The Coast Guard will issue a VTS Advisory concerning the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone might be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 500-feet of either side of the KCS Bridge that crosses the Neches River in Beaumont, TX. It is categorically excluded from further review under paragraph L60(d) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is included in the docket with this rule where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0614 to read as follows:

§ 165.T08–0614 Safety Zone; Neches River, Beaumont, TX.

(a) *Location.* The following area is a safety zone: All navigable waters extending 500-feet on either side of the Kansas City Southern Railroad Bridge that crosses the Neches River in Beaumont, TX in approximate location 30°04′54.8″ N 094°05′29.4″ W.

(b) *Effective period.* This section is effective on February 1, 2020, through midnight on December 31, 2020, or until missing and/or damaged fendering systems are repaired or replaced, whichever occurs first.

(c) *Regulations.* (1) No vessel may enter or remain in the safety zone except:

(i) A vessel less than 65 feet in length and not engaged in towing; or

(ii) A vessel authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative.

(2) Persons and vessels desiring to enter the safety zone must request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 65A or 13 VHF–FM, or by telephone at (409) 719–5070.

(3) Permission to transit through the bridge will be based on weather, tide and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone shall comply with the lawful orders or directions given to them by COTP or a designated representative.

(4) Intentional or unintentional contact with any part of the bridge or associated structure, including fendering systems, support columns, spans or any other portion of the bridge, is strictly prohibited. Report any contact with the bridge or associated structures immediately to VTS Port Arthur on channels 65A, 13 or 16 VHF–FM or by telephone at (409) 719–5070.

(d) *Informational broadcasts.* The Coast Guard will inform the public through public of the effective period of this safety zone through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: December 19, 2019.

Keith Pierre,

Commander, U.S. Coast Guard, Acting Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2020–00299 Filed 1–14–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0820]

RIN 1625–AA00

Safety Zone; Ohio River, Owensboro, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 756.4 to MM 757.4 in Owensboro, KY. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry into, transiting through or anchoring within this zone is

prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 10 p.m. through 11 p.m. on January 18, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0820 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer Riley Jackson, Coast Guard Sector Ohio Valley, Louisville, KY; telephone (502) 779–5347 or email *Riley.S.Jackson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
FR Federal Register
MM Mile Marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On September 9, 2019, the River View Coal, LLC notified the Coast Guard that it will be conducting a fireworks display from 10 p.m. through 11 p.m. on January 18, 2020, to celebrate the previous year. In response, on October 28, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) under document number USCG–2019–0820 (84 FR 57666). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended November 27, 2019, we received three (3) comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks display on January 18, 2020 will be a safety concern for anyone within a 1-mile radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received three (3) comments on our NPRM published on October 28, 2019. From the comments received, two were duplicates, with the original comment in agreement with the COTP's decision to establish a safety zone. The third comment was withdrawn. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 10 p.m. through 11 p.m. on January 18, 2020. The safety zone would cover the entire width of the Ohio River from Mile Marker (MM) 756.4 to MM 757.4 in Owensboro, KY. The duration of the zone is intended to ensure the safety of vessels and the navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone would only be in effect for one hour and limit access to a one-mile stretch of the Ohio River. The Coast Guard expects minimum adverse impact to mariners. Also, mariners would be permitted to request authorization from the COTP or a designated representative to transit the temporary safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one hour, that will prohibit entry within a 1-mile stretch of the Ohio River. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0820 to read as follows:

§ 165.T08–0820 Safety zone; Ohio River, Owensboro, KY.

(a) *Location.* All navigable waters of the Ohio River between mile marker (MM) 756.4 to MM 757.4 in Owensboro, KY.

(b) *Period of enforcement.* This section will be enforced from 10 p.m. through 11 p.m. on January 18, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and the Local Notice to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: January 7, 2020.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2020–00298 Filed 1–14–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0240; FRL–10003–97-Region 9]

Extreme Area Submission Requirements, Coachella Valley Nonattainment Area; California Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a schedule for California to submit an ''Extreme'' ozone nonattainment area plan addressing the requirements of CAA section 182(e) and revised title V and new source review (NSR) rules for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The EPA is approving a deadline of one year from the effective date of this rule for the State to submit a state implementation plan (SIP) revision addressing these requirements and to implement the related control requirements.

DATES: This final action is effective on February 14, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0240. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3856 or by email at *kelly.thomasp@epa.gov.*

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

Table of Contents

I. Proposed Action

On July 10, 2019, the EPA granted [1] a request by the California Air Resources Board (CARB) to voluntarily reclassify the Coachella Valley portion of Riverside County, California (''Coachella Valley'') from ''Severe-15'' to ''Extreme'' for the 1997 ozone NAAQS.[2] On August 27, 2019 (84 FR 44801), the EPA proposed to require CARB and the South Coast Air Quality Management District (SCAQMD or ''District'') to submit SIP revisions addressing the requirements resulting from the EPA's reclassification by no later than July 10, 2020, one year from the effective date of the reclassification. Our proposal specified that the State's submittal must include an Extreme area plan that addresses the requirements of CAA section 182(e), including but not limited to: (1) An attainment demonstration showing attainment of the 1997 ozone NAAQS as expeditiously as practicable but no later than June 15, 2024; (2) a reasonable further progress (RFP) demonstration showing ozone precursor reductions of at least 3 percent per year until the attainment date; (3) additional reasonably available control technology (RACT) rules to address sources subject to the lower Extreme area major source threshold; (4) use of clean fuels or advanced control technology for boilers as described at CAA section 182(e)(3); and (5) contingency measures.[3] In addition, as explained in the proposal, California must submit revised title V and NSR rules for the Coachella Valley that reflect the Extreme area definitions for new major sources and modifications, as well as increase the offset ratios for these sources and modifications consistent with CAA section 182(e)(1) and (2).[4]

Please see our August 27, 2019 proposed rule for additional background and a more detailed explanation of our proposed action.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received three comments, including one not relevant to the proposed action. The full text of these comments is available in the docket for this action.[5] Below, we provide summaries of the two relevant comments and our responses.

Comment #1: One anonymous commenter supported the reclassification of the Coachella Valley, but asked how the reclassification will improve air quality. The commenter stated that air quality in the area calls for drastic action from the state, and cited other environmental hazards of concern, such as pesticide application, failing septic systems, illegal waste dumps, inadequate housing, unpaved streets and contaminated bodies of water. The commenter also emphasized the need for action on the part of public agencies, elected officials, foundations, businesses, advocates and residents.

Response #1: The EPA granted the reclassification request, effective July 10, 2019. This action specifies the schedule for CARB to submit the elements necessary to meet the Extreme requirements for the 1997 ozone NAAQS, including new rules to lower the major source threshold from 25 tons per year to 10 tons per year. The SCAQMD and CARB must identify and implement the control measures necessary to improve air quality sufficiently to attain the standards, and the EPA will take action on the submitted measures and elements in a separate action, with another opportunity for public comment.

Comment #2: The SCAQMD requested additional time to submit a plan addressing the Extreme nonattainment requirements for the Coachella Valley. The District explained that the public process for amending the NSR and title V permitting rules is expected to take at least 9 months, and that the development of contingency measures would take at least one year to allow for sufficient public process. Based on these estimates and considering the time needed to develop the other SIP requirements, the District states that the proposed July 10, 2020 deadline is not adequate to satisfy the applicable requirements. The District requests that the EPA extend the submittal deadline to one year from the effective date of the action.

Response #2: We recognize that the District and CARB will require adequate time to develop and implement new measures and strategies, revise local rules, complete necessary analysis and demonstrations, and to provide adequate opportunities for public involvement. The State must ensure that all required planning elements for an Extreme nonattainment area are satisfied, that public processes are completed, and that the resulting plan is sufficient to demonstrate attainment of the 1997 ozone NAAQS in the Coachella Valley as expeditiously as practicable but no later than June 15, 2024. Because we find the District's request for additional time reasonable, and we believe the additional time will not impede the area's attainment of the standard by the attainment date, we agree with the commenter's proposed extension of the submittal deadline to one year from the effective date of this rule.

III. EPA Action

For the reasons discussed in detail in the proposed rule and Section II of this document, the EPA is setting a deadline for submittal of SIP revisions to address the Extreme area requirements for the Coachella Valley as no later than one year from the effective date of this rule.

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically

[1] 84 FR 32841; see also 84 FR 50760 (September 26, 2019) correcting the docket number. As explained in the July 10, 2019 notice, the EPA's reclassification to Extreme nonattainment applies only to the portions of the Coachella Valley subject to the State's jurisdiction, and the EPA did not reclassify any areas of Indian country within the boundaries of the nonattainment area.

[2] The EPA revoked the 1997 ozone NAAQS with the promulgation of the 2008 ozone NAAQS, 80 FR 12263 (March 6, 2015). Following revocation, certain requirements of the 1997 ozone NAAQS continue to apply as anti-backsliding measures under CAA section 172(e).

[3] *Id.* at 44802.

[4] Under CAA section 182(e), the major source threshold for an Extreme nonattainment area is 10 tons per year (tpy), which is lower than the 25 tpy threshold for a Severe-15 area. Under CAA section 182(e)(1), the permitting offset ratios for volatile organic compound and oxides of nitrogen for major sources and modifications in an Extreme nonattainment area must be at least 1.5 to 1, or at least 1.2 to 1 if the plan requires all existing major sources in the nonattainment area to use the best available control technology. Under CAA section 182(e)(2), any change at a major stationary source that results in an increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source is generally considered a modification, subject to additional provisions for emissions increases offset through internal reductions and for equipment that is installed to comply with CAA requirements. *See* 42 U.S.C. 7511a(e).

[5] See *http://www.regulations.gov* under docket ID number EPA–R09–OAR–2019–0240.

triggered by classification, the timing of the submittal of the Extreme area requirements does not impose a materially adverse impact under Executive Order 12866. For these reasons, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Furthermore, this action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not significant under Executive Order 12866.

In addition, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the action addresses only the timing of submittals required by the Clean Air Act. For the same reason, this action does not have regulatory requirements that might significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Because this action addresses only the timing of submittals required by the State and would not affect areas of Indian Country, this action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship, or the distribution of power and responsibilities established in the Clean Air Act.

This rule also is not subject to Executive Order 13045. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks such that the analysis required under section 5–501 of the Executive order has the potential to influence the regulation. This action does not concern an environmental health risk or safety risk.

As this action would set a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This action addresses the timing for the submittal of Extreme area ozone planning requirements, and we find that it does not have disproportionately high and adverse human health or environmental health effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Ozone.

Dated: December 18, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2020–00178 Filed 1–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0528; FRL–10003–96–Region 9]

Air Plan Approval; California; Northern Sierra Air Quality Management District; Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Northern Sierra Air Quality Management District (NSAQMD or ''District'') portion of the California State Implementation Plan (SIP) under the Clean Air Act (CAA or ''the Act''). This revision concerns the District's demonstration regarding reasonably available control technology (RACT) requirements for the 2008 8-hour ozone national ambient air quality standard (NAAQS or ''standards'') in the Western Nevada County ozone nonattainment area, which is under the jurisdiction of the NSAQMD.

DATES: This rule will be effective on February 14, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0528. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

Stanley Tong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4122 or by email at *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to the EPA.

Table of Contents

I. Proposed Action

On November 4, 2019 (84 FR 59331), the EPA proposed to approve NSAQMD's "Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Revision for Western Nevada County 8-Hour Ozone Nonattainment Area" ("*2018 RACT SIP*"), adopted on March 26, 2018, and submitted to the EPA by the California Air Resources Board (CARB) on June 7, 2018, for approval as a revision to the California SIP.

We proposed to approve the *2018 RACT SIP* because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the document and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving the *2018 RACT SIP* into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 16, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(529) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(529) The following plan was submitted on June 7, 2018 by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.* (A) Northern Sierra Air Quality Management District.

(*1*) Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Revision for Western Nevada County 8-Hour Ozone

Nonattainment Area, adopted on March 26, 2018.

(*2*) [Reserved]

(B) [Reserved]

■ 3. Section 52.222 is amended by adding paragraph (a)(9)(iv) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(9) * * *

(iv) The following negative declarations for the 2008 ozone NAAQS were adopted by the Northern Sierra Air Quality Management District on March 26, 2018, and submitted to the EPA on June 7, 2018.

TABLE 1 TO PARAGRAPH (a)(9)(iv)—NEGATIVE DECLARATIONS FOR THE 2008 OZONE NAAQS

CTG document No.	Title
EPA–450/2–77–008	Surface Coating of Cans.
EPA–450/2–77–008	Surface Coating of Coils.
EPA–450/2–77–008	Surface Coating of Paper.
EPA–450/2–77–008	Surface Coating of Fabric.
EPA–450/2–77–008	Surface Coating of Automobiles and Light-Duty Trucks.
EPA–450/2–77–022	Solvent Metal Cleaning.
EPA–450/2–77–025	Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
EPA–450/2–77–026	Tank Truck Gasoline Loading Terminals.
EPA–450/2–77–032	Surface Coating of Metal Furniture.
EPA–450/2–77–033	Surface Coating of Insulation of Magnet Wire.
EPA–450/2–77–034	Surface Coating of Large Appliances.
EPA–450/2–77–035	Bulk Gasoline Plants.
EPA–450/2–77–036	Storage of Petroleum Liquids in Fixed-Roof Tanks.
EPA–450/2–78–029	Manufacture of Synthesized Pharmaceutical Products.
EPA–450/2–78–030	Manufacture of Pneumatic Rubber Tires.
EPA–450/2–78–032	Factory Surface Coating of Flat Wood Paneling.
EPA–450/2–78–033	Graphic Arts-Rotogravure and Flexography.
EPA–450/2–78–036	Leaks from Petroleum Refinery Equipment.
EPA–450/2–78–047	Petroleum Liquid Storage in External Floating Roof Tanks.
EPA–450/3–82–009	Large Petroleum Dry Cleaners.
EPA–450/3–83–006	Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
EPA–450/3–83–007	Leaks from Natural Gas/Gasoline Processing Plants.
EPA–450/3–83–008	Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
EPA–450/3–84–015	Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
EPA–450/4–91–031	Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
EPA–453/R–96–007	Wood Furniture Manufacturing Operations.
EPA–453/R–94–032, 61 FR 44050; 8/27/96.	ACT Surface Coating at Shipbuilding and Ship Repair Facilities Shipbuilding and Ship Repair Operations (Surface Coating).
EPA–453/R–97–004, 59 FR 29216; 6/06/94.	Aerospace MACT and Aerospace (CTG & MACT).
EPA–453/R–06–001	Industrial Cleaning Solvents.
EPA–453/R–06–002	Offset Lithographic Printing and Letterpress Printing.
EPA–453/R–06–003	Flexible Package Printing.
EPA–453/R–06–004	Flat Wood Paneling Coatings.
EPA 453/R–07–003	Paper, Film, and Foil Coatings.
EPA 453/R–07–004	Large Appliance Coatings.
EPA 453/R–07–005	Metal Furniture Coatings.
EPA 453/R–08–003	Miscellaneous Metal Parts and Plastic Parts Coatings Tables 3–6.
EPA 453/R–08–004	Fiberglass Boat Manufacturing Materials.
EPA 453/R–08–005	Miscellaneous Industrial Adhesives.
EPA 453/R–08–006	Automobile and Light-Duty Truck Assembly Coatings.
EPA 452/B16–001	Oil and Natural Gas Industry.
— N/A —	Major non-CTG VOC sources.
— N/A —	Major non-CTG NO_X sources.

* * * * *

[FR Doc. 2020–00179 Filed 1–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2011–0513; FRL–10003–60-Region 6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; New Mexico and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Other Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received CAA section 111(d)/129 negative declarations from New Mexico and Albuquerque-Bernalillo County, New Mexico for existing Other Solid Waste Incineration (OSWI) units. These negative declarations certify that existing OSWI units subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the specified jurisdictions in New Mexico. The EPA is accepting the negative declarations in accordance with the requirements of the CAA.

DATES: This rule is effective on April 14, 2020 without further notice, unless the EPA receives relevant adverse comment by February 14, 2020. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2011–0513, at *https://www.regulations.gov* or via email to *ruan-lei.karolina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665–7346, *ruan-lei.karolina@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Karolina Ruan Lei or Mr. Bill Deese at (214) 665–7253.

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

I. Background

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and the EPA has established emission guidelines for such existing sources. CAA section 129 directs the EPA to establish standards of performance for new sources (NSPS) and emissions guidelines (EG) for existing sources for each category of solid waste incineration unit. Under CAA section 129, NSPS and EG must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While NSPS are directly applicable to affected facilities, EG for existing units are intended for states to use to develop a state plan to submit to the EPA. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for controlling designated pollutants. Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which EPA will approve or disapprove such plans submitted by a state. When existing designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.,* negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a CAA section 111(d)/129 plan.

EPA promulgated OSWI NSPS and EG on December 16, 2005, codified at 40 CFR part 60, subparts EEEE and FFFF, respectively (70 FR 74870). Thus, states were required to submit plans for existing OSWI units pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. The designated facilities to which the OSWI EG apply are existing OSWI units that commenced construction on or before December 9, 2004, and were not modified or reconstructed on or after June 16, 2006, as specified in 40 CFR 60.2991 and 60.2992, with limited exceptions as provided under 40 CFR 60.2993.

In order to fulfill obligations under CAA sections 111(d) and 129, the New Mexico Environment Department (NMED), and the City of Albuquerque Environmental Health Department (AEHD) submitted negative declarations for OSWI units for their individual air pollution control jurisdictions. The submittal of these negative declarations exempts New Mexico and Albuquerque-Bernalillo County from the requirement to submit a state plan for OSWI units under 40 CFR part 60, subpart FFFF.

The NMED and AEHD each determined that there are no existing OSWI units subject to CAA sections 111(d) and 129 requirements in their individual air pollution control jurisdictions in New Mexico. NMED and AEHD submitted OSWI negative declaration letters to the EPA on October 11, 2007, and December 13, 2006, respectively. Copies of the negative declaration letters can be found in the docket for this rulemaking. EPA is notifying the public that these negative declarations fulfill NMED's and AEHD's obligations under CAA sections 111(d) and 129.

II. Final Action

In this final action, the EPA is amending 40 CFR part 62, subpart GG, to reflect receipt of the negative declaration letters from NMED and AEHD. These letters certify that there are no existing OSWI units subject to 40 CFR part 60, subpart FFFF, in New Mexico and Albuquerque-Bernalillo County in accordance with 40 CFR 60.5010, 40 CFR 62.06, and sections 111(d) and 129 of the CAA.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend 40 CFR part 62, subpart GG, to reference the negative declaration letters if relevant adverse comments are received. This rule will be effective on April 14, 2020 without further notice unless we receive relevant adverse comment by February 14, 2020. If we receive relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and FFFF; and 40 CFR part 62, subpart A. With regard to negative declarations for designated facilities received by the EPA from states, the EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. For that reason, this action:

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

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: December 23, 2019.

Kenley McQueen,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart GG—New Mexico

■ 2. Add an undesignated center heading and § 62.7894 to read as follows:

Emissions From Existing Other Solid Waste Incineration Units

§ 62.7894 Identification of plan—negative declarations.

Letters from the New Mexico Environment Department and the City of Albuquerque Environmental Health Department dated October 11, 2007, and December 13, 2006, respectively, certifying that there are no existing other solid waste incineration (OSWI) units subject to 40 CFR part 60, subpart FFFF, under their jurisdictions in the State of New Mexico.

[FR Doc. 2020–00288 Filed 1–14–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 19–1325; FRS 16392]

Annual Adjustment of Civil Monetary Penalties To Reflect Inflation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires the Federal Communications Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. The Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: The rule is effective January 15, 2020. The civil monetary penalties are applicable beginning January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Lisa S. Gelb, Deputy Chief, Enforcement Bureau, 202–418–2019.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 19–1325, adopted and released on December 27, 2019. The document is available for download at *https://www.fcc.gov/document/2019-annual-adjustment-civil-monetary-penalties-reflect-inflation.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554.

The Bipartisan Budget Act of 2015 included, as Section 701 thereto, the Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the Inflation Adjustment Act, agencies are required to make annual inflationary adjustments by January 15 each year, beginning in 2017. The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance. OMB issued guidance on December 16, 2019, and this Order follows that guidance. The Commission therefore updates the civil monetary penalties for 2020, to reflect an annual inflation adjustment based on the percent change between each published October's Consumer Price Index for all Urban Consumers (CPI–U); in this case, October 2019 CPI–U (257.346)/October 2018 CPI–U (252.885) = 1.01764. The Commission multiplies 1.01764 by the most recent penalty amount and then rounds the result to the nearest dollar.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Lisa Gelb,

Deputy Chief, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

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.

■ 2. Section 1.80 is amended by revising the table in Section III of the note to paragraph (b)(8) and paragraph (b)(9) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(8) * * *

Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

* * * * *

Violation	Statutory amount after 2020 annual inflation adjustment
Sec. 202(c) Common Carrier Discrimination	$12,294, $615/day.
Sec. 203(e) Common Carrier Tariffs	$12,294, $615/day.
Sec. 205(b) Common Carrier Prescriptions	$24,586
Sec. 214(d) Common Carrier Line Extensions	$2,458/day.
Sec. 219(b) Common Carrier Reports	2,458/day.
Sec. 220(d) Common Carrier Records & Accounts	$12,294/day.
Sec. 223(b) Dial-a-Porn	$127,398/day.
Sec. 227(e) Caller Identification	$11,766/violation. $35,298/day for each day of continuing violation, up to $1,176,638 for any single act or failure to act.
Sec. 364(a) Forfeitures (Ships)	$10,245/day (owner).
Sec. 364(b) Forfeitures (Ships)	$2,050 (vessel master).
Sec. 386(a) Forfeitures (Ships).	$10,245/day (owner).
Sec. 386(b) Forfeitures (Ships)	$2,050 (vessel master).
Sec. 634 Cable EEO	$908/day.

(9) *Inflation adjustments to the maximum forfeiture amount.* (i) Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 (129 Stat. 599–600), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101–410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted annually for

inflation by order published no later than January 15 each year. Annual inflation adjustments will be based on the percentage (if any) by which the Consumer Price Index for all Urban Consumers (CPI–U) for October preceding the date of the adjustment exceeds the prior year's CPI–U for October. The Office of Management and Budget (OMB) will issue adjustment rate guidance no later than December 15 each year to adjust for inflation in the CPI–U as of the most recent October.

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

TABLE 1 TO PARAGRAPH (b)(9)(ii)

U.S. Code citation	Maximum penalty after 2020 annual inflation adjustment
47 U.S.C. 202(c)	$12,294
	615
47 U.S.C. 203(e)	12,294
	615
47 U.S.C. 205(b)	24,586
47 U.S.C. 214(d)	2,458
47 U.S.C. 219(b)	2,458
47 U.S.C. 220(d)	12,294
47 U.S.C. 223(b)	127,398
47 U.S.C. 227(e)	11,766
	35,298
	1,176,638
47 U.S.C. 362(a)	10,245
47 U.S.C. 362(b)	2,050
47 U.S.C. 386(a)	10,245
47 U.S.C. 386(b)	2,050
47 U.S.C. 503(b)(2)(A)	51,222
	512,228
47 U.S.C. 503(b)(2)(B)	204,892
	2,048,915
47 U.S.C. 503(b)(2)(C)	414,454
	3,825,726
47 U.S.C. 503(b)(2)(D)	20,489
	153,669
47 U.S.C. 503(b)(2)(F)	117,664
	1,176,638
47 U.S.C. 507(a)	2,029
47 U.S.C. 507(b)	297
47 U.S.C. 554	908

* * * * *

[FR Doc. 2020–00459 Filed 1–14–20; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No.: NTSB–GC–2020–0001]

RIN 3147–AA22

Civil Monetary Penalty Annual Inflation Adjustment

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2020 adjustment to the civil penalties that the agency may assess against a person for violating certain NTSB statutes and regulations.

DATES: This final rule is effective on January 15, 2020.

ADDRESSES: A copy of this final rule, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW, Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide website on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2020–0001).

FOR FURTHER INFORMATION CONTACT: Kathleen Silbaugh, General Counsel, (202) 314–6080 or *rulemaking@ntsb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) requires, in pertinent part, agencies to make an annual adjustment for inflation by January 15th every year. OMB, M–16–06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Feb. 24, 2016). The Office of Management and Budget (OMB) annually publishes guidance on the adjustment multiplier to assist agencies in calculating the mandatory annual adjustments for inflation.

The NTSB's most recent adjustment was for fiscal year (FY) 2019, allowing the agency to impose a civil penalty up to $1,692, effective August 30, 2019, on a person who violates 49 U.S.C. 1132 (Civil aircraft accident investigations), 1134(b) (Inspection, testing, preservation, and moving of aircraft and parts), 1134(f)(1) (Autopsies), or 1136(g) (Prohibited actions when providing assistance to families of passengers involved in aircraft accidents). Civil Monetary Penalty Annual Inflation Adjustment, 94 FR 45686 (Aug. 30, 2019).

OMB has since published updated guidance for FY 2020. OMB, M–20–05, *Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation*

Adjustment Act Improvements Act of 2015 (Dec. 16, 2019). Accordingly, this final rule reflects the NTSB's 2020 annual inflation adjustment and updates the maximum civil penalty from $1,692 to $1,722.

II. The 2020 Annual Adjustment

The 2020 annual adjustment is calculated by multiplying the applicable maximum civil penalty amount by the cost-of-living adjustment multiplier, which is based on the Consumer Price Index and rounding to the nearest dollar. OMB, M–20–05, *Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 16, 2019). For FY 2020, OMB's guidance states that the cost-of-living adjustment multiplier is 1.01764.

Accordingly, multiplying the current penalty of $1,692 by 1.01764 equals $1,721.84688, which rounded to the nearest dollar equals $1,722. This updated maximum penalty for the upcoming fiscal year applies only to civil penalties assessed after the effective date of this final rule. The next civil penalty adjustment for inflation will be calculated by January 15, 2021.

III. Regulatory Analysis

The Office of Information and Regulatory Affairs Acting Administrator has determined agency regulations that exclusively implement the annual adjustment are consistent with OMB's annual guidance, and have an annual impact of less than $100 million are generally not significant regulatory actions under Executive Order (E.O.) 12866. OMB, M–20–05, *Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 16, 2019). An assessment of its potential costs and benefits under E.O. 12866, *Regulatory Planning and Review* and E.O. 13563, *Improving Regulation and Regulatory Review* is not required because this final rule is not a ''significant regulatory action.'' Likewise, this rule does not require analyses under the Unfunded Mandates Reform Act of 1995 and E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs* because this final rule is nonsignificant.

The NTSB does not anticipate this rule will have a substantial direct effect on state government or will preempt state law. Accordingly, this rule does not have implications for federalism under E.O. 13132, *Federalism.*

The NTSB also evaluated this rule under E.O. 13175, *Consultation and Coordination with Indian Tribal Governments.* The agency has concluded that this final rule will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Paperwork Reduction Act of 1995 is inapplicable because the final rule imposes no new information reporting or recordkeeping necessitating clearance by OMB.

The Regulatory Flexibility Act of 1980 does not apply because, as a final rule, this action is not subject to prior notice and comment. *See* 5 U.S.C. 604(a).

The NTSB has concluded that this final rule neither violates nor requires further consideration under the aforementioned Executive orders and acts.

List of Subjects in 49 CFR Part 831

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

Accordingly, for the reasons stated in the Preamble, the NTSB amends 49 CFR part 831 as follows:

PART 831—INVESTIGATION PROCEDURES

■ 1. The authority citation for part 831 continues to read as follows:

Authority: 49 U.S.C. 1113(f).

Section 831.15 also issued under Pub. L. 101–410, 104 Stat. 890, amended by Pub. L. 114–74, sec. 701, 129 Stat. 584 (28 U.S.C. 2461 note).

§ 831.15 [Amended]

■ 2. Amend § 831.15 by removing the dollar amount ''$1,692'' and add in its place ''$1,722''.

Robert L. Sumwalt, III,

Chairman.

[FR Doc. 2020–00532 Filed 1–14–20; 8:45 am]

BILLING CODE 7533–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 191230–0124]

RIN 0648–BH68

Fisheries of the Northeastern United States; Expanding the Scallop Dredge Exemption Areas Under the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements modifications to the regulations implementing the Northeast Multispecies Fishery Management Plan to allow vessels issued a limited access general category individual fishing quota sea scallop permit to fish for scallops with small dredges in an expanded area. In addition, NMFS also implements modifications to the open area days-at-sea trip reporting procedures for limited access scallop vessels. This action is intended to provide consistency, flexibility, and potential economic benefit to the scallop fleet.

DATES: Effective February 14, 2020.

ADDRESSES: NMFS developed an environmental assessment (EA) for this action that describes the action and other considered alternatives and provides a thorough analysis of the impacts of these measures. Copies of the Amendment, the EA, and the small entity compliance guide are available upon request from Michael Pentony, Regional Administrator (RA), NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/.*

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION:

Background

This final rule approves and implements the New England Fishery Management Council's recommendation from its meeting on June 20, 2017, that the RA use his authority to expand the Great South Channel (GSC) scallop dredge exemption area to encompass all of Georges Bank (GB). Additionally NMFS is expanding the Southern New

England (SNE) scallop dredge exemption area in combination with the GSC scallop dredge exemption area creating a new expanded exemption area called Georges Bank/Southern New England (GB/SNE) scallop dredge exemption area. NMFS published a proposed rule for the expansion of the scallop dredge exemption areas on November 1, 2018 (83 FR 54903). The proposed rule included a 30-day public comment period that closed on December 3, 2018.

Regulations implementing the Northeast Multispecies Fishery Management Plan (FMP) include a bycatch control measure for the Gulf of Maine (GOM), GB, and SNE Regulated Mesh Areas. A vessel may not fish in these areas unless it is fishing under a multispecies or a scallop days-at-sea (DAS) allocation; is fishing with exempted gear; is fishing under the Handgear or Party/Charter permit restrictions; or is fishing in an exempted fishery (50 CFR 648.80(a)(3)(vi) and 50 CFR 648.80(b)(2)(vi)). The regulations found at 50 CFR 648.80(a)(8) give the RA the authority to establish a new exempted fishery, or modify an existing exempted fishery, after consultation with the Council, provided the bycatch of groundfish species is, or can be reduced to, less than five percent by weight of the total catch and the exempted fishery will not jeopardize the fishing mortality objectives of the NE Multispecies FMP.

The limited access general category (LAGC) individual fishing quota (IFQ) fleet currently operates in four different exemption areas: GOM Scallop Dredge Exemption Area; GSC Scallop Dredge Exemption Area; SNE Scallop Dredge Exemption Area; and the Mid-Atlantic Exemption Area (Figure 1). Some members of the scallop industry requested that NMFS expand the GSC and GOM Scallop Dredge Exemption Areas to encompass all of GB and the GOM. The Council is currently working on Amendment 21 to the Scallop FMP to develop comprehensive management measures for the GOM, and therefore, it did not recommend that we expand the GOM Scallop Dredge Exemption Area.

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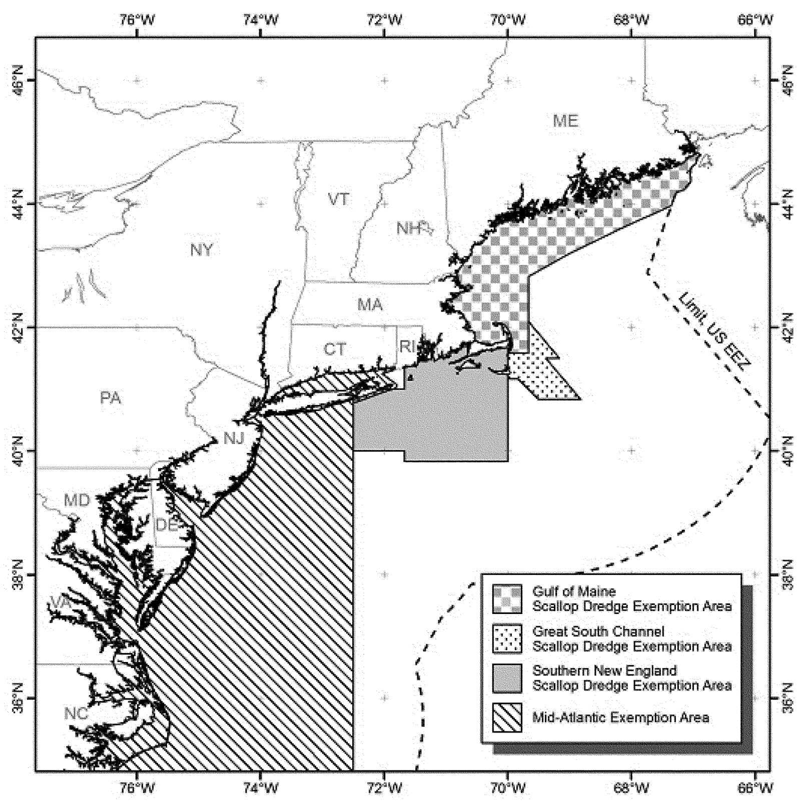
Figure 1 -- Map of Current Scallop Dredge Exemption Areas



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The current exemptions in the scallop dredge exemption areas allow LAGC IFQ vessels to fish within the designated scallop dredge exemption area using dredge gear that is less than 10.5 ft (3.2 m) wide. The exemptions allow these vessels to retain only scallops and up to 50 lb (23 kg) of monkfish tails or 166 lb (75 kg) of whole monkfish per trip. One purpose of this action is to expand the area where these exemptions apply. Because the Mid-Atlantic Exemption Area is not subject to the same exemption conditions under the NE Multispecies FMP as the scallop dredge exemption areas, no changes are needed for the Mid-Atlantic Exemption Area.

Based on consultations with the Council, the current scallop dredge exemption areas for the LAGC IFQ fleet are being expanded by eliminating the current GSC and SNE Scallop Dredge Exemption Areas designations and creating a new expanded exemption area called Georges Bank/Southern New England (GB/SNE) Scallop Dredge Exemption Area. The GB/SNE Scallop Dredge Exemption Area will encompass all fishing grounds south of 42°20′ N lat. and east of the Mid-Atlantic Exemption Area (Figure 2).

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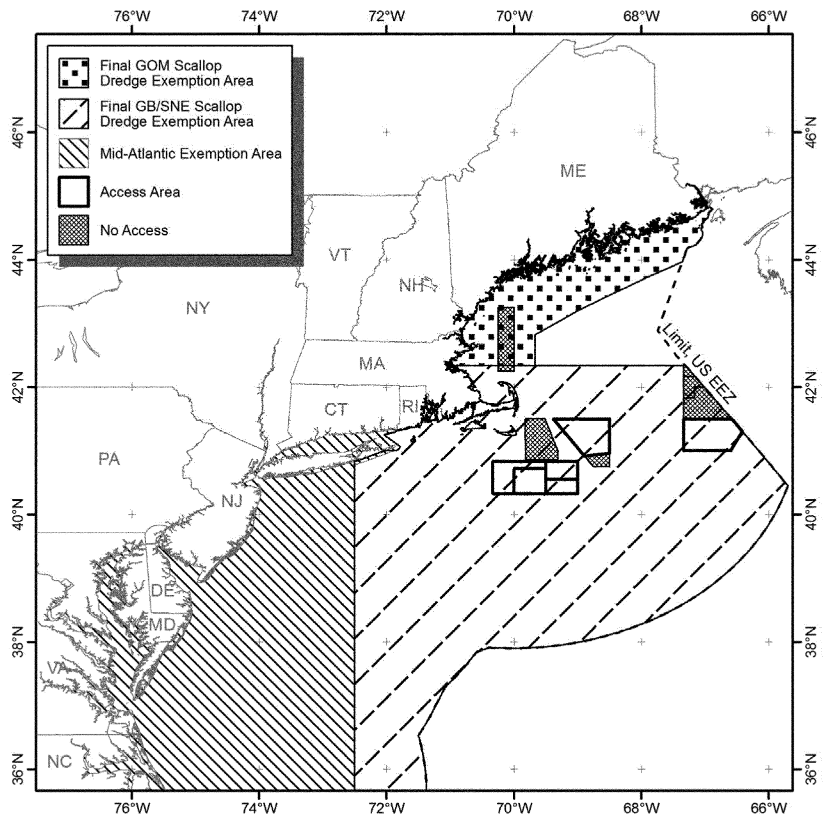
Figure 2 -- Map of New Georges Bank/Southern New England Scallop Dredge Exemption Area



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This new expanded exemption area will provide continuity for IFQ scallop fishing and achieve the following benefits:

- Include new areas that were originally part of the Nantucket Lightship Essential Fish Habitat Closure opened under the Omnibus Habitat Amendment 2 (83 FR 15240, April 9, 2018) and are not currently accessible to the LAGC fleet; and
- Include an area off the coasts of Rhode Island, Connecticut, and New York that is not covered by current exemption areas, but where activity in the IFQ fishery has occurred.

The primary area that will open to LAGC fishing as a result of this action is the GB Broad Stock Area, which is made up of statistical reporting areas 522, 525, 542, 561, 562, and 543 (a map of the statistical reporting areas is available from the Regional Administrator upon request). Because LAGC dredge fishing is not currently permitted in these areas, we analyzed potential effect on groundfish catch by LAGC dredge fishing in the expansion area by looking at limited access and LAGC observed hauls (n_h) in the Southern New England/Mid-Atlantic (SNE/MA) Broad Stock Area and Statistical Area 521 from 2012 to 2016 (n_h = 3,426). We determined that the information collected from these areas would be a valid way to estimate potential catch of groundfish in the newly expanded areas. In looking at this information, we excluded hauls that caught less than 40 lb (18.1 kg) of scallop meats because they are not representative samples. Using the observer program information, we developed a ratio of groundfish discarded (*D*) to total catch (*K*) for both the limited access and LAGC fleets according to the following equation:

Percent Multispecies = [D/K] × 100

For this analysis, we summed the weights of groundfish caught on observed trips (n_t) in the SNE/MA Broad Stock Area and Statistical Area 521, and divided it into the total weight (n_t = 374). Trips were aggregated across area, fishing year, and fleet. The ratios for both fleets were compared for differences using statistical analysis. We found that the limited access fleet had a bycatch rate of 0.52 percent of regulated species in the SNE/MA Broad Stock Area and the LAGC fleet had a bycatch rate of 0.53 percent of regulated species. There were no significant differences between bycatch rates of regulated species between the two fleets.

Limited access D/K ratios were then calculated from observed trips within the GB Broad Stock Area. We used additional statistical analysis to determine the range of the likely rate of groundfish bycatch by the LAGC fleet in the GB Broad Stock Area. We found that the limited access fleet had a bycatch rate of 1.07 percent of regulated species. Based on the combination of these two analyses, the expected range of regulated species bycatch for the LAGC fleet in the GB Broad Stock Area would be between 0.99 percent and 1.25 percent. Further, an examination of rates within fishing years and individual areas revealed that there were no years or areas where the D/K rate exceeded five percent.

Based on data analysis performed by NMFS, the LAGC IFQ fishery is expected to meet the five-percent-or-less bycatch criteria for granting an exemption throughout the entirety of the GB and SNE Regulated Mesh Areas. Further, because multispecies catch is controlled for the IFQ fleet by the sub-annual catch limits and there are accountability measures for yellowtail and windowpane flounder caught in the fishery, allowing the IFQ fleet to fish in the expanded area will not likely jeopardize fishing mortality limits for Northeast multispecies stocks.

In addition, this expanded exemption will help offset the effects on the closure to fishing implemented by the Omnibus Habitat Amendment 2. The GSC Habitat Management Area was created under the Omnibus Habitat Amendment 2 within the existing GSC Scallop Dredge Exemption Area. The GSC Habitat Management Area prohibits the use of all mobile fishing gear, including scallop dredge gear, year-round. Creating the new GB/SNE Scallop Dredge Exemption Area will provide additional fishing area, fishing opportunity, and greater flexibility and simplicity by being uniform to the scallop fishery as a whole for the IFQ fleet. From a conservation standpoint, by allowing the IFQ fleet to expand fishing operations to scallop areas with higher densities, there would be less area swept and time the gear is in the water providing benefits to both habitat and protected species.

This action also implements a modification to open area DAS trip reporting procedures by requiring that each limited access vessel submit a pre-landing notification form through its vessel monitoring system (VMS) unit prior to returning to port at the end of each DAS trip, including trips where no scallops were landed. At its June 13, 2018, meeting the Council requested that NMFS use its authority to require a VMS pre-landing notification on all limited access scallop trips to create reporting parity in the fishery with other limited access trips and LAGC trips where this notification is required. NOAA's Office of Law Enforcement may use this information to assist in monitoring vessel activity and to improve compliance with the regulations.

Comments and Responses

We received six comments on the proposed rule. One comment was from the Associated Fisheries of Maine, which is the organization that initially requested the exemption. The Associated Fisheries of Maine represents New England fishermen including IFQ scallop vessel owners. Another comment was submitted by the Cape Cod Fisherman's Alliance, which is an organization that includes several Cape Cod IFQ scallop vessel owners. We also received four comments from members of the general public.

Comment 1: Both the Associated Fisheries of Maine and the Cape Cod Fisherman's Alliance along with three members of the public, commented in favor of the rule. Those who commented in favor of the rule cited greater economic benefit to the fleet, more flexibility, better efficiency, and that an expanded area will help offset the negative effects of any closures implemented through Omnibus Habitat Amendment 2.

Response: We agree.

Comment 2: One member of the public commented in opposition of the rule stating that scallops are considered an endangered species and expanding the fishing area opens the fishery up to additional participants.

Response: Atlantic sea scallops are not currently listed as an endangered species nor have they ever been. The scallop fishery is not overfished and overfishing is not occurring. The scallop fishery is a thriving, healthy fishery that has benefitted significantly from rotational management and is one of the most profitable fisheries in the Northeast. In addition, the scallop fishery has been fully limited access with a maximum number of permits issued each year since 2010. This final rule does not change the limited access component of the fishery as a harvest control mechanism and therefore no new LAGC IFQ permits will be issued as a result of this action. The main purpose of this rule is to give the LAGC IFQ permit holders access to additional fishing grounds, not give them additional quota beyond what is allocated through the annual specifications process.

Changes From the Proposed Rule

The new pre-landing notification form requirement for the limited access fleet was originally part the NMFS Greater Atlantic Region Scallop Report Family of Forms (OMB Control No. 0648–0491) but has since been moved to fall under the more general Greater Atlantic Region Report Family of Forms (OMB Control No. 0648–0202) as of the current renew.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable laws.

OMB has determined that this rule is not significant pursuant to E.O. 12866.

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

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action contains collection-of-information requirements subject the Paperwork Reduction Act (PRA). The requirements for this final approval are under the NMFS Greater Atlantic Region Family of Forms (OMB Control No. 0648–0202). The final rule implements a requirement that all 347 limited access scallop vessels will be required to submit a pre-landing notification form for each DAS trip through their VMS units. This information collection is intended to improve DAS trip monitoring, as well as create reporting consistency for all scallop trips.

The pre-landing notification will include the following information: Operator's permit number; amount of scallop meats to be landed; the estimated time of arrival; the landing port and state where the scallops will be offloaded; and the vessel trip report (VTR) serial number recorded from that trip's VTR.

The burden estimates for these new requirements apply to all limited access scallop vessels. In a given fishing year, NMFS estimates that for DAS reporting, each of the 313 full-time limited access scallop vessels will submit a pre-landing report 3 times (939 responses) and each of the 34 part-time limited access vessels will submit a pre-landing report up to 2 times (68 responses), for a total of 1,007 responses. Public reporting burden for submitting this pre-landing notification for is estimated to average five minutes per response with an associated cost of $1.25, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Therefore, 1,007 responses will impose total compliance costs of $1,259.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 30, 2019.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.10, revise paragraph (f)(4)(iii) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(f) * * *

(4) * * *

(iii) *Scallop Pre-Landing Notification Form for limited access vessels fishing on scallop trips.* A limited access vessel on a declared sea scallop trip must report through VMS, using the Scallop Pre-Landing Notification Form, the amount of any scallops kept on each trip, including declared trips where no scallops were landed. The report must be submitted no less than 6 hours before arrival, or, if fishing ends less than 6 hours before arrival, immediately after fishing ends. If scallops will be landed, the report must include the vessel operator's permit number, the amount of scallop meats in pounds to be landed, the number of bushels of in-shell scallops to be landed, the estimated time of arrival, the landing port and state where the scallops will be offloaded, and the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer). If no scallops will be landed, a limited access vessel on a declared sea scallop trip must provide only the vessel's captain/operator's permit number, the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer), and confirmation that no scallops will be landed. A limited access scallop vessel may provide a corrected report. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report. Submitting a correction does not prevent NMFS from pursuing an enforcement action for any false reporting. A vessel may not offload its catch from a Sea Scallop Access Area trip at more than one location per trip.

* * * * *

■ 3. In § 648.14, revise paragraph (k)(5)(i) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(5) * * *

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (h)(3)(i), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (h)(3)(ii), the Georges Bank/Southern New England Scallop Dredge Exemption Area; (a)(19), the Eastern and Western Cape Cod Spiny Dogfish Exemption Areas; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; (h)(3)(ii); or (b)(12), the SNE Skate Bait Trawl Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 4. In § 648.51, revise paragraph (b)(1) to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m), measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section, in § 648.59(g)(2), and the scallop dredge exemption areas specified in § 648.80(h). However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, *i.e.,* the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

* * * * *

■ 5. In § 648.62, revise paragraph (a) introductory text to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) The NGOM scallop management area is the area north of 42°20′ N lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in § 648.80(h)(3)(i). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

* * * * *

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

■ 6. In § 648.80,

■ a. Revise paragraphs (a)(3)(vi);

■ b. Remove and reserve paragraphs (a)(11) and (18);

■ c. Revise paragraph (b)(2)(vi);

■ d. Remove and reserve paragraph (b)(11); and

■ e. Revise paragraphs (h).

The revisions read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *

(3) * * *

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (a)(7), (a)(9) through (a)(16) and (a)(18) through (a)(19), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (h)(3)(i) of this section; or if fishing under a scallop DAS or general category trip in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed and not available for immediate use as defined in § 648.2.

* * * * *

(b) * * *

(2) * * *

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(12), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS or General Category scallop permit in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed and not available for immediate use as defined in § 648.2.

* * * * *

(h) *Scallop vessels*—(1) *Scallop DAS.* Except as provided in paragraphs (h)(2) and (3) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) *NE Multispecies DAS.* Limited access scallop vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species or ocean pout, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS, but are prohibited from using scallop dredge gear on such trips.

(3) *Scallop dredge exemption areas for general category scallop permits*—(i) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, § 648.370, or § 648.371, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Regulated Mesh Area specified in paragraph (a)(1) of this section, when not under a NE multispecies DAS, providing the vessel fishes in the GOM Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (h)(3)(iii) of this section. The GOM Scallop Dredge Fishery Exemption Area is bounded on the west and north by the coastlines of Massachusetts, New Hampshire, and Maine, bounded on the east by the U.S.-Canada Maritime Boundary, and bounded on the south by straight lines connecting the following points in the order stated:

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N lat.	W long.
GOM1	43°58′	(1)
GOM2	43°58′	67°22′
GOM3	43°41′	68°00′
GOM4	43°12′	69°00′
GOM5	42°49.5′	69°40′
GOM6	42°20′	69°40′
GOM7	42°20′	(2)

1 The intersection of 43°58′ N lat. and the U.S.-Canada Maritime boundary.

2 The intersection of 42°20′ N lat. and the coastline of Massachusetts.

(ii) *Georges Bank/Southern New England Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, § 648.370, or § 648.371, vessels issued a LAGC scallop permit, including limited access scallop permits that have used up their DAS allocations, may fish in the Georges Bank/Southern New England Scallop Dredge Exemption Area, as defined under paragraph (h)(3)(ii)(A) of this section, when not under a NE multispecies or scallop DAS or on a sector trip, provided the vessel complies with the requirements specified in paragraph (h)(3)(iii) of this section and applicable scallop regulations in subpart D of this part.

(A) *Area definition.* The Georges Bank/Southern New England dredge exemption area is bounded on the north by 42°20′ N lat.; bounded on the east by the U.S.-Canada Maritime boundary and the outer limit of the US EEZ; bounded on the west by 72°30′ W long. from the outer limit of the US EEZ to the south-facing coastline of Long Island; and bounded on the northwest by the following points, connected as noted in the order listed:

GB/SNE SCALLOP DREDGE EXEMPTION AREA

Point	N lat.	W long.	Note
1	The south-facing coastline of Long Island.	72°30′ W	From Point 1 to Point 2 following the coastline of Long Island.
2	41°00′ N	The southeast-facing coast of Long Island.	From Point 2 to Point 3 following a straight line.
3	41°00′ N	The 3 nautical mile line, approximately 71°51.841′ W long.	From Point 3 to Point 4 following the Submerged Lands Act (3 nautical mile) line.
4	41°4.25′ N	The 3 nautical mile line, approximately 71°47.384′ W long.	From Point 4 to Point 5 following a straight line.
5	41°15′ N	72°2.25′ W	Point 5 represents Race Point, Fishers Island, NY. From Point 5 to Point 6 following a straight line northeasterly through Fishers Island, NY.
6	41°18.2′ N	71°51.5′ W	Point 6 represents Watch Hill, RI. From Point 6 to Point 7 following the coastlines of Rhode Island and Massachusetts.
7	42°20′ N	The coastline of Massachusetts	

(B) [Reserved]

(iii) *Requirements.* (A) A vessel fishing in the Scallop Dredge Fishery Exemption Areas specified in paragraphs (h)(3)(i) and (ii) of this section may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the Scallop Dredge Fishery Exemption Areas may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(a)(3) and (4), respectively.

* * * * *

[FR Doc. 2019–28455 Filed 1–14–20; 8:45 a.m.]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]
[RTID 0648–XY065]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Pot Catcher/Processors 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2020 Pacific cod total allowable catch allocated to catcher/processors using pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 12, 2020, through 1200 hours, A.l.t., September 1, 2020.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 A season apportionment of the 2020 Pacific cod total allowable catch (TAC) allocated to catcher/processors using pot gear in the BSAI is 1,058 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 inseason adjustment (85 FR 19, January 2, 2020).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2020 Pacific cod TAC allocated as a directed fishing allowance to catcher/processors using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 closure of directed fishing for Pacific cod by pot catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 10, 2020.

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: January 10, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–00537 Filed 1–10–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 10

Wednesday, January 15, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0887; Airspace Docket No. 19–ANM–32]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace by establishing a designated surface area at the Bend Municipal Airport, Bend, OR. This airspace area is designed to enhance safety at the airport by providing controlled airspace to the surface.

This action also proposes to establish an airspace area designated as an extension to a Class D or Class E surface area. This area is designed to contain aircraft on instrument approaches when they descend below 1,000 feet above the surface.

Additionally, this action proposes to amend the airspace area extending upward from 700 feet or more above the surface. Amendments to this airspace area are designed to properly contain arriving and departing IFR aircraft. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0887 and Airspace Docket No. 19–ANM–32, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2019–0887 and Airspace Docket No. 19–ANM–32) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.* Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0887; Airspace Docket No. 19–ANM–32.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov//air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Bend Municipal Airport, Bend, OR. The proposal adds a designated surface airspace area, which is designed to protect IFR arrivals descending below 1,000 feet above the surface and IFR departures until reaching 700 feet above the surface. The airspace area is defined as that airspace extending upward from the surface within a 3.9-mile radius of the Bend Municipal Airport, excluding that airspace within 1 mile of a point in space located at latitude 44°02′51″ N longitude 121°16′301″ W. The exclusion allows the Pilot Butte airport to remain outside of the controlled airspace extending upward from the surface.

This action also proposes to add a Class E airspace area designated as an extension to a Class D or Class E surface area. This area is defined as that airspace extending upward from the surface within 1 mile each side of the 167° bearing, extending from the 3.9-mile radius to 6.8 miles south of the Bend Municipal Airport.

Additionally, the action proposes to amend the Class E airspace extending upward from 700 feet above the surface to properly contain IFR aircraft on instrument approach when descending below 1,500 feet above the surface. The area is also designed to contain IFR departures until reaching 1,200 feet above the surface. The proposal would amend the Class E airspace area extending upward from 700 feet above the surface to within a 6.4-mile radius of the airport and within 1.1 miles each side of the 167° bearing, extending from the 6.4-mile radius to 8.8 miles south of the airport. This area also includes that airspace within 3.8 miles each side of the 338° bearing, extending from the 6.8-mile radius to 8.4 miles north of the Bend Municipal Airport.

Class E2, E4 and E5 airspace designations are published in paragraph 6002, 6002 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM OR E2 Bend, OR (NEW)

Bend Municipal Airport, OR
(Lat. 44°05′40″ N, long. 121°12′01″ W)

That airspace extending upward from the surface within a 3.9-mile radius of the Bend Municipal Airport, excluding that airspace within 1 mile of a point in space at lat. 44°02′51″ N, Long. 121°16′30″ W.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM OR E4 Bend, OR (NEW)

Bend Municipal Airport, OR
(Lat. 44°05′40″ N, long. 121°12′01″ W)

That airspace extending upward from the surface within 1 mile each side of the 167° bearing, extending from the 3.9-mile radius to 6.8 miles south of the Bend Municipal Airport.

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

* * * * *

ANM OR E5 Bend, OR (AMENDED)

Bend Municipal Airport, OR
(Lat. 44°05′40″ N, long. 121°12′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the airport, and within 1.1 miles each side of the 167° bearing, extending from 6.4-mile radius to 8.8 miles south of the airport, and within 3.8 miles each side of the 338° bearing extending from the 6.4-mile radius to 8.4 miles north of the Bend Municipal Airport.

Issued in Seattle, Washington, on January 8, 2020.

Byron Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–00404 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0972; Airspace Docket No. 19–ANM–30]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Mountain Home, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet or more above the surface at Mountain Home Municipal Airport, Mountain Home, ID. The first area is proposed to extend upward from 700 feet above the surface. The second area is proposed to extend upward from 1,200 feet above the surface. The establishment of the Class E airspace will support a new area navigation (RNAV) approach procedure and provide properly sized airspace for the airport's current RNAV approach and IFR departures. This action would ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0972; Airspace Docket No. 19–ANM–30, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2019–0972 and Airspace Docket No. 19–ANM–30) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.* Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0972; Airspace Docket No. 19–ANM–30.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov//air_traffic/publications/airspace_amendments/.*

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Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet or more above the surface at Mountain Home Municipal Airport, Mountain Home, ID. Establishing Class E airspace will support the implementation of a new RNAV approach procedure as well as provide appropriate airspace for the current RNAV approach procedure and IFR departures. Controlled airspace in the vicinity of the municipal airport is currently defined as part of Mountain Home Air Force Base's Class E airspace; independent airspace should be established for the municipal airport.

The first airspace area, to the extent possible, will contain IFR departures until reaching 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area will extend upward from 700 feet above the surface within a 5.5-mile radius of the airport, and within 2 miles each side of the 300° bearing extending from the 5.5-mile radius to 8 miles northwest of the Mountain Home Municipal Airport, excluding that airspace within the Mountain Home Air Force Base's Class D and Class E2 surface areas.

The second airspace area is designed to contain IFR aircraft transitioning to/from the en route environment and will extend upward from 1,200 feet above the surface within a 20-mile radius of the Mountain Home Municipal Airport.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or more above the Surface of the Earth.

* * * * *

ANM ID E5 Mountain Home, ID

Mountain Home Municipal Airport, ID
(Lat. 43°07′54″ N, long. 115°43′50″ W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the airport, and within 2 miles each side of the 300° bearing, extending from the 5.5-mile radius to 8 miles northwest of the airport, excluding that airspace within the Mountain Home AFB Class D and Class E2 airspace areas; and that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Mountain Home Municipal Airport.

Issued in Seattle, Washington, on January 8, 2020.

Byron Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–00406 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0954; Airspace Docket No. 19–ANM–6]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Hardin, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Big Horn County Airport, Hardin, MT. The establishment of the Class E airspace will accommodate a new area navigation (RNAV) procedure and IFR departures at the airport. This action would ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0954; Airspace Docket No. 19–ANM–6, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2019–0954 and Airspace Docket No. 19–ANM–6) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.* Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0954; Airspace Docket No. 19–ANM–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov//air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface at the Big Horn County Airport, Hardin, MT. The establishment of the new Class E airspace area will support the airport's transition from VFR to IFR operations. Specifically, to the extent possible, it will contain IFR departures until reaching 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface.

The airspace area will extend upward from 700 feet above the surface within a 6.4-mile radius of the airport, and within 2 miles each side of the 090° bearing extending from the 6.4-mile radius to 10.4 miles east of the Big Horn County Airport.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or more above the Surface of the Earth.

* * * * *

ANM MT E5 Hardin, MT

Big Horn County Airport, Hardin, MT
(Lat. 45°44′40″ N, long. 107°39′38″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the airport, and within 2.0 miles each side of the 090° bearing, extending from the 6.4-mile radius to 10.4 miles east Big Horn County Airport.

Issued in Seattle, Washington, on January 8, 2020.

Byron Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–00405 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release No. 33–10738; 34–87864; FR–86; IA–5422; IC–33737; File No. S7–26–19]

RIN 3235–AM63

Amendments to Rule 2–01, Qualifications of Accountants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to update certain auditor independence requirements as a result of recent feedback received from the public and our experience administering these requirements since their initial adoption nearly two decades ago. The proposed amendments would more effectively focus the independence analysis on those relationships or services that are more likely to pose threats to an auditor's objectivity and impartiality.

DATES: Comments should be received on or before March 16, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–26–19 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–26–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml).* Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

We or the SEC staff (the ''staff'') may add studies, memoranda or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notification by email.

FOR FURTHER INFORMATION CONTACT: Duc Dang, Senior Special Counsel, or Giles T. Cohen, Acting Chief Counsel, Office of the Chief Accountant, at (202) 551–5300; Alexis Cunningham, Assistant Chief Accountant, or Daniel Rooney, Assistant Chief Accountant, Chief Accountant's Office, Division of Investment Management, at (202) 551–6918; or Joel Cavanaugh, Senior Counsel, Investment Company Regulation Office, Division of Investment Management, at (202) 551–6792, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to 17 CFR 210.2–01 (''Rule 2–01'') of 17 CFR 210.01 *et seq.* (''Regulation S–X).[1]

Table of Contents

I. Introduction

The Commission has long recognized that an audit by an objective, impartial, and skilled professional contributes to both investor protection and investor confidence.[2] If investors do not perceive that the auditor is independent from the audit client, they will derive less confidence from the auditor's report and the audited financial statements. As such, the Commission's auditor independence rule, as set forth in Rule 2–01, requires auditors [3] to be independent of their audit clients both ''in fact and in appearance.'' [4]

In 2000, the Commission adopted a comprehensive framework of rules governing auditor independence, laying out governing principles and describing certain specific financial, employment, business, and non-audit service relationships that would cause an auditor not to be independent of its audit client. The 2000 amendments set forth the standard for analysis to determine whether an auditor is

[1] Hereinafter, all references to Rule 2–01 and any paragraphs included within the rule are referring to Rule 2–01 of Regulation S–X.

[2] *See Revision of the Commission's Auditor Independence Requirements,* Release No. 33–7919 (Nov. 21, 2000) [65 FR 76008 (Dec. 5, 2000)] (''2000 Adopting Release'').

[3] We use the terms ''accountants'' and ''auditors'' interchangeably in this release.

[4] *See* Preliminary Note 1 to Rule 2–01 and Rule 2–01(b). *See also United States* v. *Arthur Young & Co.,* 465 U.S. 805, 819 n.15 (1984) (''It is therefore not enough that financial statements be accurate; the public must also perceive them as being accurate. Public faith in the reliability of a corporation's financial statements depends upon the public perception of the outside auditor as an independent professional.'').

independent. Under this analysis, pursuant to Rule 2–01(b), the ''Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.'' Rule 2–01(b) further states that the ''Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client,'' in determining whether an auditor is independent. Rule 2–01(c) then sets forth a nonexclusive list of particular circumstances that the Commission considers to be inconsistent with the independence standard in Rule 2–01(b), including certain financial, employment, business, and non-audit service relationships between an accountant and its audit client.[5]

Except for revisions made in connection with amendments required by the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'')[6] and the recent amendments related to certain debtor-creditor relationships,[7] many of the provisions from the 2000 Adopting Release have remained unchanged since adoption. We seek to maintain the relevance of our auditor independence requirements, and evaluate their effectiveness in light of current market conditions and industry practices. As such, in connection with the recent proposal to address certain debtor-creditor relationships, we also solicited comment on other potential updates to the auditor independence rules.[8] After considering the feedback received from the public and our experience administering these rules since their initial adoption nearly two decades ago, we are proposing additional amendments to our auditor independence rules to more effectively focus the independence analysis on those relationships or services that we believe are most likely to threaten an auditor's objectivity and impartiality.

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed rule amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Proposed Amendments

A. Proposed Amendments to Definitions

1. Proposed Amendments to Affiliate of the Audit Client and the Investment Company Complex

''Rule 2–01 is designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance.''[9] The term ''audit client''[10] is defined as ''the entity whose financial statements or other information is being audited, reviewed or attested''[11] and any ''affiliates of the audit client.''[12] The definition of ''affiliate of the audit client'' includes, in part, ''[a]n entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries'' and ''[e]ach entity in the investment company complex when the audit client is an entity that is part of an investment company complex.''[13] Rule 2–01(f)(14) defines an investment company complex (''ICC'') to include, in part, ''[a]ny entity controlled by or controlling an investment adviser or sponsor . . . or any entity under common control with an investment adviser or sponsor . . . if the entity: (1) Is an investment adviser or sponsor; or (2) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor.''

As noted above, the first paragraph of the definition of affiliate of the audit client includes ''an entity that has control over the audit client . . . or *which is under common control with the audit client,* including the audit client's parents and subsidiaries''[14] (emphasis added). As such, entities under common control with the audit client (''sister entities'') are considered affiliates and fall within the definition of the ''audit client'' set forth in Rule 2–01(f)(6). Additionally, pursuant to Rule 2–01(f)(4)(iv), each entity in an ICC is considered an affiliate when the audit client is part of the ICC. Consequently, in complex organizational structures, such as large ICCs, the requirement to identify and monitor for potential independence-impairing relationships and services currently applies to affiliated entities, including sister entities, regardless of whether the sister entities are material to the controlling entity.

In our experience administering the independence rules, we have observed some challenges in the practical application of the ''common control'' component of the definition of affiliate of the audit client. We also have observed a number of situations where a prohibited service or relationship with a sister entity did not result in a corresponding threat to an auditor's objectivity and impartiality. Additionally, several commenters have suggested that we revisit the scope of the current application of the independence rules to entities under ''common control.''[15] In the private equity and investment company context, where there potentially is a significant volume of acquisitions and dispositions of unrelated portfolio companies,[16] the definition of affiliate of the audit client may result in an expansive and constantly changing list of entities that are considered to be affiliates of the audit client. Such changes in portfolio companies can create compliance challenges for audit firms performing independence analyses by requiring them to monitor their various relationships and services with affiliates of the audit client, even if many of those relationships and services likely would not threaten the auditor's objectivity and impartiality.

Furthermore, individual portfolio companies are often audited by different auditors, even when they are within the

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[5] *See* Rule 2–01(c); *see also* 2000 Adopting Release, at 65 FR 76009 (''The amendments [to Rule 2–01 adopted in 2000] identify certain relationships that render an accountant not independent of an audit client under the standard in Rule 2–01(b). The relationships addressed include, among others, financial, employment, and business relationships, and relationships where auditors provide certain non-audit services between auditors and audit clients . . .'').

[6] *Strengthening the Commission's Requirements Regarding Auditor Independence,* Release No. 33–8183 (Jan. 28, 2003) [68 FR 6005 (Feb. 5, 2003)].

[7] *Auditor Independence With Respect to Certain Loans or Debtor-Creditor Relationships,* Release 33–10648 (June 18, 2019) [84 FR 32040 (July 5, 2019)] (''Loan Provision Adopting Release''). In this release, references to the ''Loan Provision'' are referring to Rule 2–01(c)(1)(ii)(A).

[8] *See Auditor Independence with Respect to Certain Loans or Debtor-Creditor Relationships,* Release No. 33–10491 (May 2, 2018) [83 FR 20753 (May 8, 2018)] (''Loan Provision Proposing Release''). The comment letters received in response to the Proposing Release are available at *https://www.sec.gov/comments/s7-10-18/s71018.htm.*

[9] Preliminary note 1 to Rule 2–01.

[10] Rule 2–01(f)(6).

[11] For the purposes of our discussion in this release, we refer to this part of the definition as the ''entity under audit.''

[12] *See* Rule 2–01(f)(6). For the purpose of Rule 2–01(c)(1)(i), entities covered by Rule 2–01(f)(4)(ii) or (iii) are not considered affiliates of the audit client.

[13] Rule 2–01(f)(4)(i) and (iv).

[14] Rule 2–01(f)(4)(i).

[15] *See e.g.,* letters from PricewaterhouseCoopers LLP (June 29, 2018) (''PwC''), Center for Audit Quality (July 3, 2018) (''CAQ''), BDO USA, LLP (July 9, 2018) (''BDO''), Ernst & Young LLP (July 9, 2018) (''EY''), American Institute of Certified Public Accountants (July 9, 2018) (''AICPA''), and American Investment Council (July 9, 2018) (''AIC'').

[16] In this release, we are using the term ''portfolio company'' to refer to an operating company that has among its investors, investment companies or unregistered funds in private equity structures.

same ICC or private equity structure. Where the portfolio companies are otherwise unrelated, multiple audit firms may need to be independent of each of the entities currently deemed affiliates of the audit client. As a result, the shared responsibility of the audit client and respective audit firm to monitor the relationships and services against this often expansive and constantly changing list of affiliates as part of their independence analysis throughout the audit and professional engagement period could result in substantial compliance costs. Such compliance costs from independence monitoring arise even where the relationships being monitored are not likely to threaten the auditor's objectivity and impartiality, as discussed further below.

In addition to impacting monitoring and compliance efforts, the current application of the common control prong in Rule 2–01(f)(4)(i) to an auditor's relationships and services with sister entities also may have competitive effects on the market for audit and non-audit services. Where a potential audit client is in the market for an auditor, the number of qualified audit firms may be reduced because certain audit firms may have relationships with or provide services to sister entities that are impermissible under the current auditor independence rules regardless of the impact to the objectivity or impartiality of the audit firm. This potential reduction in the number of qualified audit firms may constrain the audit client's choice as to its preferred auditor and thereby also may have an impact on audit quality. For example, those responsible for selecting an auditor may believe a certain audit firm is the best fit from an audit quality perspective to audit one of the portfolio companies, but the audit firm would not be considered independent if it is providing a prohibited service to a sister entity, even where such sister entity is not material to the controlling entity.

To address these challenges and more effectively focus the definition of affiliate of the audit client on those relationships and services that are most likely to threaten auditor objectivity and impartiality, we propose amending both paragraphs (f)(4) (*i.e.,* the affiliate of the audit client definition) and (f)(14) (*i.e.,* the ICC definition) of Rule 2–01 to include materiality qualifiers in the respective common control provisions and to distinguish how the definition applies when an accountant is auditing a portfolio company, an investment company, or an investment adviser or sponsor.

Although the proposed amendments in this section will impact an auditor's analysis under Rule 2–01(c) by changing the population of entities that are included in the definition of audit client, the proposed amendments do not alter the application of the general standard in Rule 2–01(b). Because the Commission is not able to ascertain all the permutations of relationships or services that would impair an auditor's objectivity and impartiality, the Commission focused ''the legal standard [in Rule 2–01(b)] by including the explicit reference to 'all relevant facts and circumstances.' '' [17] As noted in the 2000 Adopting Release, ''[c]ircumstances that are not specifically set forth in our rule are measured by the general standard set forth in Rule 2–01(b).'' As such, notwithstanding the potential exclusion from the term audit client of entities that are currently considered affiliates of the audit client but would no longer be deemed affiliates under the proposed amendments, relationships and services between an auditor and such entities are still subject to the general standard. For example, the audit firm, or those charged with governance of the entity under audit, may identify independence concerns in fact or in appearance, individually or in the aggregate, upon considering the nature, extent, relative importance and other aspects of the services or relationships between the auditor, the controlling entity, and such sister entities that are not material to the controlling entity.

a. Proposed Amendments for Common Control and the Affiliate of the Audit Client

We are proposing to amend Rule 2–01(f)(4)(i) to include a materiality requirement with respect to operating companies under common control.[18] With respect to the application of the affiliate of the audit client definition to operating companies, including portfolio companies, we propose amending Rule 2–01(f)(4)(i) to focus the independence analysis on sister entities that are material to the controlling entity. Specifically, proposed Rule 2–01(f)(4)(i)(B) would qualify the definition with ''unless the entity is not material to the controlling entity.''

To demonstrate the application of proposed Rule 2–01(f)(4)(i)(B) to operating companies, consider the following organizational structure: A parent company (Parent Company A) has control over three operating companies, including Operating Company B. If an accountant is serving as Operating Company B's auditor, it would need to consider whether either of the other two sister entities are material to Parent Company A to determine whether one or both of the sister entities are affiliates of the audit client.

As noted below, we believe it is appropriate to identify the affiliates of the audit client for a portfolio company under audit under proposed Rule 2–01(f)(4)(i) rather than under proposed Rule 2–01(f)(14). Portfolio companies are a type of operating company and, also as discussed below, often the portfolio companies are unrelated even though they are controlled by the same entity in the private equity structure or ICC.

To demonstrate the application of the proposed Rule 2–01(f)(4)(i) to portfolio companies, consider the situation where the accountant is serving as the auditor for Portfolio Company C, which is controlled by Unregistered Fund D. Even though Portfolio Company C is controlled by an entity within proposed Rule 2–01(f)(14) (discussed further below), Portfolio Company C's auditor would still look to proposed Rule 2–01(f)(4)(i)(A) through (D) and not proposed paragraph (f)(14) to determine which entities are affiliates of Portfolio Company C. That is because the portfolio company is the entity under audit and, as such, it does not fall within the definition of ICC set forth in proposed Rule 2–01(f)(14).

Based on the SEC staff's consultation experience, audit firms providing services to or having relationships with sister entities not material to the controlling entity do not typically present issues with respect to the audit firm's objectivity or impartiality. As such, we believe it is appropriate to exclude sister entities that are not material to the controlling entity from being considered affiliates of the audit client because an auditor's relationships and services with such entities do not typically pose a threat to the auditor's objectivity and impartiality.

We recognize that adding an evaluation of materiality as proposed may result in additional work to be done by audit firms with ongoing monitoring responsibilities for the purposes of compliance with the

[17] 2000 Adopting Release at 65 FR 76031.

[18] Proposed Rule 2–01(f)(4)(i)(B). In the 2000 Adopting Release, the Commission stated that ''entities, if not part of an [ICC], will be considered affiliates of the audit client if they satisfy the criteria of one of the three paragraphs of Rule 2–01(f)(4).'' 2000 Adopting Release at 65 FR 76059. The proposed amendments do not alter the scope of application for the affiliate of the audit client definition. For the purpose of this release, we use the term ''operating company'' to refer to entities that are not investment companies, investment advisers, or sponsors.

independence rules. However, the affiliate of the audit client definition already has a materiality evaluation, which is familiar to auditors and their audit clients. In particular, materiality is applied currently in the existing affiliate of the audit client definition in Rule 2–01(f)(4)(ii) and (iii).[19] Also, a materiality evaluation as it relates to sister entities is consistent, in part, with the definition of ''affiliate'' used by the American Institute of Certified Public Accountants (''AICPA'') in its ethics and independence rules, which are the independence rules typically applied when domestic companies are not subject to SEC and Public Company Accounting Oversight Board (''PCAOB'') independence requirements.[20] Auditors therefore have experience in applying a materiality standard when identifying affiliates, whether applying the independence rules of the SEC or AICPA.

We note that a determination under the proposed amendments that sister entities are not material to the controlling entity, by itself, does not conclude the independence analysis under Rule 2–01. This is because, as explained above, auditors and audit clients must consider ''all relevant facts and circumstances'' when assessing independence pursuant to the general standard in Rule 2–01(b).

We believe focusing on sister entities that are material to the controlling entity would relieve some of the compliance burden associated with making independence determinations, as there should be fewer entities considered affiliates. For the relationships and services that might nevertheless impact the auditor's independence under the general standard in Rule 2–01(b), we would expect those relationships and services individually or in the aggregate would be easily known by the auditor and the audit client because such services and relationships are most likely to threaten an auditor's objectivity and impartiality due to the nature, extent, relative importance or other aspects of the service or relationship. We also believe the proposed amendments could increase choice and competition for audit and non-audit services.

Request for Comment

1. Should we add the materiality requirement, as proposed, so that only sister entities that are material to the controlling entity are deemed to be an affiliate of the audit client? Alternatively, should we retain the current common control provision in the affiliate of the audit client definition?

2. Does the proposed amendment sufficiently focus the common control prong of the definition of affiliate of the audit client on those relationships and services that are most likely to threaten auditor objectivity and impartiality? Should we focus on the materiality of sister entities to the controlling entity, as proposed? If not, are there other amendments that would better focus on relationships and services that are more likely to threaten auditor objectivity and impartiality? For example, should we focus on whether sister entities are material to the entity under audit, in addition to whether they are material to the controlling entity? Should we consider aggregating sister entities in the materiality assessment rather than the assessment being done on an individual basis? Or is aggregation of multiple sister entities sufficiently covered by the general standard under Rule 2–01(b)?

3. Would auditors and audit clients face challenges in applying the materiality concept in this context? Would auditors face particular challenges assessing materiality in connection with private portfolio companies? If so, what are those challenges and how could they be addressed?

4. Would focusing only on sister entities that are material to the controlling entity increase the risk that auditors will be performing audits when they are not objective and impartial? If so, is the overarching consideration of all relevant facts and circumstances, as required by Rule 2–01(b), sufficient to mitigate this risk? Would focusing on sister entities that are material to the controlling entity increase the risk of appearance issues?

5. Are there other types of affiliates that should be excluded from the definition because the services and relationships with such entities rarely threaten an auditor's objectivity and impartiality?

b. Proposed Amendments to the Investment Company Complex

We are also proposing to clarify that with respect to an entity under audit that is an investment company or an investment adviser or sponsor, the auditor and the audit client should look solely to proposed Rule 2–01(f)(14) (*i.e.,* the ICC definition) to identify affiliates of the audit client.[21] The proposed amendments would explicitly direct auditors of an investment company or an investment adviser or sponsor to include all entities within the proposed ICC definition as affiliates of the audit client instead of conducting an analysis based on the prongs in proposed Rule 2–01(f)(4)(i). As such, we are proposing amendments to the ICC definition in Rule 2–01(f)(14) to focus the definition from the perspective of the entity under audit and align certain portions of the ICC definition with the amendments discussed in the preceding section.

Consistent with the discussion in the preceding section, while the proposed amendments to the ICC definition may alter the composition of entities that are deemed affiliates of the audit client principally due to materiality being added for sister entities, the overarching general standard in Rule 2–01(b) continues to apply.

i. Entity Under Audit and Unregistered Funds

We propose to clarify that auditors of investment companies, including unregistered funds,[22] or investment advisers or sponsors must assess whether other entities are affiliates of

[19] Rule 2–01(f)(4)(ii) includes as an affiliate of the audit client ''an entity over which the audit client has significant influence, unless the entity is not material to the audit client.'' Rule 2–01(f)(4)(iii) includes as an affiliate of the audit client ''an entity that has significant influence over the audit client, unless the audit client is not material to the entity.''

[20] *See* AICPA Professional Code of Conduct *available at https://pub.aicpa.org/codeofconduct/ethicsresources/et-cod.pdf.* We acknowledge that the proposed amendment may not result in the same number of sister entities being deemed material to the controlling entity under our rules and the AICPA rules. For example, in defining control the AICPA uses the accounting standards adopted by the Financial Accounting Standards Board, whereas our rules define control in Rule 1–02(g) of Regulation S–X. Also, the AICPA affiliate definition pertaining to common control deems a sister entity as an affiliate if both the entity under audit and the sister entity are material to the entity that controls both. The proposed amendment only focuses on the materiality of the sister entity to the controlling entity because we believe requiring materiality between the entity under audit and the controlling entity may exclude, from the proposed definition, sister entities whose relationships with or services from an auditor would impair the auditor's objectivity and impartiality.

[21] Proposed Rule 2–01(f)(4)(ii).

[22] We use the term ''unregistered fund'' in this release to refer to entities that are not considered investment companies pursuant to the exclusions in Section 3(c) of Investment Company Act of 1940. Registered investment advisers acting as qualified custodians that have custody of client funds or securities generally are required by 17 CFR 275.206(4)–2 (Rule 206(4)–2 (the ''Custody Rule'') under the Investment Advisers Act of 1940 (the ''Investment Advisers Act'')) to obtain a surprise examination conducted by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB or, for pooled investment vehicles, may be deemed to comply with the requirement by distributing financial statements audited by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB to the pooled investment vehicle's investors.

the audit client by focusing solely on proposed Rule 2–01(f)(14).

Unlike the current ICC definition, the proposed amendments would reference the entity under audit in proposed paragraph (f)(14)(i)(A) as the starting point for the analysis of which entities are to be considered part of an ICC. As a result, when the entity under audit is an investment company, an investment adviser or a sponsor, the auditor would focus solely on proposed Rule 2–01(f)(14) to determine what other entities are part of the ICC and, therefore, affiliates of the audit client. We also are proposing to include within the meaning of the term investment company, for the purposes of the ICC definition, entities ''that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act.'' [23] As such, proposed paragraph (f)(14)(iv) would cover registered investment companies, business development companies, and entities that would be investment companies but for the exclusions provided by section 3(c) of the Investment Company Act, such as private funds that rely on section 3(c)(1) or 3(c)(7). If an auditor is auditing only these entities, it would look solely to proposed Rule 2–01(f)(14) to determine which entities are affiliates of the audit client. This would more effectively focus the independence analysis for unregistered funds under audit and align with the analysis to be undertaken for registered investment companies.

If an auditor audits *both* a portfolio company and an investment company or an investment adviser or sponsor, then the auditor would have to apply both proposed Rules 2–01(f)(4)(i) and (f)(14) to identify the entities that are affiliates of the audit client and where it would need to monitor for prohibited relationships and services. To demonstrate this using the example from the preceding section, where the accountant is serving as the auditor of both Unregistered Fund D and Portfolio Company C, which is controlled by Unregistered Fund D, the auditor would apply both proposed Rules 2–01(f)(4)(i) and (f)(14) in connection with its independence analysis. Specifically, the auditor of Portfolio Company C would conduct its analysis under proposed Rule 2–01(f)(4)(i), while the same auditor, with respect to its audit of Unregistered Fund D, would conduct its analysis under proposed Rule 2–01(f)(14) to determine the affiliate status of entities within the same ICC as Unregistered Fund D. However, if an auditor audits only an investment company or investment adviser or sponsor, as defined by proposed Rule 2–01(f)(14), then it would look solely to proposed Rule 2–01(f)(14) to determine the affiliates it would have to monitor for prohibited relationships and services.

Request for Comment

6. Should the proposed ICC definition specifically reference the entity under audit and explicitly define investment companies, for the purpose of proposed paragraph (f)(14), to include unregistered funds, as proposed?

7. Is it appropriate to direct auditors of an investment adviser, sponsor, or investment company to the investment company complex definition, as we propose to amend it, to determine the entities that will be considered affiliates of the audit client? Why or why not? Would that lead to more consistent independence analyses by auditors of these entities?

ii. Common Control With Any Investment Company, Investment Adviser or Sponsor

Under the current ICC definition, any entity under common control with an investment adviser or sponsor of an investment company [24] audit client that is also an investment adviser or sponsor (''sister investment adviser or sponsor'') is considered part of the ICC, and thereby an affiliate of the audit client.[25] Additionally, the current ICC definition includes not just the investment companies that share an investment adviser or sponsor with an investment company audit client, it also includes any investment company advised by a sister investment adviser or has a sister sponsor.[26]

To demonstrate the application of the current definition of ICC, consider the following example: An investment company, Investment Company A, is the entity under audit. Investment Company A is advised by Investment Adviser B. Investment Adviser B is under common control with Investment Adviser C and Investment Adviser D. Under current Rule 2–01(f)(14)(i)(B)(*1*), Investment Adviser C and Investment Adviser D are considered sister investment advisers and, therefore, are affiliates of the audit client Investment Company A. Moreover, every investment company advised by Investment Adviser C and Investment Adviser D falls within the definition of ICC and, therefore, is also an affiliate of the audit client Investment Company A because of the application of current Rule 2–01(f)(14)(i)(C). In this instance, the auditor could not have any prohibited services or relationships with any of the sister investment advisers or any of the investment companies they advise.

We are proposing to align the common control prong of the proposed ICC definition (proposed Rule 2–01(f)(14)(i)(D)) with the proposed common control prong for operating companies (proposed Rule 2–01(f)(4)(i)(B)), for the same reasons we discuss in Section II.A.1.a. As a result, proposed paragraph (f)(14)(i)(D)(*1*) of the ICC definition includes only sister investment companies, advisers, and sponsors that are material to the controlling entity. If the sister investment company, adviser, or sponsor is not material to the controlling entity, the general standard under Rule 2–01(b) would still apply, as discussed above.

Under the current ICC definition, an investment company seeking an auditor to audit its financial statements is precluded from considering any accountant with services or relationships prohibited by Rule 2–01(c) with sister investment advisers, sponsors, or any of the investment companies they advise or sponsor. As such, an investment company's choices among qualified auditors may be limited. The inclusion of a materiality qualifier in proposed paragraph (f)(14)(i)(D)(*1*) may broaden the pool of prospective accountants the potential investment company audit client can evaluate and consider to engage as its auditor while being unlikely to increase the potential threat to an auditor's objectivity and impartiality. Proposed paragraph (f)(14)(i)(D) is not meant to change the population of controlling entities an auditor should consider when assessing common control under the current Rule 2–01(f)(14)(i)(B), but rather to be consistent with the common control provision in proposed Rule 2–01(f)(4)(i)(B), with the primary change being the inclusion of a materiality qualifier. Because of the changes to the ICC definition discussed in the preceding section, which direct auditors

[23] *See* proposed Rule 2–01(f)(14)(iv). This is in contrast to current Rule 2–01(f)(14)(i)(C) which includes an unregistered fund only if it has an investment adviser or sponsor already included within the definition of investment company complex. *Revision of the Commission's Auditor Independence Requirements,* Release No. 33–7870 (June 30, 2000) [65 FR 43147, 43181 (July 12, 2000)].

[24] As noted in the preceding section, since proposed Rule 2–01(f)(14)(iv) defines investment company to include entities that would be considered investment companies but for the exclusions provided by Section 3(c) of the Investment Company Act of 1940, when we use the term investment company in this release to discuss the proposed amendments, the term also includes such entities.

[25] Rule 2–01(f)(14)(i)(B)(*1*).

[26] Rule 2–01(f)(14)(i)(C).

and the audit client to look solely to proposed Rule 2–01(f)(14) to identify affiliates of the audit client with respect to an entity under audit that is an investment company or an investment adviser or sponsor, the proposed amendment discussed in this section simply aligns with the change in proposed Rule 2–01(f)(4)(i)(B).

Additionally, current Rule 2–01(f)(14)(i)(B) does not include investment companies whereas proposed paragraph (f)(14)(i)(D)(*1*) does include investment companies in the assessment of sister entities. We are introducing the reference to investment companies in the proposed ICC common control provision because, under current Rule 2–01(f)(14)(i)(C), any investment company advised or sponsored by a sister investment adviser is already included as an affiliate, regardless of materiality. With the addition of the materiality requirement in proposed paragraph (f)(14)(i)(D)(*1*), we did not want to exclude investment companies that are material to the controlling entity from the ICC when such investment companies' investment advisers or sponsors are not material to the controlling entity. This is intended to ensure that a controlling entity's investment directly in an investment company is considered in the affiliate analysis in the event that the adviser to that investment company is deemed not material to the controlling entity. We do not believe that this would expand the scope of entities determined to be affiliates based on the current application of Rule 2–01(f)(14)(i)(B) and (C).

Furthermore, we proposed to add a reference to proposed paragraph (f)(14)(i)(C) within proposed paragraph (f)(14)(i)(D) to align with the concept of parent and subsidiaries found in proposed paragraph (f)(4)(i)(B). This is intended to ensure that entities downstream and upstream to the entity under audit are considered in the analysis for common control.

Request for Comment

8. Should we include a materiality qualifier in Rule 2–01(f)(14)(i)(D), as proposed, so that only sister investment companies or investment advisers or sponsors that are material to the controlling entity are included in the proposed definition of ICC and, as a result, are deemed to be an affiliate of the audit client? Should we focus on whether sister investment companies, advisers, or sponsors are material to the investment company, adviser, or sponsor under audit, in addition to whether they are material to the controlling entity? Should we consider aggregating sister entities in the materiality assessment rather than the assessment being done on an individual basis? Or is aggregation of multiple sister entities sufficiently covered by the general standard under Rule 2–01(b)?

9. Does the proposed amendment sufficiently focus the common control prong of the ICC definition on those relationships and services that are most likely to threaten auditor objectivity and impartiality? Should the analysis focus on the materiality of sister entities to the controlling entity, as proposed?

10. Would auditors and audit clients face challenges in applying the materiality concept in this context? Would auditors face particular challenges assessing materiality in connection with unregistered funds? If so, what are the challenges and how could they be addressed?

11. Would focusing only on sister entities that are material to the controlling entity increase the risk that auditors will be performing audits when they are not objective and impartial? If so, is the overarching consideration of all relevant facts and circumstances, as required by Rule 2–01(b), sufficient to mitigate this risk? Would focusing on sister entities that are material to the controlling entity increase the risk of appearance issues?

12. Is it appropriate for auditors to assess whether or not sister investment companies are material to the controlling entity even when a sister fund's investment adviser may not be material to the controlling entity? Should we include a reference to paragraph (f)(14)(i)(C) within paragraph (f)(14)(i)(D), as proposed?

iii. Investment Companies That Share an Investment Adviser or Sponsor Included Within the ICC Definition

Under current paragraph (f)(14)(i)(C) of the ICC definition, an auditor of an investment company has to monitor for prohibited services and relationships with sister investment companies that have the same investment adviser or sponsor or have an investment adviser or sponsor that is under common control, regardless of whether the sister investment companies are material to such investment adviser or sponsor. The proposed amendments would not change the analysis of sister investment companies that have an investment adviser or sponsor included within the ICC definition. This is because proposed paragraph (f)(14)(i)(F) would include within the ICC definition any investment company that has any investment adviser or sponsor that is an affiliate of the audit client pursuant to proposed paragraphs (f)(14)(i)(A) through (D).

For example, proposed paragraph (f)(14)(i)(B) includes the investment adviser or sponsor of an investment company under audit. As the language in neither proposed paragraph (f)(14)(i)(B) nor proposed paragraph (F) includes a materiality requirement, under proposed paragraph (f)(14)(i)(F), an auditor would need to consider as part of its independence analysis, sister investment companies that have the same investment adviser or sponsor as the investment company under audit, regardless of whether such sister investment companies are material to the shared investment adviser or sponsor. Consistent with current paragraph (f)(14)(i)(C), we continue to believe that the nature of the relationship between an investment adviser or sponsor and the investment companies it advises is such that once an investment adviser or sponsor is included within the proposed ICC definition, the investment companies it advises should be included as well.

Request for Comment

13. Should paragraph (f)(14)(i)(F) be adopted as proposed? Should we instead include a materiality qualifier for sister investment companies in proposed paragraph (f)(14)(i)(F)?

iv. Significant Influence Within the ICC Definition

As discussed above, the proposed ICC definition would clarify that when the entity under audit is an investment company or an investment adviser or sponsor, the auditor should look to the proposed ICC definition in proposed Rule 2–01(f)(14) to determine which entities are considered affiliates of the audit client. As such, we propose including in the proposed ICC definition a significant influence prong to align, in part, with the current significant influence analysis applicable to operating companies in the definition of affiliate of the audit client in Rule 2–01(f)(4)(ii) and (iii).[27] Given that ''significant influence'' is used in other parts of the Commission's independence rules, including within the affiliate definition, the concept of ''significant influence'' is one with which audit firms and their clients are already required to be familiar.[28]

[27] The proposed amendments to the affiliate of the audit client definition include conforming amendments to list these two prongs as proposed Rule 2–01(f)(4)(i)(C) and (D).

[28] The Loan Provision Adopting Release clarified what constitutes significant influence in an investment company context and that analysis

Continued

Again, because of the changes to the ICC definition discussed above, which direct auditors and the audit client to look solely to proposed Rule 2–01(f)(14) to identify affiliates of the audit client with respect to an entity under audit that is an investment company or an investment adviser or sponsor, the proposed amendment discussed in this section simply aligns with the significant influence prongs in the current definition of affiliate of the audit client.

Additionally, we are also proposing a conforming amendment to the definition of the term audit client in Rule 2–01(f)(6) to include a reference to proposed Rule 2–01(f)(14)(i)(E) to be consistent with the existing references in such definition to the significant influence prongs of the affiliate of the audit client definition. Currently Rule 2–01(f)(6), for the purposes of considering investment relationship prohibitions under current Rule 2–01(c)(1)(i), excludes from the audit client definition entities that are deemed affiliates solely because of the significant influence prongs in current paragraphs (f)(4)(ii) and (iii). This conforming amendment would add a reference to proposed Rule 2–01(f)(14)(i)(E) to those exclusions.

Request for Comment

14. Should we incorporate a significant influence prong into the ICC definition, as proposed?

15. Should we also adopt the proposed conforming amendment to Rule 2–01(f)(6) to include the reference to proposed paragraph (f)(14)(i)(E)?

2. Proposed Amendment To Audit and Professional Engagement Period

Currently, paragraphs (c)(1) through (5) of Rule 2–01 enumerate certain circumstances that, if they occur during the ''audit and professional engagement period,'' are inconsistent with the general independence standard of Rule 2–01(b).[29] Under the current rule, the term ''audit and professional engagement period'' is defined differently for domestic issuers and foreign private issuers (''FPIs'') [30] with respect to situations in which a company first files, or is required to file, a registration statement or report with the Commission. Specifically, Rule 2–01(f)(5)(i) and (ii) defines the audit and professional engagement period as including both the ''period covered by any financial statements being audited or reviewed'' and the ''period of the engagement to audit or review the . . . financial statements or to prepare a report filed with the Commission. . . .'' However, paragraph (iii) of the definition narrows the audit and professional engagement period to just the ''first day of the last fiscal year before the *foreign private issuer* first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission'' (emphasis added).

The narrower definition applicable to FPIs creates a disparate application of the auditor independence rules between domestic issuers and FPIs when, for example, both types of audit clients are engaging in an IPO. The auditor of a domestic issuer engaging in an IPO has to be independent in accordance with Rule 2–01 during all periods included in the issuer's registration statement filed with the Commission. For example, if the registration statement includes three years of financial statements, then the auditor of a domestic issuer engaging in an IPO would have to look back three years and assess independence under Rule 2–01 during all such prior years. Conversely, the auditor of an FPI engaging in an IPO has to be independent in accordance with Rule 2–01 only during the immediately preceding fiscal year. Even if the registration statement for the FPI includes three years of financial statements, the auditor and the FPI would, for purposes of Rule 2–01, look back and assess independence only during the most recently completed fiscal year provided the FPI has been in full compliance with its home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

As a consequence, a domestic private company may need to delay its IPO or engage a new auditor in order to comply with the auditor independence rules, which would put it at a potential economic disadvantage when compared to an FPI. Several commenters specifically suggested that the definition of ''audit and professional engagement period'' be amended so that domestic issuers would be subject to the same audit and professional engagement period as FPIs when they are first filing, or are required to file, a registration statement or report with the Commission.[31] Commenters also suggested that shortening the look-back period may encourage capital formation for domestic issuers contemplating an IPO (*e.g.,* for those issuers that may have to delay an IPO to comply with Rule 2–01), or at least put them on the same footing as FPIs.[32]

In addition, the staff has observed, from its independence consultation experience related to potential filings of initial registration statements, that often one factor, among many, in the auditor's objectivity and impartiality analysis is how far back in time the prohibited service or relationship ended. If the prohibited service or relationship ended in the early years of the financial statements included in the initial registration statement, that fact may lend support to a conclusion that the auditor is objective and impartial under Rule 2–01 at the time the IPO is consummated.

In light of this feedback and our experience, we are proposing to amend Rule 2–01(f)(5)(iii) so that the one year look back provision for issuers filing or required to file a registration statement or report with the Commission for the first time (''first-time filers'') will apply to all such filers.[33] As proposed, an auditor for a first time filer that is either a domestic issuer or an FPI would apply Rule 2–01 for the most recently completed fiscal year included in its first filing provided there has been full compliance with applicable independence standards in all prior periods covered by any registration statement or report filed with the Commission. We believe that the proposed requirement to comply with applicable independence standards in all prior periods sufficiently mitigates the risk associated with shortening the look back provision for domestic first-time filers. Also, as it relates to relationships and services in prior years that would not be included in the look back period as a result of the proposed amendment, such relationships and services should still be considered under the general standard of Rule 2–01(b). Similar to the discussion in Section II.A.1, for the relationships and services to be evaluated under Rule 2–01(b), individually and in the aggregate,

would apply here as well. *See* Section II.C.3 of the Loan Provision Adopting Release.

[29] *See* Preliminary Note 2 and paragraphs (c)(1), (2), (3), (4), and (5) to Rule 2–01.

[30] 17 CFR 240.3b–4(c). A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents; and (2) any of the following: (i) A majority of its executive officers or directors are citizens or residents of the United States; (ii) more than 50% of its assets are located in the United States; or (iii) its business is principally administered in the United States. *See* 17 CFR 240.3b–4(c).

[31] *See e.g.,* letters from PwC, CAQ, BDO, AICPA, and AIC.

[32] *See e.g.,* letters from CAQ, AICPA, and AIC.

[33] The proposed amendments would not impact the compliance analysis related to the partner rotation provisions in Rule 2–01(c)(6).

we would expect those relationships and services would be easily known by the auditor as such services and relationships might be thought to reasonably bear on an auditor's independence due to the nature, extent, relative importance, or other aspects of the service or relationship.

Request for Comment

16. We are proposing to amend rule 2–01(f)(5) to shorten the look-back period for all first-time filers to the most recently completed fiscal year, which would result in treating all first-time filers (including domestic issuers and FPIs) similarly for purposes of our independence requirements under Rule 2–01. Should we amend Rule 2–01(f)(5) as proposed? Alternatively, should we consider instead lengthening the lookback period for FPIs to all periods in which the financial statements are being audited or reviewed to harmonize the lookback periods?

B. Proposed Amendments to Loans or Debtor-Creditor Relationships

Currently, under Rule 2–01(c)(1)(ii)(A) (the ''Loan Provision''), an accountant is not independent if the accounting firm, any covered person in the firm, or any of his or her immediate family members has any loans (including any margin loan) to or from an audit client, or certain other entities or persons related to the audit client.[34] The Commission originally adopted this provision because certain creditor or debtor relationships ''reasonably may be viewed as creating a self-interest that competes with the auditor's obligation to serve only investors' interest.'' [35] Recognizing that not all creditor or debtor relationships threaten an auditor's objectivity and impartiality, the Commission included in Rule 2–01(c)(1)(ii)(A) a list of loans that are excepted from the prohibition. Under the current rule, the following loans from a financial institution under its normal lending procedures, terms, and requirements are excepted from the prohibition:

- Automobile loans and leases collateralized by the automobile;
- Loans fully collateralized by the cash surrender value of an insurance policy;
- Loans fully collateralized by cash deposits at the same financial institution; and
- A mortgage loan collateralized by the borrower's primary residence provided the loan was not obtained while the covered person in the firm was a covered person.

Additionally, Rule 2–01(c)(1)(ii)(E) (the ''Credit Card Rule'') provides that an accountant is not independent if the accounting firm, any covered person in the firm, or any of his or her immediate family members has any aggregated outstanding credit card balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and any available grace period.

In response to the requests for comment in the Loan Provision Proposing Release, we received feedback suggesting other potential exceptions to the Loan Provision.[36]

1. Proposed Amendment To Except Student Loans

In the Loan Provision Proposing Release, we asked whether student loans should be excepted from the Loan Provision and received feedback supporting such exception.[37] In arriving at the proposed amendments, we considered the different characteristics associated with student loans, such as whether the student loan was obtained specifically for accounting and auditing education, obtained by the covered persons when they were pursuing their undergraduate education, or obtained by the covered persons for their immediate family members.

We propose to add student loans obtained from a financial institution under its normal lending procedures, terms, and requirements for a covered person's educational expenses provided the loan was obtained by the individual prior to becoming a covered person in the firm as defined under Rule 2–01(f)(11). The limitation on the student loan exclusion (*i.e.,* not obtained while a covered person in the firm) is consistent with the current provision in Rule 2–01(c)(1)(ii)(A)(*1*)(*iv*) limiting the mortgage exclusion to mortgage loans ''not obtained while the covered person in the firm was a covered person,'' and provides a familiar principle for compliance purposes.

Moreover, we believe obtaining a student loan as a covered person poses a higher risk to the auditor's objectivity and impartiality because loans obtained while a covered person are likely more recent and thus may have a larger balance than loans obtained when such person was not a covered person. Additionally, a covered person obtaining a student loan from an audit client creates, at a minimum, an independence appearance issue that is not present when a non-covered person obtained a similar student loan from such audit client. In addition, the proposed exception would not encompass student loans obtained for a covered person's immediate family members. We are concerned that the amount of student loan borrowings could be significant when considering student loans obtained for multiple immediate family members and thus could impact an auditor's objectivity and impartiality. We are therefore limiting the exclusion to student loans obtained for the covered person's educational expenses. Considered together, we believe these proposed limitations appropriately balance the benefits of the proposed exception with its potential impact on the auditor's objectivity and impartiality.

Request for Comment

17. We are proposing to except student loans obtained for a covered person's educational expenses that were not obtained while the covered person in the firm was a covered person. Should we adopt this new exception as proposed? Should we limit the proposed exception to student loans not obtained while the covered person in the firm was a covered person and to student loans obtained only for the individual's educational expenses (*i.e.,* not the loans of immediate family members), as proposed?

18. Should all student loans be excepted from the application of the Loan Provision? Should the proposed exception include any other limitations, such as being limited only to the covered person's accounting and auditing educational expenses? Alternatively, should we expand the proposed exception to student loans of immediate family members? If we expand the exception to student loans of immediate family members, should we adopt a dollar limit on the aggregate amount of student loans that may be excepted? Is the overarching

[34] In the Loan Provision Adopting Release, the Commission amended this rule to replace ''record or beneficial owners of more than ten percent of the audit client's equity securities'' with beneficial owners known through reasonable inquiry that have ''significant influence over the audit client.'' The Commission also added new paragraphs (2)(i) and (ii) to Rule 2–01(c)(1)(ii)(A) to address how the amended rule applies to a fund that is an audit client.

[35] *Revision of the Commission's Auditor Independence Requirements,* Release No. 33–7870 (June 30, 2000) [65 FR 43147 (July 12, 2000)].

[36] *See e.g.,* letters from Grant Thornton LLP (July 9, 2018) (''Grant Thornton''), BDO, EY, RSM US LLP (July 9, 2018) (''RSM''), Financial Executives International (July 9, 2018) (''FEI''), MFS Funds Board Audit Committee (July 6, 2018) (''MFS Funds''), T. Rowe Price (July 9, 2018), and the Securities Industry and Financial Markets Association, Asset Management Group (July 9, 2018) (''SIFMA'').

[37] *See e.g.,* letters from Grant Thornton, BDO, EY, RSM, and FEI.

consideration of all relevant facts and circumstances related to the auditor's objectivity and impartiality, as required by Rule 2–01(b), sufficient to mitigate against any potential risk that student loans obtained for multiple immediate family members could be significant?

19. Should the proposed student loan exception include a limit on the amount that may be outstanding? If so, what is the appropriate amount?

2. Proposed Amendment To Clarify the Reference to ''a Mortgage Loan''

We are proposing to clarify that the reference to ''a mortgage loan'' in Rule 2–01(c)(1)(ii)(A)(*1*)(*iv*) was not intended to exclude just one outstanding mortgage loan on a borrower's primary residence. As currently drafted, the reference to ''a mortgage loan'' may be read to suggest that only a single loan would qualify for the exception. Over the years, the SEC staff has received questions about how the exclusion applies to second mortgages, home improvement loans, equity lines of credit, and similar mortgage obligations collateralized by a primary residence.[38] To provide further clarity on this point, we are proposing to revise Rule 2–01(c)(1)(ii)(A)(*1*)(*iv*) to refer to ''mortgage loans'' instead of ''a mortgage loan.''

Further, where the borrower becomes a covered person only because of a change in the ownership in the loan, and provided there is no modification in the original terms or conditions of the loan or obligation after the borrower becomes, or in contemplation of the borrower becoming, a covered person, the loan would be included within this exception.[39]

Request for Comment

20. Should we revise Rule 2–01(c)(1)(ii)(A)(*1*)(*iv*) to refer to ''mortgage loans'' instead of ''mortgage loan,'' as proposed?

3. Proposed Amendment To Revise the Credit Card Rule To Refer to ''Consumer Loans''

We received feedback from commenters on the Loan Provision Proposing Release that certain de minimis financings and immaterial loans may not threaten an auditor's objectivity and impartiality.[40] We agree that a limited amount of debt that is routinely incurred for personal consumption, even if the audit client is the lending entity, would typically not impair an auditor's objectivity and impartiality. As such, we propose revising Rule 2–01(c)(1)(ii)(E) to replace the reference to ''credit cards'' with ''consumer loans'' and revise the provision to reference any consumer loan balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and available grace period. Consistent with the payment terms in current Rule 2–01(c)(1)(ii)(E), in assessing the current basis of a consumer loan balance, the borrower would consider the payment due date, plus any available grace period, which is typically monthly for credit cards. For example, if a covered person has an outstanding consumer loan balance above $10,000 with an audit client, such covered person would have to reduce the balance to $10,000 or less by the monthly due date, plus any available grace period, in order to comply with the proposed amendment. The proposed amendment would expand the current Credit Card Rule to encompass the types of consumer financing borrowers routinely obtain for personal consumption, such as retail installment loans, cell phone installment plans, and home improvement loans that are not secured by a mortgage on a primary residence. We expect the types of consumer loans contemplated by the proposed amendment would typically have a payment due date consistent with credit cards (*e.g.,* monthly).

Request for Comment

21. We propose amending Rule 2–01(c)(1)(ii)(E) to replace ''credit cards'' with ''consumer loans'' and revise the provision to reference any consumer loan balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and available grace period. Should we amend Rule 2–01(c)(1)(ii)(E), as proposed?

22. Is the outstanding balance limit of $10,000 appropriate? If not, what would be a more appropriate limit?

23. Is further guidance needed regarding how ''current basis'' applies for different types of consumer loans? If so, what additional guidance should we provide?

24. Is further guidance needed regarding the types of loans that would be considered ''consumer loans'' under the proposed amendment? If so, what additional guidance should we provide?

C. Proposed Amendment to the Business Relationships Rule

1. Proposed Amendment to the Reference to ''Substantial Stockholder''

Currently, Rule 2–01(c)(3) (the ''Business Relationships Rule'') prohibits, at any point during the audit and professional engagement period, the accounting firm or any covered person from having ''any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or *substantial stockholders.* . . .'' (emphasis added). In response to the Loan Provision Proposing Release, commenters suggested aligning this rule with the then proposed amendments to the Loan Provision by replacing the reference to substantial stockholders with a significant influence analysis.[41]

We agree that referring to ''beneficial owners (known through reasonable inquiry) of the audit client's equity securities where such beneficial owner has significant influence over the audit client'' instead of ''substantial stockholders'' would improve the rule by making it more clear and less complex. In this regard, we note that ''substantial stockholder'' is not currently defined in Regulation S–X, whereas the concept of significant influence is used in the Loan Provision[42] and other aspects of the independence rules.[43] As such, we recommend proposing to replace the term ''substantial stockholders'' in the Business Relationships Rule with the phrase ''beneficial owners (known

[38] *See* Section B. Question 1 Office of the Chief Accountant: Application of the Commission's Rules on Auditor Independence Frequently Asked Questions (June 27, 2019) (originally issued August 13, 2003) (indicating the staff's view that the rationale for a mortgage on a primary residence also applies to second mortgages, home improvement loans, equity lines of credit and similar mortgage obligations collateralized by a primary residence obtained from a financial institution under its normal lending procedures, terms and requirements and while not a covered person in the firm).

[39] *Id.*

[40] *See e.g.,* letters from Grant Thornton, Investment Company Institute and Independent Directors Council (July 9, 2018) (''ICI/IDC''), MFS Funds, T. Rowe Price, SIFMA, and Federated Investors, Inc. (July 10, 2018) (''Federated'').

[41] *See e.g.,* letters from Deloitte LLP (June 29, 2018) (''Deloitte''), PwC, KPMG LLP (July 3, 2018) (''KPMG''), Crowe LLP (July 3, 2018) (''Crowe''), CAQ, Professor Joseph A. Grundfest, Stanford Law School (July 9, 2018) (''Grundfest''), Grant Thornton, EY, U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (July 9, 2018) (''CCMC''), FEI, and AIC.

[42] Consistent with the recently adopted amendments discussed in the Loan Provision Adopting Release, the use of ''significant influence'' in these proposed amendments is intended to refer to the principles in the Financial Accounting Standards Board's (''FASB's'') ASC Topic 323, Investments—Equity Method and Joint Ventures. *See* Section II.C.3 of the Loan Provision Adopting Release. Similarly, as it relates to the application of significant influence to investment companies, please refer to Section II.C.3 of the Loan Provision Adopting Release.

[43] *See e.g.,* Rule 2–01(f)(ii) and (iii).

through reasonable inquiry) of the audit client's equity securities where such beneficial owner has significant influence over the audit client.''

2. Additional Guidance on the Reference to ''Audit Client'' When Referring to Persons Associated With the Audit Client in a Decision-Making Capacity, Including the Beneficial Owner With Significant Influence

The current Business Relationships Rule prohibits business relationships, in part, with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or substantial stockholders.[44] A commenter suggested that for this part of the Business Relationships Rule, the focus should be on those business relationships with persons in a decision-making capacity that are associated with the entity whose financial statements or other information is being audited, as opposed to the ''audit client'' more broadly which, by definition, includes affiliates of the audit client.[45] In other words, the commenter suggested the focus should be on those business relationships with persons in a decision-making capacity that are associated with the entity under audit.[46]

We agree that the focus should be on those business relationships with persons in a decision-making capacity as it relates to the entity under audit. In fact, our staff consultation experience regarding this portion of the Business Relationships Rule generally focuses on the persons associated with an affiliate of the audit client only where such persons would be able to exert decision-making capacity over the entity under audit. As such, as it relates to the proposed amendment discussed in the preceding section, regardless of whether the beneficial owner owns equity securities of an audit client, including an affiliate of the audit client, the independence analysis should focus on whether the beneficial owner has significant influence over the entity under audit, since business relationships with persons with such influence could be reasonably expected to impact an auditor's objectivity and impartiality.[47]

We are also providing this clarification based on recent staff experience with consultations concerning implementation of the recently amended Loan Provision. As noted in the preceding section, in June 2019 we adopted similar language for the Loan Provision to that being proposed as a replacement for ''substantial stockholders'' in this release (*i.e.,* ''beneficial owners (known through reasonable inquiry) of the audit client's equity securities where such beneficial owner has significant influence over the audit client.'').[48] Staff consultations since the adoption of the amended Loan Provision are consistent with our past experience that, with regard to lending relationships with beneficial owners of equity securities of the audit client, including affiliates, the focus is on significant influence as it relates to the entity under audit when considering if the auditor's objectivity and impartiality is impaired.

As a result, the guidance in the second paragraph of this section also applies to the audit client references in the Loan Provision referring to ''an audit client's officers, directors, or beneficial owners (known through reasonable inquiry) of the audit client's equity securities where such beneficial owner has significant influence over the audit client,'' as we believe that a threat to an auditor's objectivity and impartiality is more likely when the beneficial owner of the equity securities of the audit client, including affiliates, has significant influence over the entity under audit.

In summary, when an auditor is evaluating lending or business relationships with officers, directors, or beneficial owners with significant influence over an affiliate of the entity under audit pursuant to the Loan Provision or the current or proposed Business Relationships Rule, the auditor should focus on whether the significant influence exists at the entity under audit.

Request for Comment

25. Should we replace the reference to ''substantial stockholders'' in the Business Relationships Rule with the concept of beneficial owners with significant influence, as proposed? Would the proposed amendment make the rule more clear and reduce complexity, given that ''substantial stockholder'' is not currently defined in Regulation S–X? Alternatively, should substantial stockholder be defined? If so, how should we define it?

26. Would the proposed amendment result in more or fewer instances of business relationships that are prohibited by Rule 2–01(c)(3)? Does the concept of beneficial owners with significant influence, as proposed, more appropriately identify relationships that are likely to impair an auditor's objectivity and impartiality than the current rule?

27. We understand that it is more common today for companies to enter into multi-company arrangements in delivering products or services and that audit firms may contribute to such multi-company arrangements, such as through intellectual property or access to data using common technology platforms. Do these arrangements present instances where an auditor's objectivity and impartiality would not be impaired even after considering the proposed amendments discussed in this release? If so, what further amendments should be considered to appropriately focus on relationships where it is more likely an auditor's objectivity and impartiality would be impaired?

28. Is the guidance related to ''persons associated with the audit client in a decision-making capacity'' and its application to the amended Loan Provision appropriate? Is further guidance needed to assist auditors and their clients in applying the recently amended Loan Provision and the proposed amendments? If so, what additional guidance is needed? Should we codify this guidance in our rules?

D. Proposed Amendments for Inadvertent Violations for Mergers and Acquisitions

We understand from the staff's independence consultation experience that in certain instances an independence violation can arise as a result of a corporate event, such as a merger or acquisition, where the services or relationships that are the basis for the violation were not prohibited by applicable independence standards before the consummation of such corporate event.[49] For example, an audit firm could have an existing audit relationship with an issuer that acquires another company for which the audit firm was not the auditor but provided services or had relationships that would be prohibited under Rule 2–01. Through no action of the audit firm, the acquisition would cause what had been

[44] Rule 2–01(c)(3).

[45] *See* letter from AIC (July 26, 2019).

[46] As discussed in Section II.A.1, we refer to the entity whose financial statements or other information is being audited, reviewed, or attested, as the entity under audit.

[47] This guidance is limited to the analysis related to associated persons in a decision-making capacity of an audit client. This guidance does not change the analysis when evaluating ''any direct or material indirect business relationships with an audit client.'' Under the current and proposed rule, an auditor is still prohibited from having any direct or material indirect business relationships with an audit client, which includes any affiliates of the audit client.

[48] *See supra* note 7.

[49] In this section, we refer to these types of violations that only arise due to a corporate event, such as mergers and acquisitions, as ''inadvertent violations.''

permitted non-audit services or relationships to become prohibited non-audit services or relationships in violation of the auditor independence rules when the prohibited services or relationships occurred within the audit or professional engagement period as defined in Rule 2–01(f)(5). We also received comments in response to the Loan Provision Proposing Release suggesting that a transition framework should be available for inadvertent independence violations triggered by corporate events, such as IPOs and mergers and acquisitions.[50]

With respect to IPOs, we preliminarily believe the proposed amendments discussed in Section II.A.2 could significantly mitigate the challenges associated with these transactions because only one year of previous compliance with Rule 2–01 would be required. In an IPO, the auditor generally has an existing auditor-client relationship with the audit client and the IPO is generally contemplated well in advance of its consummation. As a result, focusing the independence analysis on the most recent preceding fiscal year should significantly mitigate the challenges associated with consummating an IPO under our rules.

We believe that the root cause of auditor independence issues arising from mergers and acquisitions, however, generally differs from that arising from IPOs. In situations involving mergers and acquisitions, a pre-existing auditor-client relationship between the auditor and the merged company or the company being acquired is less likely, as compared to an IPO, and the timing of the transaction is generally shorter and more uncertain. As such, these transactions can give rise to auditor independence violations that are inadvertent and often difficult to contemplate in advance.[51] The prospect of auditor independence issues arising as a result of a corporate acquisition transaction can have an adverse effect on the audit client, as it may result in the termination of audit work midstream or termination of the non-audit service that is in progress in a manner that is costly to the audit client.[52] Alternatively, it could result in a delay of a merger or acquisition while the auditor and its audit client attempt to resolve the potential independence matters to the possible detriment of the audit client and investors.[53] Accordingly, we believe it is appropriate to provide, in a manner that preserves investor protection, a transition framework for mergers and acquisitions to address inadvertent violations related to such transactions so the auditor and its audit client can transition out of prohibited services and relationships in an orderly manner.

As such, we are proposing amendments to Rule 2–01 to address the challenges discussed above that may result from a merger or acquisition. The proposed framework follows the consideration of the audit firm's quality controls similar to Rule 2–01(d).[54] Under the proposed amendments, the auditor must:

- Be in compliance with the applicable independence standards related to the services or relationships when the services or relationships originated and throughout the period in which the applicable independence standards apply;
- Correct the independence violations arising from the merger or acquisition as promptly as possible under relevant circumstances associated with the merger or acquisition;
- Have in place a quality control system as described in Rule 2–01(d)(3) that has the following features:
  - Procedures and controls that monitor the audit client's merger and acquisition activity to provide timely notice of a merger or acquisition; and
  - Procedures and controls that allow for prompt identification of potential violations after initial notification of a potential merger or acquisition that may trigger independence violations, but before the transaction has occurred.

Regarding the first provision, the auditor must be in compliance with the independence standards applicable to the entities involved in the merger or acquisition transaction from the origination of the relationships or services in question and throughout the period prior to the SEC and PCAOB independence standards applying as a result of such transaction.

With respect to correction of the independence violation as promptly as possible, our expectation is that the violation, in most instances, should and could be corrected before the effective date of the merger or acquisition. However, we understand in some situations it might not be possible for the audit client and the auditor to transition the prohibited non-audit service or relationship in an orderly manner without causing significant disruption to the audit client. In those situations, we would expect the relationship or service to be corrected as promptly as possible after the effective date of the merger or acquisition. Whether a post-transaction transition is considered ''as promptly as possible'' depends on all relevant facts and circumstances used to support the delayed correction. However, under the proposed transition framework, we expect all corrective action would be taken no later than six months after the effective date of the merger or acquisition that triggered the independence violation. Audit firms and audit clients already manage to this timeline as it is consistent with international ethical standards for accountants.[55]

Request for Comment

29. Should we provide the transition framework to address inadvertent independence violations arising from mergers and acquisitions, as proposed? Should we expand the proposed framework to encompass IPOs? If so, would this eliminate the need for the proposed amendments in Section II.A.2? If we expand the proposed framework to encompass IPOs, are there additional criteria we should include in the quality control requirement? Are there other transactions that should be covered by the proposed framework?

30. Are the proposed criteria for the quality control requirement sufficiently clear? If not, how could they be clarified?

31. Are there other criteria that should be added to the quality control requirement?

32. Should certain prohibited services and relationships continue to be an independence violation regardless of the transition framework such as if the

[50] *See e.g.,* letters from Deloitte, PwC, KPMG, Crowe, CAQ, Grundfest, Grant Thornton, BDO, EY, CCMC, FEI, AICPA, and AIC.

[51] Given that these violations arise out of relationships or services that were in place before the relationships or services became prohibited as a result of being subject to our independence requirements, the staff has generally not objected, as part of the independence consultation process, to the auditor and the audit client's determination that the auditor's objectivity and impartiality were not impaired in these circumstances.

[52] *See e.g.,* letters from Deloitte and Grundfest.

[53] *Id.*

[54] The Commission adopted Rule 2–01(d) as a limited exception to address a covered person's violations in certain circumstances that would be attributed to an entire firm. The effect of Rule 2–01(d) is that an accounting firm with ''appropriate quality controls will not be deemed to lack independence when an accountant did not know of the circumstances giving rise to the impairment and, upon discovery, the impairment is quickly resolved.'' 2000 Adopting Release, at 65 FR 76052.

[55] *See The International Code of Ethics for Professional Accountants (including International Independence Standards,* section titled, ''Mergers and Acquisitions'' under, ''Part 4A-Independence for Audit and Review Engagements'' *available at https://www.ifac.org/system/files/publications/files/Final-Pronouncement-The-Restructured-Code_0.pdf.*

service or relationship results in the auditor auditing its own work?

33. The proposed framework requires any independence violations resulting from a merger or acquisition to be corrected as promptly as possible. What is a reasonable period of time after the consummation of a merger or acquisition that would allow for an auditor to correct most types of violations covered by the proposed framework? Should the proposed amendments specify a maximum period of time for such corrections?

34. Should we exclude certain types of merger and acquisition transactions from the proposed transition framework? If so, what transactions should be excluded? For example, should the framework exclude transactions that are in substance more like an IPO, such as when the acquirer is a public shell company? In these situations, would it be more appropriate to apply the proposed amendments related to the look-back period for IPOs?

E. Proposed Amendments for Miscellaneous Updates

1. Proposed Amendments To Update the Reference to Concurring Partner Within Rule 2–01

On August 17, 2018, the Commission updated a number of rules as part of its disclosure effectiveness initiative.[56] Prior to the adoption of these amendments, Rule 2–01(f)(7)(ii)(B) explained that the ''partner[s] performing a second level of review to provide additional assurance . . .'' are considered ''concurring or reviewing partners.''[57] In its recent amendments, the Commission revised the language in Rule 2–01(f)(7)(ii)(B) to be consistent with current auditing standards. As a result, the rule no longer uses the term ''concurring partner'' and instead uses the terms ''Engagement Quality Reviewer'' and ''Engagement Quality Control Reviewer'' to describe the ''partner conducting a quality review.'' As such, we propose conforming amendments throughout Rule 2–01 to replace references to ''concurring partner'' with the term ''Engagement Quality Reviewer.''

2. Proposed Amendment to Preliminary Note to Rule 2–01

We propose a technical amendment to convert the current Preliminary Note to Rule 2–01 into introductory text to Rule 2–01, as this is consistent with current **Federal Register** practices. This proposed amendment is in no way intended to affect the application of the auditor independence rules.

3. Proposed Amendment To Delete Outdated Transition and Grandfathering Provision

Rule 2–01(e) was added as part of the 2003 amendments discussed in Section I to address the existence of relationships and arrangements that predated those amendments.[58] Based on the passage of time, these transition and grandfathering provisions are no longer necessary. We propose deleting the current Rule 2–01(e) and reserving it for the proposed amendments discussed in Section II.D.

Request for Comment

35. Should we make the miscellaneous updates described above? Are there other conforming amendments we should make in light of these updates?

III. Economic Analysis

A. Introduction

We are proposing to amend the auditor independence requirements in Rule 2–01 by: (1) Amending the definition of an affiliate of an audit client to address certain affiliate relationships in common control scenarios and the definition of investment company complex; (2) shortening the look-back period for domestic first time filers in assessing compliance with the independence requirements; (3) adding certain student loans and de minimis consumer loans to the categorical exclusions from independence-impairing lending relationships; (4) replacing the reference to ''substantial stockholders'' in the Business Relationships Rule with the concept of beneficial owners with significant influence; and (5) introducing a transition framework for merger and acquisition transactions to consider whether an auditor's independence is impaired, among other updates.

We are sensitive to the costs and benefits of the proposed amendments. The discussion below addresses the potential economic effects of the proposed amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation.[59]

We note that, where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In many cases, however, we are unable to quantify the economic effects because we lack information necessary to provide a reasonable estimate. For example, we are unable to quantify, with precision, the costs to auditors and audit clients of complying with the selected aspects of the auditor independence rules and the potential compliance cost savings and changes in audit quality that may arise from the proposed amendments to Rule 2–01.

The remainder of the economic analysis presents the baseline, anticipated benefits and costs from the proposed amendments, potential effects of the proposed amendments on efficiency, competition and capital formation, and reasonable alternatives to the proposed amendments.

B. Baseline and Affected Parties

The proposed amendments would update the auditor independence requirements, which would impact auditors, audit clients, and any other entity that is currently or may become an affiliate of the audit client. Other parties that may be affected by the proposed amendments include ''covered persons'' of accounting firms and their immediate family members. As discussed further below, the proposed amendments are likely to affect investors indirectly.

We are not able to estimate precisely the number of current audit engagements that would be immediately affected by the proposed amendments. We also do not have precise data on audit clients' ownership and control structure. With respect to the proposed amendments relating to treatment of student loans and consumer loans, there is no data readily available to us relating to how ''covered persons'' and their immediate family members arrange their financing. Similarly there is no data readily available to quantify the number of business relationships that audit firms have with beneficial owners of an

[56] *Disclosure Update and Simplification,* Release No. 33–10532 (Aug. 17, 2018) [83 FR 50148 (Oct. 4, 2018)].

[57] *See* 2018 Annual Edition of the Code of Federal Regulations, 17 CFR 210.2–01, *available at https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol3/pdf/CFR-2018-title17-vol3-part210.pdf.*

[58] *See supra* note 6.

[59] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)], Section 3(f) of the Exchange Act [17 U.S.C. 78c(f),] Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)], and Section 202(c) of the Investment Advisers Act [15 U.S.C. 80b–2(c)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

audit client's equity securities where the beneficial owner has significant influence over the audit client. As such, we are not able to identify those auditor-client relationships that would be impacted by the proposed amendments to the Business Relationships Rule. We therefore are not able to quantify the effects of these aspects of the proposed amendments.

We have relied on information from PCAOB Forms 2 to approximate the potential universe of auditors that may be impacted by the proposed amendments.[60] According to aggregated information from PCAOB Forms 2, as of December 31, 2018, there were 1,862 audit firms registered with the PCAOB (of which 984 are domestic audit firms, with the remaining 878 audit firms located outside the United States). According to a report provided by Audit Analytics in 2018, the four largest accounting firms audit about 75 percent of accelerated and large accelerated filers [61] and about 46 percent of all registrants.[62]

We estimate that approximately 6,919 issuers filing on domestic forms [63] and 393 FPIs filing on foreign forms would be affected by the proposed amendments.[64] Among the issuers that file on domestic forms, approximately 29 percent are large accelerated filers, 19 percent are accelerated filers, 19 percent are non-accelerated filers, and 33 percent are smaller reporting companies.[65] In addition, we estimate that approximately 21.3 percent of domestic issuers are emerging growth companies.[66]

The proposed amendment related to the ''look-back'' period for assessing independence compliance would impact future domestic first time filers, but not future FPI first time filers. To assess the effects of this amendment, we utilized historical data for domestic IPOs. According to Thompson Reuters' Security Data Company (''SDC'') database, there were approximately 421 domestic IPOs during the period between June 30, 2016, and June 30, 2019.

The proposed amendment related to a transition framework for merger and acquisition transactions would impact issuers that might engage in mergers and acquisitions at some point in time. To assess the overall market activity for mergers and acquisitions, we examined mergers and acquisitions data from SDC. During the period from January 1, 2016, to December 31, 2018, there were 6,310 mergers and acquisitions entered into by publicly listed U.S. firms.

The proposed amendments to the ICC definition would potentially affect registered investment companies and unregistered funds.[67] We estimate that there were 3,160 registered investment companies with an ''Active'' status as of December 2018. As of September 2019, there were 10,201 mutual funds (including money market funds) with $24,725 billion in total net assets, 1,918 ETFs with $3,455 billion in total net assets, 666 UITs (excluding ETFs) with $1,509 billion in total net assets, 664 registered closed-end funds with $294 billion in total net assets, and 13 variable annuity separate accounts registered as management investment companies on Form N–3 with $224 billion in total net assets.[68] In addition, as of June 2019, there were 99 BDCs with $63 billion in total net assets.[69]

C. Potential Costs and Benefits

In this section, we discuss the anticipated economic benefits and costs of the proposed amendments. We first analyze the overall economic effects of the proposed amendments. We then discuss the potential costs and benefits of specific proposed amendments.

1. Overall Potential Benefits and Costs

We anticipate the proposed amendments would benefit audit firms and audit clients in several ways. First, the proposal is likely to reduce compliance costs for both audit firms and their clients by updating certain aspects of the auditor independence requirements that may be unduly burdensome. The proposed amendments may reduce the emphasis in our rules on relationships and services that are less likely to threaten auditor objectivity and impartiality. As a result, the proposed amendments likely would allow auditors and audit clients to focus their resources and attention on those relationships and services that are more likely to pose threats to auditor objectivity and impartiality. In turn, compliance costs likely would decrease for both auditors and audit clients.

A reduction in compliance costs also may be realized because of the potential larger pool of eligible auditors due to the proposed amendments. With a larger pool of eligible auditors, audit clients could potentially avoid costs associated with searching for an independent auditor and related costs resulting from switching from one audit firm to

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[60] All registered accounting firms must file annual reports on Form 2 with the PCAOB. To determine the number of audit firms registered with the PCAOB, we aggregated the total number of entities who filed a Form 2 with the PCAOB.

[61] Accelerated filers and large accelerated filers are defined in Rule 12b–2 of the Exchange Act of 1934 [17 CFR 240.12b-2].

[62] *See Who Audits Public Companies-2018 Edition, available at https://blog.auditanalytics.com/who-audits-public-companies-2018-edition.*

[63] This number includes fewer than 25 foreign issuers that file on domestic forms and approximately 100 business development companies.

[64] The number of issuers that file on domestic forms is estimated as the number of unique issuers, identified by Central Index Key (CIK), that filed Forms 10–K and 10–Q, or an amendment thereto, with the Commission during calendar year 2018. We believe that these filers are representative of the issuers that would primarily be affected by the proposed amendments. For purposes of this economic analysis, these estimates do not include issuers that filed only initial domestic Securities Act registration statements during calendar year 2018, and no Exchange Act reports, in order to avoid including entities, such as certain co-registrants of debt securities, which may not have independent reporting obligations and therefore would not be affected by the proposed amendments. Nevertheless, the proposed amendments would affect any registrant that files a Securities Act registration statement and assumes Exchange Act reporting obligations. We believe that most registrants that have filed a Securities Act registration statement, other than the co-registrants described above, would be captured by this estimate through their Form 10–K and Form 10–Q filings. The estimates for the percentages of smaller reporting companies, accelerated filers, large accelerated filers, and non-accelerated filers are based on data obtained by Commission staff using a computer program that analyzes SEC filings, with supplemental data from Ives Group Audit Analytics.

[65] ''Smaller reporting company'' is defined in 17 CFR 229.10(f) as an issuer that is not an investment company, an asset-backed issuer (as defined in 17 CFR 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (i) Had a public float of less than $250 million; or (ii) had annual revenues of less than $100 million and either: (A) No public float; or (B) a public float of less than $700 million.

[66] An ''emerging growth company'' is defined as an issuer that had total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year. *See* 17 CFR 230.405 and 17 CFR 240.12b–2. *See* Rule 405; Rule 12b–2; 15 U.S.C. 77b(a)(19); 15 U.S.C. 78c(a)(80); and Inflation Adjustments and Other Technical Amendments under Titles I and II of the JOBS Act, Release No. 33–10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)]. We based the estimate of the percentage of emerging growth companies on whether a registrant claimed emerging growth company status, as derived from Ives Group Audit Analytics data.

[67] Based on the current reporting requirements for unregistered funds, we do not have data readily available regarding unregistered funds that would allow us to quantify the number of unregistered funds that would be affected by the proposed amendments.

[68] Estimates of the number of registered investment companies and their total net assets are based on a staff analysis of Form N–CEN filings as of September 5, 2019. For open-end funds that have mutual fund and ETF share classes, we count each type of share class as a separate fund and use data from Morningstar to determine the amount of total net assets reported on Form N–CEN attributable to the ETF share class.

[69] Estimates of the number of BDCs and their net assets are based on a staff analysis of Form 10–K and Form 10–Q filings as of June 30, 2019. Our estimate includes BDCs that may be delinquent or have filed extensions for their filings, and it excludes 6 wholly owned subsidiaries of other BDCs.

another. Larger pools of potentially qualified independent auditors may promote competition among audit firms, which may lower audit fees. Reduction in audit fees would lead to cash savings for audit clients, who could utilize the savings to make further investments or return excess savings to investors, all which may accrue to the benefit of investors. However, this competition effect may be limited because the audit industry is highly concentrated [70] with the four largest audit firms auditing about 46 percent of all registrants. More specifically, the four largest audit firms audit about 75 percent of accelerated and large accelerated filers.[71]

The potential expansion of auditor choices as a result of the proposed amendments could also allow audit clients to align audit expertise better with the audit engagement, which may lead to an improvement in audit quality and financial statement quality.[72] For example, audit clients in certain industries might have more complicated or very specialized businesses, requiring auditors of those clients to possess certain expertise or experience. If the pool of potential independent auditors is restricted due to prohibitions under current Rule 2–01 that are the subject of the proposed amendments, an audit client might have to choose what it regards as a ''suboptimal'' audit firm, which may not provide the highest quality audit services. Since audit quality is correlated with financial reporting quality,[73] the improved financial reporting quality under the proposed amendments also would benefit audit clients as the higher quality of financial reporting could potentially reduce information asymmetry between auditors and their investors, improve firms' liquidity and decrease cost of capital.[74] Investors would similarly benefit from any resulting improvement in financial reporting quality.

Auditors also could benefit from the proposed amendments as they may have a broader spectrum of audit clients and clients for non-audit services. If the proposed amendments reduce certain burdensome constraints on auditors in complying with the independence requirements, auditors likely would incur fewer compliance costs. In addition, the proposed amendments could potentially reduce auditor turnover due to changes in audit clients' organizational structure arising from certain merger and acquisition activities. The proposal may also benefit auditors that provide non-auditing services, as those audit firms, under the proposed amendments, would be permitted to provide such services to an entity that is under common control with the audit client, so long as that entity is not material to the controlling entity.

There also could be certain costs associated with the proposed amendments. For example, if the proposed amendments increase the risk of auditors' objectivity and impartiality being threatened by newly permissible relationships and services, investors could have less confidence in the quality of financial reporting, which could lead to less efficient investment allocations and increased cost of capital. Overall, however, we do not anticipate significant costs to investors or other market participants associated with the proposal because the proposed amendments address those relationships and services that are less likely to threaten auditors' objectivity and impartiality.

2. Benefits and Costs of Specific Proposed Amendments

We expect the proposed amendments would result in benefits and costs to auditors, audit clients, and investors, and we discuss those benefits and costs qualitatively, item by item, in this section.

a. Proposed Amendments to the Definition of an Affiliate of the Audit Client and Investment Company Complex

i. Affiliate of the Audit Client

Currently, the term affiliate of the audit client includes not only ''an entity that has control over the audit client or over which the audit client has control,'' but also those ''*under common control with the audit client, including the audit client's parents and subsidiaries*'' [75] (emphasis added). Under this definition, affiliates of the audit client include all entities under common control with the audit client, including those that are not material to the controlling entity. The current inclusion of sister entities that are not material to the controlling entity in the auditor independence analysis creates practical challenges and imposes compliance costs on both auditors and audit clients, especially those with complex organizational structures. As it relates to entities under common control, the proposed amendment includes as affiliates of the audit client only sister entities that are material to the controlling entity for the auditor independence analyses. Excluding sister entities that are not material to the controlling entity likely would reduce compliance costs associated with having to consider and potentially monitor independence impairing relationships and services involving such entities.[76] The proposed amendment also would help avoid the costs that audit clients could incur to switch auditors. Additionally, the proposed amendment could reduce instances of lost revenues from non-audit services (*e.g.,* management functions) that auditors must give up where an independence impairing relationship or service exists with a sister entity that is not material to the controlling entity. These cost savings could be especially pronounced for entities with complex organizational structures (*e.g.,* private equity structures) that have an expansive and constantly changing list of affiliates because the proposal may significantly reduce the number of entities that fall within the definition of affiliates of the audit client.

According to the current definition of affiliate of the audit client, an auditor

[70] *See* United States Government Accountability Office. Audits of Public Companies—Continued Concentration in Audit Market for Large Public Companies Does Not Call for Immediate Action, *available at www.gao.gov/new.items/d08163.pdf* (2008).

[71] *See supra* note 62.

[72] *See* Mark Defond and Jieying Zhang, A Review of Archival Auditing Research, 58 J. Acct. Econ. 275 (2014).

[73] *See id.*

[74] *See* Siew H. Teoh and T.J. Wong, Perceived Auditor Quality and the Earnings Response Coefficient, 68 Acct. Rev. (1993) 346–366. *See also* Jeffery A. Pittman and Steve Fortin, Auditor Choice and the Cost of Debt Capital for Newly Public Firms, 37. J. Acct. Econ. (2004). 113–136; Jere R. Francis and Bin Ke, Disclosure of Fees Paid to Auditors and the Market Valuation of Earnings Surprises, 11 Rev. Acct. Stud. (2006) 495–523; Chan Li, Yuan Xie, and Jian Zhou, National Level, City Level Auditor Industry Specialization and Cost of Debt, 24 Acct. Horizon. (2010) 395–417; and Jagan Krishnan, Chan Li, and Qian Wang, Auditor Industry Expertise and Cost of Equity, 27 Acct. Horizon. (2013) 667–691.

[75] Rule 2–01(f)(4)(i).

[76] As noted in Section II.A above, notwithstanding the proposed amendments, auditors and their clients would continue to be required to consider ''all relevant facts and circumstances,'' consistent with the general independence standard in Rule 2–01(b). Thus, audit firms and their clients may continue to incur some costs to consider such entities as part of their independence analysis. However, for those relationships and services that might nevertheless impact the auditor's independence under the general standard in Rule 2–01(b), we would expect those relationships and services individually or in the aggregate would be easily known by the auditor and the audit client because such services and relationships might be thought to reasonably bear on an auditor's independence due to the nature, extent, relative importance or other aspects of the service or relationship. We note that a similar qualification applies with respect to other aspects of the proposed amendments that could have the potential benefit of reducing compliance costs associated with considering and monitoring independence impairing relationships and services.

with desired expertise may be excluded from a firm's audit engagement consideration because the auditor currently provides management functions for the firm's sister entity that is not material to the controlling entity. The exclusion of certain specialized auditors from an audit engagement due to their prohibited relationships or services with a sister entity that is not material to the sister entity under the current rule might lead to the audit engagement not being matched with the most qualified auditors. Such an outcome could compromise the audit quality and decrease financial reporting quality, thereby imposing compliance costs on audit clients and investors. In addition, the lack of matching between auditor expertise and audit tasks might result in inefficiency in the auditing processes, which likely increases the costs of audit services (*e.g.,* audit fees).

The proposed amendment to the definition of affiliate of the audit client may result in an expansion of the pool of qualified auditors. With an expanded pool of eligible auditors, competition among auditors might increase, thereby reducing audit fees for audit clients.[77] However, the auditor market is highly concentrated, and such cost savings are likely to be limited. The expanded pool of qualified auditors also might improve matching between auditor expertise and audit task, thereby improving audit efficiency and reducing audit costs.[78] Furthermore, the proposed amendment might positively influence audit quality and financial reporting quality through improved auditor-client alignment.[79]

The proposed amendments are likely to benefit investors indirectly. First, the potentially expanded auditor choices under the proposed amendment might improve audit quality through better matching between auditor expertise and audit engagement, thus potentially enhancing financial reporting quality.[80] Better financial reporting quality would help investors make more efficient investment decisions, thereby improving market efficiency. Second, the potential reduction in audit fees from possible increased competition among auditors and improved audit efficiency might generate cash savings to audit clients, which might be passed to investors.

The proposed ''materiality test'' in the amended definition of audit client might require more efforts from audit firms and audit clients to familiarize themselves with and to apply the test. This might potentially increase the compliance costs. However, given that the materiality concept is already part of the Commission's auditor independence rules,[81] we do not expect a significant learning curve in applying the test or significant incremental compliance costs for auditors.

ii. Investment Company Complex

As discussed in Section II.A.1.b, above, the proposed amendments (1) direct auditors of an investment company or an investment adviser or sponsor to include all entities within the proposed ICC definition as affiliates of the audit client; (2) focus the ICC definition from the perspective of the entity under audit; (3) include within the meaning of the term investment company, for the purposes of the ICC definition, unregistered funds; (4) amend the common control prong of the ICC definition to include only sister investment companies, advisers, and sponsors that are material to the controlling entity; and (5) include within the ICC definition entities where significant influence exists between those entities and an audit client.

The proposed amendments to the ICC definition would impact the analysis used to identify entities that are considered affiliates of registered investment companies, unregistered funds, and investment advisers or sponsors that are under audit. The proposal would lead to improved clarity in the ICC definition and, for the purpose of auditor independence analysis, could facilitate audit firms, registered investment companies, unregistered funds, and investment advisors or sponsors in complying with the auditor independence requirements. The improved clarity under the amended definition may result in compliance cost savings, thus benefiting audit firms and audit clients.

The economic implications of the materiality test under the amended definition of investment company complex are largely similar to those for operating companies as discussed above. For example, under the current ICC definition, an investment company audit client may have a rather restricted set of independence compliant auditors due to the current common control provisions. The proposed amendments could potentially reduce compliance costs for investment company audit clients because the proposed ICC definition excludes from the affiliate analysis sister entities that are not material to the controlling entity.

In addition, the auditors with certain relationships or providing certain non-audit services to sister entities that are not material to the controlling entity may become eligible to serve as an auditor to the audit client under the proposed amendments. The potential expanded pool of compliant auditors could help registered investment companies and unregistered funds hire (and retain) auditors who have more relevant industry expertise, which potentially could lead to better financial reporting for investment companies. Better financial reporting quality, in turn, would benefit investors in registered investment companies and unregistered funds by allowing them to make more informed investment decisions.

With respect to the proposed amendments that include unregistered funds within the meaning of the term investment company, for purposes of the ICC definition,[82] we believe the proposed amendments provide a useful update to the ICC definition that was adopted in 2000. Specifically, we believe the proposed amendments provide clarity for unregistered funds, their investment advisers or sponsors, and their auditors. In addition to this clarity, defining investment company to include unregistered funds would promote consistency in the application of Rule 2–01 to registered investment companies and unregistered funds so that these two types of audit clients, which share some similar characteristics, would not be subject to

[77] *See* Paul K. Chaney, Debra C. Jeter, and Pamela E. Shaw, Client-Auditor Realignment and Restrictions on Auditor Solicitation, 72 Acct. Rev. (1997) 433. *See also* Emilie R. Feldman, A Basic Quantification of the Competitive Implications of the Demise of Arthur Andersen, 29 R. Ind. Org. (2006) 193; Michael Ettredge, Chan Li, and Susan Scholz. Audit Fees and Auditor Dismissals in the SOX Era, 21 Acct Horizon (2011) 371; Wieteke Numan and Marleen Willekens, An Empirical Test of Spatial Competition in the Audit Market. 20 J. Acct Econ. 450 (2012); and Joseph Gerakos and Chad Syverson, Competition in the Audit Market: Policy Implications, 53 J. Acct Res. 725 (2015).

[78] The proposed amendments could result in some crowding-out effect, as the four largest audit firms may be deemed to be independent with more clients under the proposed amendments, crowding out smaller audit firms. However, we believe that better matching between auditor specialization and their clients and the reduction in unnecessary auditor turnovers could potentially prevent any decline in audit quality and in the long run may improve audit quality.

[79] *See* Chen-Lung Chin, and Hsin-Yi Chin, Reducing Restatements with Increased Industry Expertise, 26 Cont. Acct. Res., (2009) 729; Michael Ettredge, James Heintz, Chan Li, and Susan Scholz, Auditor Realignments Accompanying Implementation of SOX 404 ICFR Reporting Requirements, 25 Acct Horizon (2011) 17; and Jacob Z. Haislip, Gary F Peters, and Vernon J Richardson, The Effect of Auditor IT Expertise on Internal Controls, 20 Int. J. Acct. Inf. Sys. 1 (2016).

[80] *See supra* note 72.

[81] *See e.g.,* Rule 2–01(f)(4)(ii) and (iii).

[82] *See* proposed Rule 2–01(f)(14)(iv).

disparate application of the independence rules.

We do not anticipate significant incremental costs associated with the proposed amendments to the ICC definition for registered investment companies, unregistered funds, investment advisers or sponsors, or auditors as well as investment company investors. The proposed amendments may require additional effort from audit firms and registered investment companies, unregistered funds, and investment advisers or sponsors that are under audit to become familiar with the application of the proposed ICC definition. This may potentially lead to an initial increase in compliance costs. However, the proposed amendments would improve the clarity of the ICC definition and therefore likely would decrease overall compliance costs after affected parties adjust to the new definition. The proposed materiality test is already part of the Commission's auditor independence rules [83] and also is aligned with the proposed common control prong of the affiliate of the audit client definition.[84] Therefore, we do not expect a significant learning curve in applying the test or significant incremental compliance costs for auditors or registered investment companies, unregistered funds, and investment advisers or sponsors.

We do not expect any significant economic effects associated with amending the definition of ICC to include the concept of ''significant influence.'' As discussed in Section II.A.1.b.iv above, audit clients and auditors are familiar with the concept as a result of the application of current Rule 2–01(f)(4)(ii) and (iii). The proposed amendment simply would align the ICC definition with the existing definition of affiliate of the audit client. Consistent with an auditor of an operating company, auditors of investment companies and investment advisers or sponsors who, under the proposed amendments, are directed to look solely to proposed Rule 2–01(f)(14), would be required to consider significant influence when identifying affiliates of the audit client.

b. Proposed Amendment to ''Audit and Professional Engagement Period''

Currently, the term ''audit and professional engagement period'' is defined differently for domestic first time filers and FPI first time filers.[85] A domestic IPO registration statement must include either two or three years of audited financial statements, and auditors of domestic first time filers need to comply with Rule 2–01 for all audited financial statement periods included in the registration statement.[86] This may result in certain inefficiencies in the IPO process for domestic filers, such as the need to delay the offering or switch to a less well-qualified auditor to comply with independence requirements. In comparison, for FPIs, the corresponding ''audit and professional engagement period'' includes only the fiscal year immediately preceding the initial filing of the registration statement or report. As a consequence, the current definition of the ''audit and professional engagement period'' creates disparate application of the independence requirements between domestic issuers and FPIs. To address this disparate treatment, we propose to amend the definition such that the one-year look-back provision applies to all first time filers, domestic and foreign.

The proposed amendment to the definition of ''audit and professional engagement period'' would require domestic first time filers to assess auditor independence over a shortened look-back period (*i.e.,* a single immediate preceding year). The proposed change likely would alleviate the compliance challenges noted above for both domestic first time filers and their auditors. As a result, this proposed amendment could help domestic firms avoid the compliance costs associated with switching auditors or delaying the filing of an initial registration statement. These reduced compliance costs may facilitate additional domestic IPOs and thereby promote efficiency and capital formation.

This proposed amendment might also expand the pool of eligible auditors for domestic first time filers. The potential increase in the number of eligible auditors for these filers could foster competition among eligible auditors and thus reduce the cost of audit services.[87] Specifically, where an audit client is looking to potentially change auditors, an audit client would be able to select from a broader group of auditors to perform audit services related to the audit client's IPO even if the auditor had provided prohibited services or had prohibited relationships in the second or third year prior to filing the IPO. However, the audit industry is already highly concentrated, especially with respect to IPOs,[88] and consequently, such a benefit may not be significant. The expanded pool of qualified auditors could allow the first time domestic filers to better match auditor expertise to audit engagements. We anticipate that the improved alignment between auditor expertise and audit engagement likely would positively influence audit and financial reporting quality, thereby benefiting investors and improving market efficiency.[89]

The proposed change in the look-back period for domestic first time filers might lead to some financial statements in early years being audited by auditors that do not meet the Commission's current independence requirements, thus potentially compromising the integrity and reliability of financial reporting information related to the earlier second and third years, if included in the first filing. However, this potential adverse effect would be mitigated by the requirement for these auditors to meet applicable independence requirements—such as AICPA independence requirements—for the audits of these periods and by the application of the general standard in Rule 2–01(b) to the relationships and services in those earlier years. In addition, there are often, if not always, internal and external governance mechanisms (*e.g.,* audit committee and underwriters) in place at first time filers, and auditors are subject to heightened litigation risk around IPOs.[90]

c. Proposed Amendments to Loans or Debtor-Creditor Relationships

Currently, Rule 2–01 prohibits certain loans/debtor-creditor relationship and other financial interests with a few exceptions.[91] Commenter feedback from the Loan Provision Proposing Release supported certain additional exceptions

[83] *See e.g.,* Rule 2–01(f)(4)(ii) and (iii).

[84] *See* Proposed Rule 2–01(f)(4)(i)(B).

[85] *See* Section II.A.2.

[86] For example, a specialized auditor may be excluded from consideration if the auditor provided a prohibited service (*e.g.,* management functions) to a domestic filer in the third year before the firm files the registration statement for the first time. Even though the auditor has stopped providing such service to the filer starting two years prior to the firm's filing the registration statement, under the current definition, the auditor will not qualify as ''independent'' under Rule 2–01.

[87] *See supra* note 77.

[88] *See* United State Government Accountability Office, Audits of Public Companies—Continued Concentration in Audit Market for Large Public Companies Does Not Call for Immediate Action (2008) *available at www.gao.gov/new.items/d08163.pdf. See also* Patrick Velte and Markus Stiglbauer, Audit Market Concentration and Its Influence on Audit Quality, 5 Intl. Bus. Res. (2012) 146; and Xiaotao Liu and Biyu Wu, Do IPO Firms Misclassify Expenses? Working paper, (2019). They show that 84.2% of IPO firms of their sample use Big 4 auditors before going public.

[89] *See supra* note 79 and accompanying text.

[90] *See* Ray Ball and Lakshmana Shivakumar, Earnings Quality at Initial Public Offerings, 45, J. Acct. Econ. (2008) 324–349. *See also* Ramgopal Venkataraman, Joseph P. Weber and Michael Willenborg, Litigation Risk, Audit Quality, and Audit Fees: Evidence from Initial Public Offerings. 83 Acct Rev. (2008) 1315–1345.

[91] Rule 2–01(c)(1)(ii).

(or exclusions) for these otherwise prohibited financial interests. As a result, the proposed amendments would make the following additional changes: (1) Include, as part of the exceptions, student loans for a covered person's educational expenses as long as the loan was obtained while the individual was not a covered person, and (2) update the Credit Card Rule to refer instead to ''consumer loans'' in order to except personal consumption loans such as retail installment loans, cell phone installment plans, and home improvement loans that are not secured by a mortgage on a primary residence.

The proposed amendments to except certain student and consumer loans that are less likely to raise threats to auditors' objectivity or impartiality may alleviate some compliance burdens. For instance, audit firms would no longer have to monitor such student and consumer loans as part of their compliance program. The proposed amendments would permit certain covered persons (including audit partners and staff) to be considered independent notwithstanding the existence of certain lending relationships, such as student loans or consumer loans. The potential expansion of qualified audit partners and staff may allow audit firms to more readily identify audit partners and staff for a given audit engagement and improve matching between partner and staff experience with audit engagements. The improved alignment between partner and staff experience and audit engagements can increase audit efficiency and reduce audit costs. Such efficiency gains may transfer to audit clients in the form of reduced audit fees and audit delays.

Moreover, the better alignment between partner and staff experience and audit engagement may increase audit quality.[92] Since audit quality improvement increases financial reporting quality, this benefit likely would accrue to the overall investment community.[93] Finally, the proposed amendments likely would make it easier for covered persons and their immediate family members to obtain necessary consumer loans, as they would no longer need to be concerned about such loans categorically being deemed as independence impairing.

The exclusion of previously prohibited financial obligations may increase the likelihood that some covered persons may participate in an audit of a client even when the covered persons or their family members have some financial relationships with the audit client, or an audit client's officers, directors, or beneficial owners. However, we do not believe student loans obtained by covered persons prior to being a covered person or de minimis consumer loans are likely to threaten an auditor's objectivity and impartiality.

d. Proposed Amendments to the Reference to ''Substantial Stockholder'' in the Business Relationships Rule

The Business Relationships Rule currently refers to ''substantial stockholders'' to identify a type of ''person associated with the audit client in a decision-making capacity.'' [94] Under the current rule, a business relationship between a substantial stockholder of the audit client, among others, and the auditor or covered person would be considered independence-impairing. The proposed amendment would change the term ''substantial stockholders'' to ''beneficial owners (known through reasonable inquiry) of the audit client's equity securities where such beneficial owner has significant influence over the audit client'' to align this rule with changes recently made to the Loan Provision. The proposed amendment should improve compliance with the auditor independence rules by improving the clarity and reducing the complexity of application of the Business Relationships Rule.

There may be some additional compliance costs to auditors and audit clients associated with having to comply with a standard that now requires identifying beneficial owners of equity securities that have ''significant influence'' over the audit client, as opposed to identifying ''substantial stockholders.'' However, any such additional cost should be limited given that the concept of ''significant influence'' has been part of the Commission's auditor independence rules since 2000,[95] and we do not expect a significant learning curve in applying the test for auditors and registrants.

e. Proposed Amendments for Inadvertent Violations for Mergers and Acquisitions

Currently, certain aspects of Rule 2–01 require auditor independence compliance during the audit and professional engagement period, which may include periods before, during, and after merger and acquisition transactions. As a result, certain merger and acquisition transactions could give rise to inadvertent violations of auditor independence requirements. For example, an auditor may provide management functions to a target firm and auditing services to an acquirer prior to the occurrence of an acquisition. As a result, the acquisition may result in an auditor independence violation that had not existed prior to the acquisition. In this scenario, the auditor's objectivity and impartiality is likely not impaired.[96]

There may be compliance costs associated with the application of the current rule in that registrants might have to: (i) Delay mergers and acquisitions in order to comply with Rule 2–01, (ii) forgo potentially value-enhancing transactions altogether, or (iii) switch auditors or stop the prohibited relationships or services mid-stream, potentially resulting in disruption to the registrant.

We are proposing amendments to Rule 2–01 to establish a transition framework for mergers and acquisitions to address these costs. Under the proposed amendments, auditors and their audit clients would be able to transition out of prohibited relationships or services in an orderly manner in certain situations. As such, the proposed amendments likely would reduce registrants' independence compliance costs in merger and acquisition transactions by reducing the uncertainty associated with incidences of inadvertent violations of auditor independence due to these corporate events. For example, the proposed transition framework would allow, in certain situations, up to six months after the transaction effective date to correct the prohibited relationship or service. As a result, the proposed framework would help registrants, especially those entities with complex organizational structures and those actively pursuing merger and acquisition transactions, to achieve full and timely compliance with the auditor independence requirements when they undertake mergers and acquisitions without missing out on the ideal timing for such transactions. In addition, investors may indirectly benefit from the value created through timely mergers and acquisitions and costs saved from managing inadvertent independence violations.

There may be transitional costs to auditors and audits clients as they adapt to the proposed framework. However, given that the framework follows the consideration of the audit firm's quality controls similar to existing Rule 2–

[92] *See e.g.,* G. Bradley Bennett & Richard C. Hatfield, The Effect of the Social Mismatch between Staff Auditors and Client Management on the Collection of Audit Evidence, 88 Acct. Rev. (2013) 31–50.

[93] *See supra* note 74 and accompanying text.

[94] *See* Rule 2–01(c)(3).

[95] *See e.g.,* Rule 2–01(f)(4)(ii) and (iii).

[96] *See supra* note 51.

01(d), we do not expect a significant learning curve in applying the proposed framework for auditors and audit clients. The proposed framework does not alter the independence requirements for entities involved in mergers and acquisitions *per se;* rather, the framework offers a more practical approach to, and timeline for, addressing inadvertent independence violations as a result of certain merger and acquisition transactions. Thus, we do not anticipate significant compliance costs associated with this amendment.

D. Effects on Efficiency, Competition and Capital Formation

We believe that the proposed amendments likely would improve the practical application of Rule 2–01, enhance efficiency of rule implementation, reduce compliance burdens, and increase competition among auditors. They also may facilitate capital formation.

The proposed amendments to Rule 2–01 aim to reduce or remove certain practical challenges associated with the auditor independence analysis by focusing the analysis on those relationships and services that are more likely to pose a threat to an auditor's objectivity and impartiality. The proposed amendments are expected to expand the pool of eligible auditors and covered persons to undertake audit engagements without impairing auditors' independence. As a result, audit clients should have more options and audit costs may decrease. The potential expansion of eligible auditing service providers may also lead to better alignment between the audit client's needs and the auditor's expertise. The improved alignment between auditor specialties and audit clients could enable auditors to perform auditing services more efficiently and effectively, thus potentially reducing audit fees and increasing audit quality over the long term.

The proposed amendments deemphasize relationships and services that are unlikely to threaten auditor objectivity and impartiality, thus allowing auditors and audit clients to focus on those relationships and services that are more likely to threaten the auditor's objectivity and impartiality. To the extent that the proposed amendments do so, the quality of financial reporting is likely to improve, and the amount of audit client audit committee attention to independence questions when objectivity and impartiality is not at issue will be reduced, thus allowing the board to focus on its other responsibilities. Furthermore, we expect that improved identification of threats to auditor independence would increase investor confidence about the quality and accuracy of the information reported. Reduced uncertainty about the quality and accuracy of financial reporting should attract capital and thus reduce cost of capital, facilitate capital formation and improve overall market efficiency.[97]

The proposed amendments also may lead to changes in the competitive structure of the audit industry. We expect more accounting firms to be eligible to provide auditing services and be in compliance with proposed Rule 2–01. If the larger audit firms are the ones more likely to engage in non-audit relationships and services, and therefore, are more likely not to be in compliance with the existing Rule 2–01, then these firms are more likely to be positively affected by the proposed amendments. In particular, these firms may be able to compete for or retain a larger pool of audit clients. At the same time, the larger firms' potentially increased ability to compete for audit clients could potentially crowd out the auditing business of smaller audit firms. However, we estimate that the four largest accounting firms already perform 46 percent of audits for all registrants (or about 75 percent of accelerated and large accelerated filers) and more than 80 percent in the registered investment company space.[98] As a result, we do not expect any potential change in the competitive dynamics among auditor firms to be significant.

E. Alternatives

We considered certain alternative approaches to the proposed amendments, which we summarize below.

The proposed amendments would exclude certain student loans of a covered person that were obtained prior to the individual becoming a covered person in the audit firm from consideration as part of the independence analysis, as such loans are less likely to influence an auditor's objectivity and impartiality. The proposed exclusion, however, would not encompass student loans to immediate family members of the covered person. An alternative approach would be to exclude all student loans of a covered person and the individual's immediate family members obtained before the individual became a covered person. Student loans for immediate family members are individually similar to those for the covered person and may be less likely to pose threats to the objectivity or impartiality of the covered person. Excluding such loans could further address auditors' constraints when seeking to maintain compliance with the auditor independence requirements. However, when all student loans of the covered person's immediate family members are considered, the aggregated amount could be significant and, as a result, excluding such loans could increase threats to the covered person's independence.

Another alternative to the exclusion of student loans of the covered person would be a bright-line test in which, if the percentage of the aggregate amount of the student loans of a covered person and his or her immediate family members to the total wealth of the covered person's family is below a certain threshold, then all of the students loans would be excluded from the prohibition. This alternative has the advantage of better capturing the importance of the student loans to the covered person's financial interests. However, this alternative, because it is a bright-line test, may lead to over-identifying or under-identifying scenarios where the auditor's objectivity and impartiality are deemed impaired, especially in cases close to the selected percentage threshold. In addition, this alternative could present operational and privacy challenges in calculating and monitoring changes to a family's total wealth.

The proposed transition framework for merger and acquisition transactions includes a provision that in certain situations allows affected auditors and audit clients up to six months following the completion of the transaction to promptly correct the prohibited relationship or service. An alternative approach would be to require correction within six months following the merger or acquisition announcement. A benefit of this alternative approach would be the improved timeliness of auditor compliance following merger and acquisition transactions. Under this alternative, auditors and registrants would assess independence compliance analysis immediately following the

[97] *See supra* note 74. *See also* Nilabhra Bhattacharya, Frank Ecker, Per Olsson, and Katherine Schipper, Direct and Mediated Associations among Earnings Quality, Information Asymmetry and the Cost Of Equity, 87, Acct Rev. (2012) 449–482; and Shuai Ma. Economic Links and the Spillover Effect of Earnings Quality on Market Risk. 92 Acct Rev. (2017). 213–245.

[98] *See supra* note 71. Also, as of December 2018, there were approximately 12,577 fund series, with total net assets of $23 trillion that are covered by Morningstar Direct with identified accounting firms. There were 23 accounting firms performing audits for these investment companies. These audit services were very concentrated, as 86% of the funds were audited by the four largest accounting firms.

announcement that a definite agreement has been reached. However, some mergers and acquisitions take a long time to be completed and a substantial portion of such transactions never reach completion. As a result, an alternative window of six months following announcement of the merger or acquisition may unnecessarily increase compliance burdens and associated costs (*e.g.,* switching costs) for both affected companies and their auditors when such transactions are delayed or never successfully completed.

Finally, an alternative approach to shortening the look-back period for domestic first time filers would be to increase the look-back period for foreign first time filers to align with the current requirement for domestic first time filers. While this alternative would help level the playing field for both domestic and foreign first time filers and reduce the likelihood of potential independence impairing relationships and services, it would increase compliance burdens for foreign first time issuers and thus may reduce the incentives for the foreign first time filers to list in the United States, thereby impeding capital formation and limiting investment opportunities for U.S. investors.

F. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the rules, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates.

IV. Paperwork Reduction Act

The amendments we are proposing do not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[99] nor do they create any new filing, reporting, recordkeeping, or disclosure requirements. Accordingly, we are not submitting the proposed amendments to the Office of Management and Budget for review in accordance with the PRA.[100] We request comment on whether our conclusion that the proposed amendments would not impose any new collections of information is correct.

[99] 44 U.S.C. 3501 *et seq.*

[100] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

V. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [101] requires the Commission, in promulgating rules under section 553 of the Administrative Procedure Act,[102] to consider the impact of those rules on small entities. We have prepared this Initial Regulatory Flexibility Act Analysis (''IRFA'') in accordance with 5 U.S.C. 603. This IRFA relates to the proposed amendments to Rule 2–01 of Regulation S–X.

A. Reasons for and Objectives of the Proposed Action

As discussed above, the primary reason for, and objective of, the proposed amendments is to update certain provisions within the Commission's auditor independence rules to more effectively focus the analysis on those relationships or services that are more likely to pose threats to an auditor's objectivity and impartiality. Specifically, the proposed amendments would:

- Amend the definitions of affiliate of the audit client and ICC to address certain affiliate relationships;
- Shorten the look-back period for domestic first time filers in assessing compliance with the independence requirements;
- Add certain student loans and de minimis consumer loans to the categorical exclusions from independence-impairing lending relationships;
- Replace the reference to ''substantial stockholders'' in the business relationship rule with the concept of beneficial owners with significant influence;
- Introduce a transition framework for merger and acquisition transactions to consider whether an auditor's independence is impaired; and
- Make certain other updates.

The reasons for, and objectives of, the proposed rules are discussed in more detail in Sections I and II above.

B. Legal Basis

We are proposing the amendments pursuant to Schedule A and Sections 7, 8, 10, and 19 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, and 23 of the Exchange Act, Sections 8, 30, 31, and 38 of the Investment Company Act, and Sections 203 and 211 of the Investment Advisers Act.

[101] 5 U.S.C. 601 *et seq.*

[102] 5 U.S.C. 553.

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect small entities that file registration statements under the Securities Act, the Exchange Act, and the Investment Company Act and periodic reports, proxy and information statements, or other reports under the Exchange Act or the Investment Company Act, as well as smaller registered investment advisers and smaller accounting firms. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [103] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission. Securities Act Rule 157 [104] and Exchange Act Rule 0–10(a) [105] define an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that, as of December 31, 2018, there are approximately 1,173 issuers, other than registered investment companies, that may be small entities subject to the proposed amendments.[106] The proposed amendments would affect small entities that have a class of securities that are registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. In addition, the proposed amendments would affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn.

An investment company is considered to be a ''small business'' for purposes of the RFA, if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less at the end of the most recent fiscal year.[107] Commission staff estimates that, as of June 2019, approximately 42 registered open-end mutual funds, 8 registered ETFs, 33 registered closed-end funds, and 16 BDCs (collectively, 99 funds) are small entities.[108]

[103] 5 U.S.C. 601(6).

[104] 17 CFR 230.157.

[105] 17 CFR 240.0–10(a).

[106] This estimate is based on staff analysis of issuers, excluding co-registrants, with EDGAR filings on Forms 10–K, 20–F and 40–F, or amendments thereto, filed during the calendar year of January 1, 2018, to December 31, 2018. The analysis is based on data from XBRL filings, Compustat, and Ives Group Audit Analytics.

[107] 17 CFR 270.0–10(a).

[108] This estimate is derived an analysis of data obtained from Morningstar Direct as well as data

For purposes of the RFA, an investment adviser is a small entity if it:

(1) Has assets under management having a total value of less than $25 million;

(2) Did not have total assets of $5 million or more on the last day of the most recent fiscal year; and

(3) Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[109]

We estimate, as June 30, 2019, that there are approximately 470 investment advisers that would be subject to the proposed amendments that may be considered small entities.[110]

For purposes of the RFA, a broker-dealer is considered to be a ''small business'' if its total capital (net worth plus subordinated liabilities) is less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[111] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and that is not affiliated with any person (other than a natural person) that is not a small business or small organization.[112] As of December 31, 2018, there are approximately 985 small entity broker-dealers that will be subject to the final amendments.[113]

Our rules do not define ''small business'' or ''small organization'' for purposes of accounting firms. The Small Business Administration (SBA) defines ''small business,'' for purposes of accounting firms, as those with under $20.5 million in annual revenues.[114] We have limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $20.5 million in annual revenue. We request comment on the number of accounting firms with revenue under $20.5 million.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would not impose any reporting, recordkeeping, or disclosure requirements. The proposed amendments would impose new compliance requirements with respect to Rule 2–01.

With respect to the proposed amendments related to student loans, consumer loans, and the definition of the audit and engagement period for first time filers, we believe that such proposed amendments would not increase costs for smaller entities, including smaller accounting firms. With respect to the proposed amendments related to the definitions of affiliate of the audit client and ICC, the proposed amendments should serve to reduce, if at all, the number of entities that are deemed affiliates of the audit client. As such, any additional compliance effort related to the revised definitions would be offset by the less restrictive nature of the proposed definition as compared to the current definition.

With respect to the proposed amendment adding a merger and acquisition transition framework, there would be a new compliance burden only if the auditor and its client seek to avail themselves of the framework. As such, any additional compliance effort would be offset in any circumstance where relationships and services prohibited under the current rule would be deemed not to impair independence under the proposed amendments.

Regarding the amendment to the Business Relationship Rule to replace the reference to ''substantial stockholders'' with the concept of beneficial owners with significant influence, the concept of ''significant influence'' already exists in other parts of the auditor independence rules, including the recently amended Loan Provision.[115] As such, we believe that affected entities likely would be able to leverage any existing practices, processes or controls to comply with the proposed amendments compared to having separate compliance requirements by retaining the reference to substantial stockholder.

Compliance with the proposed amendments would require the use of professional skills, including accounting and legal skills. The proposed amendments are discussed in detail in Section II above. We discuss the economic impact, including the estimated costs, of the proposed amendments in Section III (Economic Analysis) above.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap or conflict with other Federal rules.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives while minimizing any significant adverse impacts on small entities. In connection with the proposed amendments, we considered certain types of alternatives, including:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rule, or any part of the rule, for small entities.

In connection with our proposed amendments to Rule 2–01, we do not think it feasible or appropriate to establish different compliance or reporting requirements or timetables for small entities. The proposed amendments are designed to address compliance challenges for both large and small audit clients and audit firms. With respect to clarification, consolidation or simplification of compliance and reporting requirements for small entities, the proposed amendments do not contain any new reporting requirements.

While the proposed amendments establishing a materiality test for common control in the affiliate of the audit client definition, amending the ICC definition, providing a transition framework for mergers and acquisitions, and using a ''significant influence'' test in the Business Relationships Rule would create new compliance requirements, these proposed amendments are meant to better identify those relationships and services that could impair an auditor's objectivity and impartiality thereby resulting in fewer instances where certain relationships and services would cause the auditor to violate our independence requirements, as compared to the current rule. The flexibility that could result from the proposed amendments

reported to the Commission for the period ending June 2019.

[109] 17 CFR 275.0–7.

[110] This estimate is based on SEC registered investment adviser responses to Item 12 of Form ADV.

[111] 17 CFR 240.17a–5(d).

[112] 17 CFR 240.0–10(c).

[113] This estimate is based on the most recent information available, as provided in Form X–17A–5 Financial and Operational Combined Uniform Single Reports filed pursuant to Section 17 of the Exchange Act and Rule 17a–5 thereunder.

[114] 13 CFR 121.201 and North American Industry Classification System (NAICS) code 541211. The SBA calculates ''annual receipts'' as all revenue. *See* 13 CFR 121.104.

[115] *See supra* note 7.

would be applicable to all affected entities, regardless of size.

With respect to using performance rather than design standards, we note that several of the proposed amendments are more akin to performance standards. Rather than prescribe the specific steps necessary to apply such standards, the proposed amendments recognize that ''materiality'' and ''significant influence'' can be implemented using reasonable judgment to achieve the intended result. Regarding the mergers and acquisitions transition framework, the proposed amendments do not prescribe specific procedures or processes and instead focus on requiring the performance that would lead to the identification of potential violations and how to address such violations. We believe that the use of these standards would accommodate entities of various sizes while potentially avoiding overly burdensome methods that may be ill-suited or unnecessary given the facts and circumstances.

The proposed amendments are intended to update the independence rules to reflect recent feedback received from the public and our experience administering those rules since their adoption nearly two decades ago and address certain compliance challenges for audit firms and their clients, including those that are small entities. In this respect, exempting small entities from the proposed amendments would increase, rather than decrease, their regulatory burden relative to larger entities.

G. Solicitation of Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- The number of small entities that may be subject to the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis;
- How to quantify the impact of the proposed amendments; and
- Alternatives that would accomplish our stated objectives while minimizing any significant adverse impact on small entities.

Respondents are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments.

VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[116] the Commission must advise the Office of Management and Budget as to whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' when, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

If a rule is ''major,'' its effectiveness generally will be delayed for 60 days pending Congressional review.

We request comment on whether our proposed amendments would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Basis

The proposed amendments described in this release are being proposed under the authority set forth in Schedule A and Sections 7, 8, 10, and 19 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, and 23 of the Exchange Act, Sections 8, 30, 31, and 38 of the Investment Company Act of 1940, and Sections 203 and 211 of the Investment Advisers Act of 1940.

List of Subjects in 17 CFR Part 210

Accountants, Accounting, Banks, Banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

In accordance with the foregoing, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

[116] Public Law 104–121, Tit. II, 110 Stat. 857 (1996).

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l*, 78m, 78n, 78*o*(d), 78q, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

■ 2. Amend § 210.2–01 by
■ a. Removing Preliminary Note to § 210.2–01;
■ b. Adding an introductory paragraph;
■ c. Revising paragraph (c)(1)(ii)(A)(*1*)(*iii*);
■ d. Revising paragraph (c)(1)(ii)(A)(*1*)(*iv*);
■ e. Adding paragraph (c)(1)(ii)(A)(*1*)(*v*);
■ f. Revising paragraph (c)(1)(ii)(E);
■ g. Revising paragraph (c)(2)(iii)(B)(*2*)(*i*);
■ h. Revising paragraph (c)(2)(iii)(C)(*3*)(*i*);
■ i. Revising paragraph (c)(3);
■ j. Revising paragraph (c)(6)(i)(A)(*1*);
■ k. Revising paragraph (c)(6)(i)(B)(*1*);
■ l. Revising paragraph (e);
■ m. Revising paragraph (f)(4);
■ n. Revising paragraph (f)(5)(iii);
■ o. Revising paragraph (f)(6); and
■ p. Revising paragraph (f)(14), to read as follows:

§ 210.2–01 Qualifications of accountants.

Section 210.2–01 is designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance. Accordingly, the rule sets forth restrictions on financial, employment, and business relationships between an accountant and an audit client and restrictions on an accountant providing certain non-audit services to an audit client. Section 210.2–01(b) sets forth the general standard of auditor independence. Paragraphs (c)(1) to (c)(5) of this section reflect the application of the general standard to particular circumstances. The rule does not purport to, and the Commission could not, consider all circumstances that raise independence concerns, and these are subject to the general standard in § 210.2–01(b). In considering this standard, the Commission looks in the first instance to whether a relationship or the provision of a service: Creates a mutual or conflicting interest between the accountant and the audit client; places the accountant in the position of auditing his or her own work; results in the accountant acting as management or an employee of the audit client; or places the accountant in a position of being an advocate for the audit client. These factors are general guidance only, and their application may depend on particular facts and circumstances. For that reason, § 210.2–01(b) provides that, in determining whether an accountant is independent, the Commission will consider all relevant facts and circumstances. For the same reason, registrants and accountants are encouraged to consult with the Commission's Office of the Chief Accountant before entering into relationships, including relationships involving the provision of services, that are not explicitly described in the rule.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) * * *

(*1*) * * *

(*iii*) Loans fully collateralized by cash deposits at the same financial institution;

(*iv*) Mortgage loans collateralized by the borrower's primary residence provided the loans were not obtained while the covered person in the firm was a covered person; and

(*v*) Student loans obtained for a covered person's educational expenses provided the loans were not obtained while the covered person in the firm was a covered person.

* * * * *

(E) *Consumer loans.* Any aggregate outstanding consumer loan balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and any available grace period.

* * * * *

(2) * * *

(iii) * * *

(B) * * *

(*2*) * * *

(*i*) Persons, other than the lead partner and the Engagement Quality Reviewer, who provided 10 or fewer hours of audit, review, or attest services during the period covered by paragraph (c)(2)(iii)(B)(*1*) of this section;

* * * * *

(C) * * *

(*3*) * * *

(*i*) Persons, other than the lead partner and the Engagement Quality Reviewer, who provided 10 or fewer hours of audit, review, or attest services during the period covered by paragraph (c)(2)(iii)(C)(*2*) of this section;

* * * * *

(3) *Business relationships.* An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or beneficial owners (known through reasonable inquiry) of the audit client's equity securities where such beneficial owner has significant influence over the audit client. The relationships described in this paragraph (c)(3) do not include a relationship in which the accounting firm or covered person in the firm provides professional services to an audit client or is a consumer in the ordinary course of business.

* * * * *

(6) * * *

(i) * * *

(A) * * *

(*1*) The services of a lead partner, as defined in paragraph (f)(7)(ii)(A) of this section, or Engagement Quality Reviewer, as defined in paragraph (f)(7)(ii)(B) of this section; for more than five consecutive years; or

* * * * *

(B) * * *

(*1*) Within the five consecutive year period following the performance of services for the maximum period permitted under paragraph (c)(6)(i)(A)(*1*) of this section, performs for that audit client the services of a lead partner, as defined in paragraph (f)(7)(ii)(A) of this section, or Engagement Quality Reviewer, as defined in paragraph (f)(7)(ii)(B) of this section, or a combination of those services; or

* * * * *

(e) *Transition provisions for mergers and acquisitions involving audit clients.* An accounting firm's independence will not be impaired because an audit client engages in a merger or acquisition that gives rise to a relationship or service that is inconsistent with this rule, provided that:

(i) The accounting firm is in compliance with the applicable independence standards related to the services or relationships when the services or relationships originated and throughout the period in which the applicable independence standards apply;

(ii) The accounting firm's lack of independence under this rule has been or will be corrected as promptly as possible under relevant circumstances as a result of the occurrence of the merger or acquisition;

(iii) The accounting firm has in place a quality control system as described in Rule 2–01(d)(3) that has the following features:

(A) Procedures and controls that monitor the audit client's merger and acquisition activity to provide timely notice of a merger or acquisition; and

(B) Procedures and controls that allow for prompt identification of potential violations after initial notification of a potential merger or acquisition that may trigger independence violations, but before the transaction has occurred.

(f) * * *

(4) *Affiliate of the audit client* means:

(i) An entity:

(A) That has control over the audit client or over which the audit client has control, including the audit client's parents and subsidiaries;

(B) Which is under common control with the audit client, including the audit client's parents and subsidiaries, unless the entity is not material to the controlling entity;

(C) Over which the audit client has significant influence, unless the entity is not material to the audit client; and

(D) That has significant influence over the audit client, unless the audit client is not material to the entity; *or*

(ii) Each entity in the investment company complex as determined in paragraph (f)(14) of this section when the entity under audit is an investment company or investment adviser or sponsor, as those terms are defined in paragraphs (f)(14)(ii), (iii), and (iv) of this section.

(5) * * *

(iii) The ''audit and professional engagement period'' does not include periods ended prior to the first day of the last fiscal year before the issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with applicable independence standards in all prior periods covered by any registration statement or report filed with the Commission.

(6) *Audit client* means the entity whose financial statements or other information is being audited, reviewed, or attested to and any affiliates of the audit client, other than, for purposes of paragraph (c)(1)(i) of this section, entities that are affiliates of the audit client only by virtue of paragraphs (f)(4)(i)(C), (f)(4)(i)(D), or (f)(14)(i)(E) of this section.

* * * * *

(14) * * *

(i) * * *

(A) An entity under audit that is an:

(*1*) Investment company; or

(*2*) Investment adviser or sponsor;

(B) The investment adviser or sponsor of any investment company identified in paragraph (f)(14)(i)(A)(1) of this section;

(C) Any entity controlled by or controlling any investment adviser or sponsor identified in paragraph (f)(14)(i)(A)(*2*) or (B), or any investment company identified in paragraph (f)(14)(i)(A)(*1*), of this section;

(D) Any entity under common control with any investment company identified in paragraph (f)(14)(i)(A)(*1*) of this section, any investment adviser or sponsor identified in paragraph (f)(14)(i)(A)(*2*) or (B) of this section, or any entity identified in paragraph (f)(14)(i)(C) of this section; if the entity:

(*1*) Is an investment company, investment adviser or sponsor, unless the entity is not material to the controlling entity; or

(*2*) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any entity identified in paragraphs (f)(14)(i)(A) through (f)(14)(i)(B);

(E) Any entity over which any entity identified in paragraph (f)(14)(i)(A) of this section has significant influence, unless the entity is not material to the entity identified in paragraph (f)(14)(i)(A), or any entity that has significant influence over any entity in paragraph (f)(14)(i)(A) of this section, unless the entity identified in paragraph (f)(14)(i)(A) is not material to the entity that has significant influence over it; and

(F) Any investment company that has an investment adviser or sponsor included in this definition by paragraphs (f)(14)(i)(A) through (f)(14)(i)(D) of this section.

(ii) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(iii) Sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

(iv) An investment company, for purposes of paragraph (f)(14) of this section, means any investment company or entity that would be an investment company but for the exclusions provided by Section 3(c) of the Investment Company Act of 1940 (15. U.S.C. 80–a3(c)).

* * * * *

By the Commission.

Dated: December 30, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–28476 Filed 1–14–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–6138–P–01]

RIN 2529–AA99

Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend HUD's Fair Housing Act design and construction regulations by incorporating by reference the 2009 edition of International Code Council (ICC) Accessible and Usable Building and Facilities (ICC A117.1–2009) standard, as a safe harbor. The Accessible and Usable Buildings and Facilities standard is a technical standard for the design of facilities that are accessible to persons with disabilities. HUD proposes to determine that compliance with ICC A117.1–2009 satisfies the design and construction requirements of the Fair Housing Act and its amendments. This rule also proposes to designate the 2009, 2012, 2015 and 2018 editions of the International Building Code (IBC) as safe harbors under the Fair Housing Act. The IBC is a model building code and not law, but it has been adopted as law by various states and localities. The IBC provides minimum standards for public safety, health, and welfare as they are affected by building construction.

DATES: *Comment Due Date:* March 16, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service, toll-free at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:
Lynn Grosso, Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–2000; telephone number 202-708–2333 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Title VIII of the Civil Rights Act of 1968, as amended, (42 U.S.C. 3601 *et seq.*) (the ''Fair Housing Act'' or ''Act'') prohibits discrimination in housing and housing-related transactions based on race, color, religion, national origin, sex, disability and familial status.[1] The Act

[1] The Fair Housing Act refers to people with ''handicaps.'' Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the term ''persons with disabilities'' or ''disability,'' which is the preferred usage. Accordingly, this document hereinafter uses the terms ''persons with disabilities,'' ''disability,''

provides, inter alia, that unlawful discrimination against persons with disabilities includes the failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in a manner that ''(1) the public and common use portions of such dwellings are readily accessible to and usable by handicapped persons; (2) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (3) all premises within such dwellings contain the following features of adaptive design: (a) An accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.'' The Fair Housing Act does not contain specific technical design criteria that need to be followed to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the ''American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly referred to as ANSI A117.1), suffices to satisfy the requirements of [42 U.S.C. 3604(f)(3)(C)(iii)],'' which states the Act's design and construction requirements for the interiors of covered multifamily dwellings.

On November 7, 1988 (53 FR 44992), HUD published a proposed rule to implement the design and construction provisions of the Fair Housing Act, as amended. HUD's proposed rule provided that ''whenever ANSI A117.1 is used, the reference is to the most recently published edition of ANSI A117.1 as of the date bids for construction of a particular building are solicited.'' Several commenters objected that an ''open-ended'' reference to future ANSI standards would represent an unlawful delegation of the Department's rulemaking authority. According to these commenters, HUD should refer to a specific edition of the ANSI standards and should incorporate future editions only through rulemaking. As a result of these concerns, HUD's Fair Housing Act final rule, published on January 23, 1989 (54 FR 3232), specifically stated that compliance with the appropriate requirements of ANSI A117.1–1986, the edition in effect at the time of the final rule, functions as a safe harbor and satisfies the technical requirements of the Act. HUD also stated that it would propose amending the definition of ANSI as future editions of ANSI A117.1 are published.

The Fair Housing Act directs HUD to ''provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements].'' On March 6, 1991 (56 FR 9472), the Department published the ''Final Fair Housing Accessibility Guidelines'' which set forth specific technical guidance for designing covered multifamily dwellings to be consistent with the Act. Section I of the Guidelines states, ''[t]hese guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.'' On June 24, 1994 (59 FR 33362), the Department published its ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines.'' The Department published a Fair Housing Act Design Manual (Design Manual) in 1996 that was reissued in 1998 with minor changes. The Design Manual is also a safe harbor for compliance with the Act.[2]

Since HUD published its Fair Housing Act final rule in 1989, the ANSI A117.1 accessibility standard has been updated several times. HUD, as a member of the A117 Committee that updates the A117.1 standard, participates in these updates. In addition, HUD, as part of its mandate to provide technical assistance to state and local governments to incorporate the design and construction requirements of the Act into their laws and procedures for review and approval of newly constructed multifamily dwellings, has periodically reviewed these updated standards. HUD published a final rule on October 24, 2008 (73 FR 63614) that incorporated by reference ICC/ANSI–2003 and clarified that compliance with the appropriate requirements of CABO/ANSI A117.1–1992 and ICC/ANSI–1998 continued to meet the design and construction requirements of the Fair Housing Act. See 24 CFR 100.201a(b)(1). As a result of HUD's 2008 final rule, HUD's current regulations specify that compliance with the appropriate requirements of ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992 and ANSI A117.1–1986 satisfy the Fair Housing Act's accessibility requirements at subsection 804(f)(3)(C)(iii) of the Act. The 2008 final rule also updated the regulations to reference certain editions of the IBC as safe harbors for compliance with the accessibility requirements in the Fair Housing Act. HUD's final rule codified these additional design and construction standards that HUD recognized as safe harbors at § 100.205(e).

II. This Proposed Rule

This proposed rule would amend HUD's regulations with respect to the design and construction requirements of the Fair Housing Act by incorporating by reference the 2009 edition of International Code Council (ICC) Accessible and Usable Building and Facilities (ICC A117.1–2009)[3] as satisfying the design and construction requirements of the Fair Housing Act. This rule would not change either the scoping requirements or the substance of the existing accessible design and construction requirements contained in the Fair Housing Act or its regulation.

This proposed rule would also designate the 2009, 2012, 2015 and 2018 editions of the IBC as safe harbors under the Fair Housing Act. Unlike the Act, the IBC is a model building code, and not a law. It provides standards for public safety, health, and welfare as they are affected by building construction. The IBC is published by the ICC, which was formed to bring national uniformity to building codes. Representatives of three former national model code bodies joined together to develop what are now called the International Codes, or I-Codes. The IBC is a major volume of the I-Codes and contains provisions for accessibility designed to reflect the intent of the Act, the regulations, and the Guidelines. Compliance with the IBC or another model building code is not required unless mandated by a state or local jurisdiction. A jurisdiction may adopt a model building code in its entirety or with modifications.

With respect to housing, the IBC contains requirements for three different types of accessible units, which include sleeping units (when such units are used as a residence). The most accessible of these three types is an ''Accessible Unit,'' which is wheelchair accessible and may be found in numerous types of residential buildings. A second level of accessibility is set

or ''disabled,'' unless directly quoting the Fair Housing Act.

[2] The Fair Housing Design Manual, August 1996, revised 1998, is available at *https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf.*

[3] Unlike prior versions of the American National Standard, the ICC A117.1–2009 does contain ANSI in its title.

forth in the requirements for ''Type A'' dwelling units. The IBC specifies that a percentage of ''Type A'' units must be provided containing a high level of accessibility, especially in kitchens and bathrooms, as well as some features of adaptability. The third level of accessibility is a ''Type B'' dwelling unit, which is a unit that is intended to comply with those features of accessible and adaptable design required under the Act. Like the Act, the requirements for Type B dwelling units apply to a greater number of dwelling units in a building, but the level of accessibility is less than that of the Type A dwelling units.

In addition, the IBC provides scoping requirements for the three types of dwelling units described above. The scoping requirements for the Type B dwelling units are intended to be consistent with the scoping requirements in the Act, the regulations, and the Guidelines. For the technical requirements, the IBC references the A117.1 accessibility standard. Thus, the IBC contains both scoping requirements and technical requirements that are consistent with the Act, the regulations and the Guidelines.

HUD is also proposing to amend § 100.205(e)(3) to provide that, in the future, HUD may propose new safe harbors by **Federal Register** notice. HUD would provide a minimum of 30 days public comment period and, after considering public comment, publish a final notice announcing any new safe harbor. HUD will periodically codify new safe harbors in part 100 in the course of later rulemaking. HUD proposes to provide that compliance with safe harbors established by **Federal Register** notice will satisfy the requirements of paragraphs (a) and (c) of § 100.205.

III. HUD's Review of ICC A117.1–2009, and 2009, 2012, 2015 and 2018 IBC

In 2013 and 2015, and most recently in 2018, representatives of the multifamily housing industry contacted the Department to request that HUD review the accessibility requirements contained in the 2009, 2012, 2015 and 2018 editions of the IBC to make a determination as to whether these editions would be deemed safe harbors for compliance with the Act's design and construction requirements. These organizations also made this request with respect to ICC A117.1–2009, *Accessible and Usable Buildings and Facilities.* Based on assistance provided specifically by ICC in the past, the Department requested, and ICC provided, a side-by-side matrix comparing the relevant 2006 provisions of the IBC, which HUD had previously reviewed and declared as a safe harbor, with the 2009, 2012, 2015 and 2018 provisions in the IBC and related code documents. ICC also provided copies of the 2009, 2012, 2015 and 2018 IBC, related Code Commentary, and other relevant code documents. In addition, ICC provided a similar matrix for ICC/ANSI A117.1–2003 and ICC A117.1–2009, along with copies of ICC A117.1–2009 and related documents.

In conducting its review of these documents, the Department carefully reviewed the matrices provided by ICC, as well as the code documents and the accessibility standards. The Department determined that the accessibility provisions in the IBC and the ICC A117.1 standard provide at least the same level of accessibility as that required by the Act, HUD's implementing regulations, and the Guidelines.

The Department also notes that following its earlier reviews of the model building codes, the Department worked with representatives from the building industry, code organizations and advocacy groups to develop code text for certain editions of the IBC and participated in public hearings to aid in the passage of these code text changes. The Department is also a voting member of the A117 Committee, which is the Committee that reviews and makes changes to the A117.1 accessibility standard, and in this role, the Department has been actively involved in updating all editions of the A117.1 standard that have followed the 1986 edition.

Having reviewed the 2009, 2012, 2015 and 2018 editions of the IBC, the Department finds that the accessibility provisions in these editions of the IBC are consistent with the requirements in the Act, HUD's regulations and the Guidelines. The Department did not find any provision that it believes provides for less accessibility than what is required in the Act, the regulations and the Guidelines, and the Department notes that in certain respects, the IBC provides for greater accessibility. Similarly, in its review of the ICC A117.1–2009, the Department did not find any provisions that provide for less accessibility than what is required in the Act, HUD's regulations and the Guidelines. However, the Department welcomes comments concerning provisions that may provide for less accessibility than what is required in the Act, HUD's regulations and the Guidelines.

IV. HUD-Recognized Safe Harbors for Compliance With the Fair Housing Act's Design and Construction Requirements and HUD Policy Regarding These Safe Harbors

This proposed rule would amend § 100.205(e) to add ICC A117.1–2009, and the 2009, 2012, 2015 and 2018 versions of the IBC to HUD's current list of safe harbors for compliance with the design and construction requirements of the Fair Housing Act.

The Department reiterates its policy with respect to safe harbors. A covered multifamily building will be deemed compliant with the Act's design and construction requirements if the State or locality where the building is located has adopted one of HUD's safe harbors without modification of the provisions that address the Act's design and construction requirements, provided: (1) The building is designed and constructed in accordance with plans and specifications approved during the building permitting process, and (2) the building code official does not waive, incorrectly interpret, or misapply one or more of those requirements. The fact that a jurisdiction has adopted a code that conforms to the accessibility requirements of the Fair Housing Act or that construction of a building subject to the Act was approved under such a code, however, does not alter HUD's statutory responsibility to conduct an investigation, following receipt of a complaint from an aggrieved person, to determine whether the requirements of the Fair Housing Act have been met and to issue a charge of discrimination if warranted. Similarly, neither fact precludes the Department of Justice from investigating whether violations of the Act's design and construction provisions may have occurred and filing a lawsuit in federal court to enforcement compliance with the Act where appropriate. The Fair Housing Act provides that, ''[d]eterminations by a State or unit of general local government under [the Act] shall not be conclusive in enforcement proceedings under this title.'' 42 U.S.C. 3604(f)(6)(a).

HUD's investigation of a complaint under the Fair Housing Act's design and construction requirements typically involves, *inter alia,* a review of building permits, certificates of occupancy, and construction documents showing the design of the buildings and the site, and an on-site survey of the buildings and property. During the investigation, HUD investigators take measurements of relevant interior and exterior elements of the property. All parties to the complaint have an opportunity to present evidence concerning, *inter alia,* whether HUD has jurisdiction over the complaint, and whether the Act has been violated as alleged. In enforcing the design and construction requirements of the Act, a prima facie case may be established by proving that the covered multifamily dwellings were not designed and constructed in accordance with HUD's Fair Housing Accessibility Guidelines. This prima facie case may be rebutted by evidence demonstrating compliance with a recognized, comparable, objective measure of accessibility. *See* Order on Secretarial Review, *U.S. Dept. of Housing and Urban Development* v. *Nelson,* HUD ALJ 05–068FH, 2006 HUD ALJ LEXIS 56, *14 (Sept. 21, 2006) (2006 WL 4540542), aff'd, Nelson v. HUD, 320 Fed. Appx. 635, 2009 US App. LEXIS 6142, *4–5 (9th Cir. Mar. 26, 2009). In making a determination as to whether the design and construction requirements of the Act have been violated, HUD uses the Act, the regulations, and the Guidelines, all of which reference the technical standards found in ANSI A117.1–1986.

The standards and codes adopted by HUD as safe harbors represent safe harbors only when used in their entirety; that is, once a specific safe harbor document has been selected, the covered multifamily dwellings in question should comply with all of the provisions in that document that address the Act's design and construction requirements. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the above safe harbor documents or from a variety of sources. In addition, the benefit of safe harbor status will be lost if waivers of accessibility provisions are requested and/or obtained from state or local governmental agencies. HUD's purpose in recognizing a number of safe harbors for compliance with the Act's design and construction requirements is to provide a range of options that, if followed in their entirety during the design and construction phase without modification or waiver, will result in residential buildings that comply with the Act's design and construction requirements.

As part of its review of the various editions of the IBC, the Department also reviewed the related IBC Commentary to determine whether certain commentary that the Department drafted for inclusion in the IBC Commentary continues to appear in the IBC Commentary from one edition to the next. The Department reviewed the IBC Commentary only in this respect and did not review the Commentary with respect to other sections of Chapter 11 of the IBC or to commentary not drafted by the Department. Therefore, the Department's review of the code commentary applies only to the code commentary the Department previously provided to ICC. The commentary which the Department previously provided to ICC is commentary that relates to Exception 1 under Section 1107.4 of the IBC, which addresses requirements for an Accessible Route. This commentary is intended to ensure that the IBC's Accessible Route requirements do not provide for less accessibility than the Act's Accessible Route requirements. The Department reviewed the IBC Commentary for the 2009, 2012, 2015 and 2018 editions of the IBC and notes that this commentary is included and remains unchanged. For a detailed discussion of this commentary, see 72 FR 39432 (July 18, 2007).

V. Incorporation by Reference

Before HUD issues a final rule, the referenced standard proposed for incorporation must be approved by the Director of the **Federal Register**, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This rulemaking proposes to incorporate the voluntary consensus standard ICC A117.1–2009 Accessible and Usable Building and Facilities, as satisfying the design and construction requirements of the Fair Housing Act. It would not incorporate interpretations of ICC A117.1–2009 issued by the ICC or any other entity or person. The rulemaking also cannot account for editions of ICC A117.1 issued after the 2009 edition. Therefore, if HUD wishes to revise the standard in the future to codify newer editions of ICC A117.1, further rulemaking would be required.

ICC A117.1–2009 is available online for review during this rule's comment period, via read-only access, at *https://codes.iccsafe.org/content/ICCA117_12009?site_type=public.* Members of the public may visit the link and create a username and password to view the free-access edition. The standard may also be obtained from the International Code Council, 500 New Jersey Avenue NW, 6th Floor, Washington, DC 20001–2070, telephone number 1–888–422–7233, *http://www.iccsafe.org/e/category.html.*

VI. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis on 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. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions.

The purpose of this proposed rule is to update a codified regulation that provides technical standards for the design of covered multifamily dwellings to ensure accessibility for persons with disabilities as required by the Fair Housing Act. Specifically, the rule would incorporate by reference the 2009 edition of ICC A117.1 as a safe harbor, compliance with which would satisfy the requirements of the Fair Housing Act. The proposed rule also retains as safe harbors the 1986, 1992, 1998 and 2003 editions of ANSI A117.1, as well as the 2000, 2003 and 2006 IBC, which HUD has previously adopted. In addition, the rule would add the 2009, 2012, 2015 and 2018 versions of the IBC as safe harbors. Consequently, small entities would not incur a significant economic impact as they may continue to use any of the previously codified standards. Additionally, adopting the 2009 ICC A117.1 and the other new safe harbors may alleviate a significant economic impact for small entities, as those entities may find compliance with these standards to be less burdensome because their state or local building codes may use these later editions of the A117.1 standard or the IBC. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

This proposed rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose, within the meaning of the UMRA, any federal mandates on any state, local, or tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.400.

List of Subjects in 24 CFR Part 100

Aged, Fair housing, Incorporation by reference, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 100 as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

■ 1. The authority for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

■ 2. In § 100.201, revise the definitions of ''*Accessible,*'' ''*Accessible route,*'' ''*ANSI A117.1,*'' and ''*Building entrance on an accessible route*'' to read as follows:

§ 100.201 Definitions.

''*Accessible*'' when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase ''*readily accessible to and usable by*'' is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ICC A117.1–2009 (proposed for incorporation by reference, see § 100.201a), ICC/ANSI A117.1–2003 (incorporated by reference, see § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference, see § 100.201a), CABO/ANSI A117.1–1992 (incorporated by reference, see § 100.201a), ANSI A117.1–1986 (incorporated by reference, see § 100.201a) or a comparable standard is deemed ''*accessible*'' within the meaning of this paragraph.

* * * * *

''*Accessible route*'' means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ICC A117.1–2009 (proposed for incorporation by reference, see § 100.201a), ICC/ANSI A117.1–2003 (incorporated by reference, see § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference, see § 100.201a), CABO/ANSI A117.1–1992 (incorporated by reference, see § 100.201a), ANSI A117.1–1986 (incorporated by reference, see § 100.201a) or a comparable standard is an ''*accessible route*'' within the meaning of this paragraph.

* * * * *

''*Building entrance on an accessible route*'' means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ICC A117.1–2009 (proposed for incorporation by reference, see § 100.201a), ICC/ANSI A117.1–2003 (incorporated by reference, see § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference, see § 100.201a), CABO/ANSI A117.1–1992 (incorporated by reference, see § 100.201a), ANSI A117.1–1986 (incorporated by reference, see § 100.201a) or a comparable standard is a ''*building entrance on an accessible route*'' within the meaning of this paragraph.

* * * * *

■ 3. Revise § 100.201a to read as follows:

§ 100.201a Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at Department of Housing and Urban Development, 451 Seventh Street SW, Room 5240, Washington, DC 20410–0001, telephone number 202–708–2333, and is available from the sources listed in the following paragraphs. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The effect of compliance with this material is as stated in 24 CFR 100.205.

(a) American National Standards Institute (ANSI), 25 W 43rd Street, 4th Floor, New York, NY 10036, Telephone (212) 642–4980, ANSI Webstore, *https://webstore.ansi.org.*

(1) ANSI A117.1–1986, American National Standard for Buildings and Facilities: Providing Accessibility and Usability for Physically Handicapped People, 1986 edition, IBR approved for §§ 100.201, 100.205.

(2) [Reserved]

(b) International Code Council, 500 New Jersey Avenue NW, 6th Floor, Washington, DC 20001–2070, telephone number 1–888–422–7233, *http://www.iccsafe.org/e/category.html.*

(1) CABO/ANSI A117.1–1992, American National Standard: Accessible and Usable Buildings and Facilities, 1992 edition, IBR approved for §§ 100.201, 100.205.

(2) ICC/ANSI A117.1–1998, American National Standard: Accessible and Usable Buildings and Facilities, 1998 edition, IBR approved for §§ 100.201, 100.205.

(3) ICC/ANSI A117.1–2003, American National Standard: Accessible and Usable Buildings and Facilities, 2003 edition, IBR approved for §§ 100.201, 100.205.

(4) ICC A117.1–2009, American National Standard: Accessible and Usable Buildings and Facilities, 2009 edition, IBR approved for §§ 100.201, 100.205.

■ 4. In § 100.205, revise paragraph (e)(1), add paragraphs (e)(2)(vii) through (x), and revise paragraph (e)(3), to read as follows:

§ 100.205 Design and construction requirements.

* * * * *

(e)(1) Compliance with the appropriate requirements of ICC A117.1–2009 (proposed to be incorporated by reference, see § 100.201a), ICC/ANSI A117.1–2003 (incorporated by reference, see § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference, see § 100.201a), CABO/ANSI A117.1–1992 (incorporated by reference, see § 100.201a), or ANSI A117.1–1986 (incorporated by reference, see § 100.201a), or suffices to satisfy the requirements of paragraph (c)(3) of this section.

(2) * * *

(vii) 2009 International Building Code, published by ICC (*http://www.iccsafe.org*), and interpreted in accordance with the relevant 2009 IBC Commentary;

(viii) 2012 International Building Code, published by ICC (*http://www.iccsafe.org*), and interpreted in accordance with the relevant 2012 IBC Commentary;

(ix) 2015 International Building Code, published by ICC (*http://www.iccsafe.org*), and interpreted in accordance with the relevant 2015 IBC Commentary; and

(x) 2018 International Building Code, published by ICC (*http://www.iccsafe.org*), and interpreted in accordance with the relevant 2018 IBC Commentary.

(3) HUD may propose safe harbors by **Federal Register** notice that provides for a minimum of 30 days public comment period. HUD will publish a final notice announcing safe harbors after considering public comments. Compliance with safe harbors established by **Federal Register** notice will satisfy the requirements of paragraphs (a) and (c) of this section.

* * * * *

Dated: January 6, 2020.

David H. Enzel,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2020–00233 Filed 1–14–20; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2011–0513; FRL–10003–61–Region 6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; New Mexico and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Other Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received CAA section 111(d)/129 negative declarations from New Mexico and Albuquerque-Bernalillo County, New Mexico for existing Other Solid Waste Incineration (OSWI) units. These negative declarations certify that existing OSWI units subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the specified jurisdictions in New Mexico.

DATES: Written comments should be received on or before February 14, 2020.

ADDRESSES: Submit your comments, identified by EPA–R06–OAR–2011–0513, at *https://www.regulations.gov* or via email to *ruan-lei.karolina@epa.gov.* For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is accepting the State's 111(d)/129 negative declarations and amending 40 CFR part 62, subpart GG, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the EPA's action is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: December 23, 2019.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–00287 Filed 1–14–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 18–336; FCC 19–128; FRS 16369]

Implementation of the National Suicide Hotline Improvement Act of 2018

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission proposes to designate 988 as a simple, easy-to-remember, 3-digit dialing code for a national suicide prevention and mental health crisis hotline. We propose that all telecommunications carriers and interconnected VoIP providers be required to implement 988 in their networks within 18 months. We seek comment on these proposals and related issues, such as technical barriers to implementation and costs.

DATES: Comments are due on or before February 14, 2020, and reply comments are due on or before March 16, 2020.

ADDRESSES: You may submit comments, identified by WC Docket No. 18–336, by any of the following methods:

- *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be

addressed to 445 12th Street SW, Washington DC 20554.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0388, *Michelle.Sclater@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM) in WC Docket No. 18–336, adopted on December 12, 2019 and released on December 16, 2019. The full text of the document is available at *https://docs.fcc.gov/public/attachments/FCC-19-128A1.pdf.* The full text is also available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (*e.g.*, braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.*, accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

I. Notice of Proposed Rulemaking

1. In this *Notice of Proposed Rulemaking* (NPRM), we propose to designate a 3-digit dialing code for a national suicide prevention and mental health crisis hotline, and we further propose to designate 988 as that code. We expect that designating 988 as the 3-digit dialing code will help increase the effectiveness of suicide prevention efforts, ease access to crisis services, reduce the stigma surrounding suicide and mental health conditions, and ultimately save lives.

2. We anticipate that designating 988 will support the efforts of our federal partners, SAMHSA and the VA, in their vitally important work in administering the Lifeline and the Veterans Crisis Line. To this end, we encourage interested stakeholders to work directly with SAMHSA, the VA, and Congress to foster collaboration and coordination of efforts to increase the overall effectiveness of the Lifeline, including any specialized hotline services for at-risk populations such as Veterans and LGBTQ youth.

A. Designating 988 as the 3-Digit Dialing Code for a National Suicide Prevention and Mental Health Crisis Hotline

3. We first propose to designate a 3-digit dialing code for a national suicide prevention and mental health crisis hotline. Based on the findings in the SAMHSA and VA Reports, we anticipate that the Lifeline would be more effective in preventing suicides and providing crisis intervention if it were accessible via a simple, easy-to-remember, 3-digit dialing code. For example, as SAMHSA explains, ''[i]f a family member experiences severe chest pains in the company of another family member, both the patient and the family member, despite their heightened anxiety, would remember the number 911, while the concern is that many suicidal people or their family members at a similar moment of suicidal crisis might not remember 1–800–273–8255 (TALK).'' And as Lines for Life has explained, ''3-digit access'' would ''make it easier to connect people in need with help'' and ''deliver timely and effective crisis intervention services to millions of Americans.''

4. The record compiled for the FCC Staff Report supports the use of a dedicated 3-digit dialing code as a way to increase the effectiveness of suicide prevention efforts, ease access to crisis services, and reduce the stigma surrounding suicide and mental health conditions. Thus, we expect that designating a 3-digit code will ultimately increase the convenience and immediacy of access to a national suicide prevention and mental health crisis hotline system, help enhance public awareness of available suicide prevention and mental health crisis services, and support our federal partners by simplifying such access. We seek comment on this proposal.

5. We next propose to designate 988 as the 3-digit dialing code for a national suicide prevention and mental health crisis hotline system, and to require that all telecommunications carriers and interconnected VoIP providers transmit all calls initiated by an end user dialing 988 to the current toll free access number for the National Suicide Prevention Lifeline. We seek comment on this proposal. Additionally, how, if at all, should our proposal account for the fact that Americans, particularly younger Americans, increasingly rely on texting to communicate?

6. Designating 988 appears to provide the fastest, and therefore best, path to implementing a 3-digit code. *First,* using a unique 3-digit code obviates the need to age an existing N11 code and should therefore reduce the overall implementation timeline, allowing the Commission to bring this important national resource to the public years earlier than alternatives. *Second,* consumer education campaigns for a unique 3-digit code would be simpler and likely more effective than those necessary for repurposing or expanding use of an existing N11 code. *Third,* using a wholly unique 3-digit code would be less disruptive to existing users and service providers. In particular, several of the existing N11 codes discussed in the record are in heavy use and to expand or repurpose any one of these N11 codes would require significant work and resources. *Fourth,* using 988 is less technically complicated than using other unique 3-digit dialing codes. 988 ''is not currently assigned as a geographic area code and therefore does not suffer the same problems surrounding repurposing an existing area code. Moreover, in order for a switch to detect a new 3-digit code, it helps if the code is not comprised of the leading digits (often called the ''prefix'') of a local number. A United States telephone number consists of three basic parts: a three-digit Numbering Plan Area (known as the area code) NPA, a three-digit Central Office (CO) code (NXX), and a four-digit line number. In total, it is ten digits and contains two three-digit codes and a four-digit line number (*e.g.,* (NPA) (NXX)–(XXXX)). And 988 has fewer corresponding central office code assignments across the U.S. than other codes the NANC considered, and thus would be less disruptive to adopt than those other codes. We seek comment on this proposal.

7. Turning to an evaluation of specific N11 options, we seek comment on the views of SAMHSA and other commenters in the record who assert that expanding 211 would reduce the quality of and overburden the current capacity of crisis or community services offered, resulting in increased hold times and delayed crisis intervention, and create confusion as to the purpose of the dialing code. We seek comment on the view, as explained in the FCC Staff Report, that repurposing 511 would endanger public safety because states and localities use 511 to enable drivers to receive information on road conditions during emergencies and information pertaining to AMBER and

other public safety-related alerts. We also seek comment on whether repurposing 511 would require states and localities to remove or replace roadway signage across the country that advertises 511 as a local travel information line, which could lengthen the timeline for implementation, and risk creating public confusion. We seek comment on the view of the FCC Staff Report that repurposing 611—an N11 code that receives at least 297 million calls annually—could result in a crisis hotline being flooded with misdirected calls, creating confusion and delay, and risking loss of life if a caller in need could not reach a counselor quickly. And we seek comment on the findings in the FCC Staff Report that expanding or repurposing any of the other N11 codes—311 (used for non-emergency police services), 411 (used for directory assistance services), 711 (used by persons with hearing or speech disabilities to make or receive telephone calls), 811 (used for notice of excavation activities), and 911 (used for emergency response)—is not feasible and/or desirable. We note that repurposing 811 would require legislative changes and, more importantly, could have significant implications for pipeline safety. Using any N11 code would appear to significantly delay implementation of a 3-digit dialing code for a national suicide prevention and mental health crisis hotline because each of these N11 codes is widely used. Moreover, repurposing one of these N11 codes would eliminate the current and important purpose of the code. We seek comment on these views.

8. In proposing to designate 988, we agree with the findings in the FCC Staff Report that the technical and operational issues associated with implementing 988 can be addressed more quickly than the time needed to repurpose an existing N11 code. In particular, we find that, as telephone companies have been upgrading their networks to IP, the vast majority of switches in the U.S. can accommodate 988 and the relatively small percentage of legacy switches that cannot currently support this code can be upgraded more easily and quickly than conducting the re-education efforts necessary to repurpose an existing N11 code. We seek comment on these views and on any other challenges of designating a 3-digit dialing code for the national suicide prevention and mental health crisis hotline of (and designating 988 in particular) and ways to mitigate them. Are there alternative proposals that would allow for implementation of a three-digit dialing code on a faster or otherwise more efficient timeline?

9. *Legal Authority.* Section 251(e)(1) of the Act gives the Commission ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States'' and provides that numbers must be made ''available on an equitable basis.'' Pursuant to this provision, the Commission retains ''authority to set policy with respect to all facets of numbering administration in the United States.'' The Commission's exclusive jurisdiction over numbering policy enables the Commission to act flexibly and expeditiously on important numbering matters.

10. We believe that this authority allows us to designate 988 as the 3-digit dialing code for a national suicide and mental health crisis hotline system and to require providers of telecommunications and interconnected VoIP services to take appropriate and timely action to implement this designation. The Commission has previously concluded that its numbering authority allows it to extend numbering-related requirements to interconnected VoIP providers that use telephone numbers. As the Commission has explained, ''the obligation to ensure that numbers are available on an equitable basis is reasonably understood to include not only how numbers are made available but to whom, and on what terms and conditions. Thus, we conclude that the Commission has authority under section 251(e)(1) to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers.'' We further believe that taking these steps will help to ensure that all Americans can receive efficient, swift access to, and reap the benefits of, critical suicide prevention and crisis services offered through the Lifeline. We seek comment on these views. Are there other sources of legal authority for this proposal?

B. Implementing 988 as the 3-Digit Dialing Code for a National Suicide Prevention and Mental Health Crisis Hotline

11. As the FCC Staff Report recognizes, ''suicide does not discriminate by geographic region, and to be effective, any code designated for a national suicide and mental health crisis hotline must be ubiquitously deployed.'' To that end, we propose requiring that *all* telecommunications carriers and interconnected VoIP providers implement 988 by transmitting all calls initiated by an end user dialing 988 to the current toll free access number for the Lifeline. We specifically seek comment on including one-way interconnected VoIP providers as well. Our proposed requirement would thus apply to those providers that access the public switched telephone network on an interconnected basis to reach all Americans. We seek comment on our proposal. Should we apply the requirements we adopt to a different set of entities and, if so, what set of entities and why?

12. *Software and Equipment Updates.* We recognize that in order to implement 988, telecommunications carriers and interconnected VoIP providers must make changes to their networks and institute new dialing requirements in certain circumstances. In particular, we recognize that certain legacy switches will require upgrades. The NANC has identified seven switch types that cannot support a new wholly unique 3-digit dialing code. Based on the legacy switch types identified by the NANC, Commission staff estimate that a little over 6,000 switches and remotes, or approximately 12% of the 50,615 switches and remotes listed in the April 2019 edition of the Local Exchange Routing Guide (LERG), cannot currently support 988 and would need to be upgraded. Of those, about 4,750 switches are DMS–10, EWSD, and DCO (*e.g.,* Nortel and Siemens) switch types. Some of these may have a direct upgrade path to IP, which we expect would enable use of 988 as a 3-digit dialing code at a relatively low cost per switch upgrade. However, approximately 1,400 switches may not have a clear upgrade path, necessitating that they be replaced. We seek comment on these estimates.

13. Depending on the type of switch currently used, implementation of 988 may require that providers take a number of steps to update their networks, which may include: Acquiring and installing new equipment; developing and testing software to implement 988; assigning 988 in the switch translations dialing plan to prevent other uses for that code; ensuring that switch routing elements correctly route 988; training staff; and deploying new software, such as adding logic to internal automated systems to implement any updates. After upgrading and replacing switches, vendors will then need to perform network translation changes and monitor network operations. We seek comment on these and any other implementation steps. Are there trunking and/or network capacity requirements that carriers and providers would need to address in order to carry the expected

increase in suicide hotline calls? Are there other implementation steps that will be necessary? We also ask commenters, particularly service providers, to provide information on the most expeditious and effective path toward achieving ubiquitous deployment of 988 across all networks.

14. *988 Call Routing.* We propose requiring telecommunications carriers and interconnected VoIP providers to route 988 calls to 1–800–273–8255 (TALK), the current toll free access number for the Lifeline and the Veterans Crisis Line. Doing so appears to provide the most efficient means to establish 988 as a national suicide prevention hotline. We seek comment on this proposal.

15. Whether to route calls to a central destination or to localized call centers will affect the 988 implementation timeline and cost. Because it offers a streamlined approach using existing infrastructure, we believe our proposal is likely to be faster and more cost effective than the alternatives of either setting up a new routing database or entering local translations, as is used for 911 calls, which are routed via a direct local translation to a 10-digit number of a local police station or Public Safety Answering Point (PSAP) based on the location of the calling number. The NANC concluded that, for service providers, routing calls is likely to be ''more efficient if the call is terminated to a national or centralized call center as opposed to a local or decentralized call center network.'' The toll free access number for the Lifeline, 1–800–273–8255 (TALK), is a national call center that currently serves to route calls to local crisis centers across the country. We expect that routing calls to 1–800–273–8255 (TALK) will be more efficient than establishing a new call center to perform the same functions, or requiring direct local translations for each local crisis center. We seek comment on this analysis.

16. Further, service provider routing of 988 calls to 1–800–273–8255 (TALK), rather than localized call centers, may facilitate access to the Lifeline and the Veterans Crisis Line by reducing the likelihood that calls will be misdirected following any changes to the local crisis center network. If the Lifeline were to add new call centers or consolidate existing call centers, for example, routing changes could be implemented by updating the centralized 800 translations service and thereby avoid having to reprogram local switches, which if done improperly, could result in misdirected calls. We seek comment on this view, on other benefits of this call routing proposal, and on the impact this proposal would have on the effectiveness of the Lifeline and Veterans Crisis Line once 988 is implemented. For example, would it impact the ability of the Lifeline to route calls to the closest local crisis center, as the Lifeline does currently? Would our proposal affect the operations of the Veterans Crisis Line? Are there other models that would provide better functionality to users of the hotline? We also seek comment on whether SAMHSA or the VA and/or the existing national network of crisis centers that currently comprise the Lifeline and the Veterans Crisis Line will need to make changes to accommodate this proposal, and the length of time and costs that such changes will entail.

17. We seek comment on any drawbacks or costs associated with this proposal. TGM Consulting, for example, cautions that some TDM switches may only be able to translate a code like 988 into a local or geographic number. Is this accurate and, if so, how many such switches are in use today and what would be required to upgrade them? Should we carve out an exemption for such switches and require them instead to route 988 calls to a geographic number? Are there other solutions that would allow these switches to direct 988 calls to 1–800–273–8255 (TALK)? We seek comment on any other issues related to this proposed call routing approach.

18. In the alternative, we seek comment on requiring service providers to route 988 calls directly to a local Lifeline or Veterans Crisis Line call center rather than to 1–800–273–8255 (TALK). In seeking comment on this alternative approach, we note that 1–800–273–8255 (TALK) currently provides access to both the Lifeline and the Veterans Crisis Line. How would this functionality be maintained under a direct routing approach? Would the Lifeline still be able to route calls to a backup center, as is currently done if a local crisis center experiences a service disruption or excessive call volume? How, if at all, would this alternative approach affect access to the Lifeline and Veterans Crisis Line? In this scenario, would routing databases need to be created to route 988 calls to such numbers? If so, what would such databases offer and who would own, maintain, and distribute such databases? How would this impact our proposed timeline and costs for implementation? What are the challenges in routing 988 calls directly to a local or regional crisis center as opposed to a single toll free number? Would such an approach offer any benefits over our proposal? We seek comment on these and any other relevant issues.

19. *Dialing in Certain Geographic Areas.* We next seek comment on how to address areas that both use 7-digit dialing and where 988 is in use as an NXX code. In such areas, a switch would need to distinguish between calls made to the suicide prevention and mental health crisis hotline and the assigned 988 central office code. Commission staff analysis of NANPA data shows that as of September 2019, there are 95 area codes that both still use 7-digit dialing and have assigned 988 as an NXX prefix. The number 95 is arrived at by looking at how many NPAs use 988 (a total of 178) and then seeing which of those are located in a 7-digit dialing area code. We seek comment on whether this is an accurate estimate of area codes that would need to implement a solution.

20. One solution is the introduction of a dialing delay after 988 is entered—the switch would recognize that the caller is dialing 988 rather than a local 988–XXXX number when no digits are entered after 988. The downside with such an approach, as the NANC has noted, is that such a dialing delay ''could result in the caller terminating the call because he thinks the call failed, or [result in] unrelated calls being routed to the hotline when a 7-digit number is dialed too slowly.'' We seek comment on this and any other potential concerns with this approach.

21. Alternatively, requiring 10-digit dialing would enable the switches to distinguish between calls made to the national suicide prevention hotline system and those made to a number beginning with a 988 prefix. With 10-digit dialing, a caller must first input the 3-digit area code before entering a 7-digit number. Thus, an individual attempting to call a 988–XXXX number would first have to input the area code (*i.e.,* XXX–988–XXXX), avoiding the problem of calling the hotline in error.

22. We seek comment on whether the Commission should mandate one particular solution as part of our designation and implementation of 988. The Commission has mandated 10-digit dialing in cases of area-code relief, which involves establishing a new area code for a geographic region after the existing area code runs out of NXX prefixes. And any transition to 10-digit dialing could likely be achieved in parallel within the other work to implement 988 and that the transition, based on previous conversions from 7 to 10-digit dialing, can be completed within a year. Indeed, in the last decade, states such as Connecticut and Nebraska moved to mandatory 10-digit dialing within a period of one year. Should we require states to transition to 10-digit

dialing in areas where the 988 exchange has been assigned as an NXX prefix in area codes that still have 7-digit dialing, as the Commission has done for area-code-relief implementation? Alternatively, should we leave it to state commissions to decide whether to mandate 10-digit dialing rather than a dialing delay for any given area code?

23. *Timeframe.* We propose that all telecommunications carriers and interconnected VoIP providers be required to implement 988 in their networks within 18 months. We believe this timeframe would provide sufficient time for providers to make any necessary changes to equipment and software, and to institute new dialing requirements, if necessary. To begin with, we understand that modern IP switches can already accommodate 988 today or do so with minor software updates. In this regard, we observe that most providers are already actively upgrading their equipment to IP technology given the technological advances in the marketplace and the advanced services that consumers are demanding. Moreover, we believe that 18 months is sufficient time to upgrade the approximately 12% of legacy switches that will need such upgrades and we anticipate that the majority of technical upgrades necessary to switches and systems can be done in parallel with other work to implement 988. We seek comment on this proposal.

24. Alternatively, should we adopt a shorter or longer timeframe for implementation such as one year or two years, and if so, why? Should the Commission consider the size of a carrier's network, including the need to simultaneously replace multiple legacy switches, when determining the appropriate implementation timeline? Further, does the use of legacy switch technology warrant a phased-in approach and, if so, how should that be implemented? Are there risks associated with such an approach (*e.g.,* confusion among the public regarding the availability of 988)? Would such an approach inappropriately reward carriers that have not invested in their networks to prepare for the IP transition in a timely manner? How many such switches reside on the networks of rural local exchange carriers, if any, and what unique barriers would such carriers face in implementing 988 in a timely manner? Are there other challenges that service providers may face that we should consider in determining the appropriate timeframe for implementation?

25. *Costs.* We propose that all providers bear their own costs for executing the upgrades necessary to be able to implement 988 as a 3-digit code for a national suicide prevention and mental health crisis hotline. This approach encourages efficiency in implementation and avoids unnecessary administrative costs. In turn, section 251(e)(2) of the Act states that ''[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis.'' The Commission is only required to apply section 251(e)(2) in situations involving some type of numbering administration arrangement, where for instance, the Commission hires a third party to develop a database for industry use. Here, that circumstance is not present. Therefore, we believe the section 251(e)(2) requirements do not apply. Even if section 251(e)(2) applies, we believe it is satisfied if we require each provider to bear its own costs because each provider's costs will be proportional to the size and quality of its network. We seek comment on this proposal.

C. Assessing the Benefits and Costs of Designating and Implementing 988

26. We expect that designation and implementation of 988 as a simple, easy-to-remember 3-digit dialing code nationwide will increase the convenience and immediacy of access to life-saving suicide prevention and mental health crisis services. By becoming a part of the existing framework of the Lifeline and Veterans Crisis Line, we expect that the 988 dialing code will ''make it easier for Americans in crisis to access potentially life-saving resources.''

27. In the FCC Staff Report, Commission staff conducted a cost-benefit analysis of designating 988 as the 3-digit dialing code for a national suicide prevention and mental health crisis hotline. The cost-benefit analysis used information from the NANC, SAMHSA, the VA, and publicly available data. Commission staff estimated the total costs for the first year at $570 million, costs for the second year at approximately $175 million, and subsequent years at approximately $50 million annually. In estimating the benefits of the 3-digit dialing code, the analysis used the Department of Transportation's Value of a Statistical Life. Staff determined that if the 3-digit code were to reduce suicide mortality risk by a fraction of one percent, it would be well worth its cost. We acknowledge the difficulty in attempting to quantify the value of mortality reductions and use Value of a Statistical Life only as a practical approach to conducting this necessary analysis. Based on this analysis, Commission staff concluded that the benefits of designating 988 as the dialing code for a national suicide prevention and mental health crisis hotline outweighed the costs. While the FCC Staff Report took a broad view and accounted for costs that may be incurred by a variety of entities from service providers to crisis centers, here we focus on the costs and benefits of our proposed rules to require covered providers to implement 988.

28. If the new 988 dialing code can deter one of every thousand Americans who would otherwise attempt suicide from harming themselves—a 0.1% reduction in suicides and suicide attempts—we expect the estimated benefit of $2.4 billion in present value over the course of ten years will exceed the estimated, one-time $367 million in present value implementation cost to service providers. As discussed below, the estimated costs that service providers will incur due to implementation include $300 million for upgrading and replacing switches and $92.5 million for translation updates. For simplicity, we assume the total estimated cost of $392.5 million will be incurred one year into the future (rather than incurred throughout the 18-month transition period) and then discount back to the present day using a discount rate of 7%. The discounted value is equal to $367 million ($392.5 million/1.07 = $367 million). If providers choose to pass these costs on to customers, we expect any increased costs to consumers to be minimal, and we believe that this potential added cost is worth the benefit. We seek comment on this preliminary conclusion that benefits surpass costs and the estimation methods described below.

29. *Estimated Benefits of Implementing 988.* The Lifeline and the Veterans Crisis Line provide proven, effective intervention services for Americans in crisis. We anticipate that integrating the 988 dialing code within this existing framework will allow callers to continue to benefit from experienced counselors, while also expanding access with the availability of a simple, easily remembered number to dial for those in need. Both the Lifeline and the Veterans Crisis Line have seen increased call volumes since their inception. SAMHSA reports that calls to the Lifeline more than doubled over a 5-year period—from under 1 million in 2012 to over 2 million in 2017—and expects the number of calls to continue to increase. Similarly, the call volume to the Veterans Crisis Line has increased from just under 500,000 calls in fiscal year 2014 to over 700,000 in fiscal year 2017—an increase of more than 40% in three years.

30. Studies have found that access to crisis counselors helps reduce suicides. A recent SAMHSA-funded study found that for crisis-center callers at imminent risk of committing suicide, counselors and callers were able to cooperatively reduce the risk of suicide without police or ambulance services in 55% of calls, counselors sent emergency responders with the caller's cooperation in 19.1% of the cases, and counselors sent emergency services without collaboration for the remaining 25.9% of calls. Studies of suicidal-caller survey responses in the UK found reductions as large as 25% in callers wanting to self-harm after speaking with hotline counselors. By facilitating access to crisis counselors, the 988 dialing code would likely help further reduce suicides.

31. Estimating a precise reduction in suicide incidence, however, is difficult. The alternative is to evaluate plausible suicide-reduction scenarios. In 2017, 47,000 Americans committed suicide, while more than 1.4 million American adults attempted suicide. If the implementation of 988 results in greater access to a nationwide network of suicide prevention and mental health services—in the way adopting 911 transformed emergency services provision—suicides may drop by 10% or more, saving at least 4,700 lives a year. Due to the lack of before-and-after statistics, the transformative impact of 911 on emergency service provision is difficult to capture in a snapshot; nevertheless, emergency response has dramatically improved. Ambulance, fire, police, and poison control centers have coalesced around 911 to dispatch the appropriate emergency service in response to one 3-digit call. Each minute saved in the sequence of recalling, dialing, and dispatching emergency services reduces response times, which saves lives. Commission staff estimated that a one-minute reduction in emergency response time saves 10,120 lives annually. A more modest decline in suicides of 1% would save 470 lives a year. A marginal decline of 0.1% would save 47 lives a year. Multiplying suicides prevented by the value of mortality reduction last used by the Commission (*i.e.,* the value of a statistical life (VSL)) yields a range of annual benefits corresponding to the suicide reductions achieved (see Table 2):

TABLE 2—ESTIMATED ANNUAL BENEFITS FROM SUICIDE REDUCTIONS

VSL 2018	10% suicide reduction	1% suicide reduction	0.1% suicide reduction
$9.6 million	$45.1 billion (4,700 * $9.6 million)	$4.51 billion (470 * $9.6 million)	$451 million (47 * $9.6 million).

32. We propose applying the most conservative assumption of a 0.1% reduction in suicides and estimating total annual benefits of implementing our 988 dialing code proposal to be $451 million. Conservatively assuming the annual benefits of our actions do not accrue until the start of the third year of our action (to account both for a technical transition and a consumer education campaign) and looking out up to ten years, we estimate the present value of the total benefits from implementing a 988 dialing code to be $2.4 billion. We seek comment on this estimate. This calculation discounts the annual benefits for each of the eight years (from three to ten years in the future) back to the present using a discount rate of 7%. If, instead, a 3% discount rate is used, the estimated benefits are $3 billion. Benefits under the 3% discount rate exceed the estimated discounted costs of $381 million.

33. Are there alternative methods of estimation that we should consider? What historic and more recent data sources, if any, are available? We seek comment on the benefits of facilitating access to the existing Lifeline and Veterans Crisis Line structure. We also seek comment on the benefits of facilitating access to the Lifeline should additional hotline services targeted at at-risk populations like LGBTQ youth be added. For example, what are the benefits if a new interactive voice response menu option is pursued or if other specialized training for call takers to handle LGBTQ youth calls or calls from other at-risk populations becomes the norm? We also seek comment on other benefits of implementing 988, such as savings in emergency responder costs, and the dollar value of these additional benefits.

34. *Estimated Costs Incurred by Service Providers.* To implement 988 as the 3-digit dialing code, service providers must incur certain one-time monetary outlays to make updates to switches and replace legacy equipment. First, as noted by the NANC, ''every originating switch in the United States and its territories would require translation updates.'' The NANC Report estimates these necessary updates will result in a one-time cost to service providers of approximately $92.5 million. The NANC arrived at this figure by multiplying the total number of dial plan changes (550,812) by the estimated time per dial plan change (1.6 hours), then multiplying that product by the hourly Telecommunications Engineering Contract rate of $105. We seek comment on the accuracy of the $92.5 million estimate for switching translation costs. We believe there are no recurring costs associated with implementation of 988 and we seek comment on this assumption.

35. Second, the NANC Report notes ''some wireline switches may be unable to support any new 3-digit dialing code that is not an N11 code.'' Those switches unable to process 988 must be upgraded or replaced. In the FCC Staff Report, Commission staff estimated switch upgrades and replacements will result in a one-time costs to service providers of approximately $300 million. We seek comment on this estimate. For the approximately 4,750 switches with a direct upgrade path to IP, we expect a relatively low cost of approximately $30,000 per switch. We estimate an average per switch replacement cost of $100,000 for the approximately 1,400 switches without a clear upgrade path. Upgrading or replacing all switches, therefore, would

cost ($100,000 × 1,400 full upgrades =) $140 million and ($30,000 × 4,750 field upgrades =) $142.5 million, for a total cost of $282.5 million which we round up to $300 million. Commission staff estimate that a little over 6,000 switches and remotes listed in the April 2019 edition of the LERG cannot support 988. We seek comment on the accuracy of the estimate of the number of switches and remotes that cannot support 988. Is this estimate correct? If not, what is the correct number? Is $300 million over 18 months a reasonable estimate for the cost of replacing these legacy switches? What is the remaining useful life of these switches? Does the replacement cost change with our timeline for implementing 988? We recognize that some providers do not want to upgrade existing switches prior to the end of their life-cycle. However, we anticipate that upgrades to legacy switches will have significant offsetting benefits beyond the immediate context of this proceeding, such as providing consumers with the benefits of more advanced, IP-based services as well as new business opportunities for providers. How should we account for those benefits in calculating the actual cost of upgrading these networks?

36. The NANC Report mentions other possible costs of implementing 988 without offering specific estimates. For example, the NANC Report notes that 988 implementation costs will vary if calls are routed directly to a national or centralized call center or to a local or regional call center. We seek comment on routing costs. If service providers route 988 calls to 1–800–273–8255 (TALK), what are the costs associated with such routing? How do such costs compare to other alternatives, such as routing to a local or regional call center? We seek comment on the types and amounts of any other implementation costs to service providers. Such implementation costs could include cell site reprogramming cited in the Suicide Hotline Improvement Act, Sec. 3(b)(2)(i)(II). In the FCC Staff Report, staff estimated in response to Sec. 3(b)(2)(i)(II) that approximately $50 million in additional annual funding would be needed to handle additional calls and that would be covered by federal, state, and local governments. In this regard, we caution commenters that we do not intend to consider benefits or costs that may be important to the Lifeline or the Veteran's Crisis Line as a whole but fall outside of the Commission's specific numbering oversight role, such as those related to advertising or educational outreach to increase the public's awareness of the availability of 988.

37. To accommodate 988, areas currently using seven-digit dialing will need to either transition to 10-digit dialing or implement post-dial delay. What are the costs and benefits of these solutions?

38. In sum, we believe that designating 988 as the national suicide prevention and mental health hotline dialing code will facilitate access to life-saving suicide prevention services. We further believe that reductions in suicides and suicide attempts will result in estimated benefits of $2.4 billion in present value over the course of ten years, exceeding the estimated one-time implementation cost to service providers of $367 million in present value, and that the proposals in this Notice complement ongoing efforts to deter suicide and provide support to Americans in crisis. We seek comment on our analysis and on the costs and benefits of any alternative proposals.

II. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (Notice).* The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Notice.* The Commission will send a copy of the *Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

40. Pursuant to the National Suicide Hotline Improvement Act of 2018 (Suicide Hotline Improvement Act), the *Notice* proposes to designate a 3-digit dialing code for a national suicide and mental health crisis hotline system, and also proposes to designate 988, specifically, as the 3-digit dialing code to be used. The *Notice* also proposes to require that, within 18 months, all telecommunications carriers and interconnected VoIP service providers transmit calls initiated by dialing 988 to the current toll free access number for the National Suicide Prevention Lifeline. The *Notice* seeks comment on all of these proposals, and also seeks comment on issues pertaining to ubiquitous nationwide deployment of 988, including whether we should mandate a 10-digit dialing code in places where 988 exchange has been assigned in area codes that still have seven-digit dialing, or nationwide; on our proposal that service providers route 988 calls to 1–800–273–8255 (TALK); on various other technical considerations associated with use of 988 as a 3-digit dialing code; and on the costs and benefits to implementing 988.

41. The Commission believes that the proposals in the *Notice* to designate 988 as the 3-digit dialing code for a national suicide and mental health crisis hotline system will help increase the effectiveness of suicide prevention efforts, help enhance public awareness of available suicide prevention and mental health crises services, ease access to crisis services, support our federal partners by simplifying such access, and reduce the stigma surrounding suicide and mental health conditions.

B. Legal Basis

42. The Suicide Hotline Improvement Act tasks the Commission with examining the effectiveness of the current National Suicide Prevention Lifeline and the feasibility of designating a 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system. Section 251(e)(1) of the Communications Act, as amended, gives the Commission ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States'' and provides that numbers must be made ''available on an equitable basis.'' The Commission proposes that this authority allows it to designate 988 as the 3-digit dialing code for a national suicide and mental health crisis hotline system, and to require providers of telecommunications and interconnected Voice over internet Protocol (VoIP) services to take appropriate and timely action to implement this requirement.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

43. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,''

and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

44. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry-specific size standards for small businesses that are used in the regulatory-flexibility analysis, according to data from the SBA's Office of Advocacy, a small business in general is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.2 million businesses.

45. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field . . . .'' Nationwide, as of March 2019, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

46. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 37,132 general purpose governments (county, municipal, and town or township) with populations of less than 50,000, and 12,184 special-purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that a majority these governments have populations of less than 50,000. Based on this data, we estimate that at least 49,316 local-government jurisdictions fall in the category of ''small governmental jurisdictions.''

47. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small-business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year and that of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

48. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that 3,117 firms operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

49. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small-business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, 1,307 Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard, the majority of incumbent LECs can be considered small entities.

50. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small-business size standard specifically for these service providers. The most appropriate NAICS Code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Additionally, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

51. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small-business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees) and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent

LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

52. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

53. *Local Resellers.* The SBA has developed a small-business size standard for Telecommunications Resellers that includes Local Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small-business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Local Resellers are small entities.

54. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small-business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small-business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

55. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small-business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

56. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small-business size standards.

57. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite), and under the most appropriate size standard for this category, such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

58. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small-business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $ 35 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 42

firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

59. The *Notice* proposes a rule to implement 988 as the 3-digit dialing code for a national suicide prevention and mental health crisis hotline within an 18 month timeframe. The proposed rules do not contain any new or additional reporting, recordkeeping, or other compliance obligations.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

60. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

61. In the *Notice,* the Commission seeks comment on alternatives to the proposals and on alternative ways of implementing the proposals. We expect to take into account the economic impact on small entities, as identified in comments filed in response to the *Notice* and this IRFA, in reaching our final conclusions and promulgating rules in this proceeding. As discussed in the *Notice,* the Commission has initiated this proceeding to solicit comments on, among other things, the costs associated with implementing our proposals, namely, the implementation of 988 as the 3-digit dialing code for a national suicide prevention and mental health crisis hotline.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

62. None.

III. Procedural Matters

63. *Ex Parte Rules.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

64. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this *Notice of Proposed Rulemaking.* The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Notice of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

65. *Comment Filing Procedures.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

66. *People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), 202–418–0432 (tty).

67. *Paperwork Reduction Act of 1995 Analysis.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified

information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

68. *Contact Person.* For further information about this rulemaking proceeding, please contact Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0388 or *michelle.sclater@fcc.gov.*

IV. Ordering Clauses

69. *It is ordered,* pursuant to sections 201 and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 251, that the Notice of Proposed Rulemaking in WC Docket No. 18–336 *is adopted*.

70. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 52 as follows:

PART 52—NUMBERING

■ 1. The authority citation for part 52 remains as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 332, unless otherwise noted.

■ 2. Amend part 52 by adding subpart E, consisting of § 52.200, to read as follows:

Subpart E—Universal Dialing Code for National Suicide Prevention and Mental Health Crisis Hotline System

Sec.
52.200 Designation of 988.

■ 3. Add § 52.200 to read as follows:

§ 52.200 Designation of 988 for a National Suicide Prevention and Mental Health Crisis Hotline.

(a) Beginning [EFFECTIVE DATE OF FINAL RULE], 988 shall be the 3-digit dialing code for a national suicide prevention and mental health crisis hotline system maintained by the Assistant Secretary for Mental Health and Substance Use and the Secretary of Veterans Affairs.

(b) All telecommunications carriers and interconnected Voice over internet Protocol (VoIP) providers shall transmit all calls initiated by an end user dialing 988 to the current toll free access number for the National Suicide Prevention Lifeline, presently 1–800–273–8255 (TALK).

(c) All telecommunications carriers and interconnected VoIP providers shall complete all changes to their systems that are necessary to implement the designation of the 988 dialing code by [DATE 18 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE].

[FR Doc. 2019–28429 Filed 1–14–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 200106–0004]

RIN 0648–BJ37

Take of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from University of California Santa Cruz's Partnership for Interdisciplinary Studies of Coastal Oceans (UCSC/PISCO) for authorization to take marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 14, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0002, by any of the following methods:

• *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0002,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Availability

A copy of UCSC/PISCO's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the UCSC/PISCO's rocky intertidal research activities in Oregon and California.

We received an application from the UCSC/PISCO requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to visual disturbance of pinnipeds during research activities and use of research equipment. Please see ''Background'' below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the *Proposed Mitigation* section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding UCSC/PISCO's rocky intertidal research activities. These measures include:

• Required implementation of mitigation to minimize impact to pinnipeds and avoid disruption to dependent pups including several measures to approach haulouts cautiously to minimize disturbance, especially when pups are present.

• Required monitoring of the research areas to detect the presence of marine mammals before initiating surveys.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are issued, and notice is provided to the public.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to, in shorthand, as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of a proposed rule (and subsequent LOAs)) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations (IHAs) with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed rule qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this proposed rule prior to concluding our NEPA process or making a final decision on the request.

Summary of Request

On August 12, 2019, NMFS received a request from UCSC/PISCO for a proposed rule and LOA to take marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. After a series of revisions, the application was deemed adequate and complete on October 8, 2019. UCSC/PISCO's request is for take of a small number of California sea lion (*Zalophus californianus*), Harbor seals (*Phoca vitulina richardii*), Northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*), by Level B harassment only. Neither UCSC/PISCO nor NMFS expects serious injury or mortality, or Level A harassment, to result from this activity.

NMFS previously issued seven IHAs to UCSC/PISCO for this work (77 FR 72327, December 5, 2012; 78 FR 79403, December 30, 2013; 79 FR 73048, December 9, 2014; 81 FR 7319, February 11, 2016; 82 FR 12568, March 6, 2017; 83 FR 11696, March 16, 2018; 84 FR 17784, April 26, 2019). UCSC/PISCO complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the *Potential Effects of the Specified Activity on Marine Mammals* and their Habitat and *Estimated Take* sections.

Description of Proposed Activity

Overview

UCSC/PISCO proposes to continue rocky intertidal monitoring work that has been ongoing for over 20 years. UCSC/PISCO focuses on understanding the nearshore ecosystems of the U.S. west coast through a number of interdisciplinary collaborations. The program integrates long-term monitoring of ecological and oceanographic processes at dozens of sites with experimental work in the lab and field. Research is conducted throughout the year along the California and Oregon coasts and will continue indefinitely. Researchers accessing and conducting research activities on the sites may occasionally cause behavioral disturbance (or Level B harassment) of four pinniped species. UCSC/PISCO expects that the disturbance to pinnipeds from the research activities will be minimal and will be limited to Level B harassment.

Dates and Duration

UCSC/PISCO's research is conducted throughout the year. Most sites are sampled one to two times per year over a 1 to 2-day period (4–6 hours per site) during a negative low tide series (when tides are lower than the average). Due to the large number of research sites, scheduling constraints, the necessity for negative low tides and favorable weather/ocean conditions, exact survey dates are variable and difficult to predict. Some sampling may occur in all months of the calendar year. Over the course of this five-year authorization UCSC/PISCO expects approximately 300 days of survey effort. UCSC/PISCO's current IHA expires April 11, 2020, so these regulations are requested to be effective April 12, 2020 through April 11, 2025.

Specific Geographic Region

Sampling sites occur along the California and Oregon coasts. Community Structure Monitoring survey sites range from Ecola State Park near Cannon Beach, Oregon to Government Point located northwest of Santa Barbara, California. Biodiversity survey sites extend from Ecola State Park south to Cabrillo National Monument in San Diego County, California. Exact locations of sampling sites can be found in Table 1 and the maps of UCSC/PISCO's application.

Detailed Description of Specific Activity

Community Structure Monitoring surveys involve the use of permanent photoplot quadrats, which target specific algal and invertebrate assemblages (*e.g.* mussels, rockweeds, barnacles). Each photoplot is photographed and scored for percent cover. The Community Structure Monitoring approach is based largely on surveys that quantify the percent cover and distribution of algae and invertebrates that constitute these communities. This approach allows researchers to quantify both the patterns of abundance of targeted species, as well as characterize changes in the communities in which they reside. Such information provides managers with insight into the causes and consequences of changes in species abundance. There are a total of 48 Community Structure Monitoring sites, each of which will be visited one to two times per year (see Table 1 of the application for specifics for each site) under the proposed regulations and LOA and surveyed over a 1-day period during a low tide series.

Biodiversity Surveys are part of a long-term monitoring project and are conducted every 3–5 years across 143 established sites. These Biodiversity Surveys involve point contact identification along permanent transects, mobile invertebrate quadrat counts, sea star band counts, and tidal height topographic measurements. Many of the Biodiversity Survey sites are also Community Structure sites. Biodiversity survey sites will be sampled zero to five times during the course of these regulations and LOA (see Tables 3–6 in the application for details of expected survey frequency).

The intertidal zones where UCSC/PISCO conducts intertidal monitoring are also areas where pinnipeds can be found hauled out (temporarily leaving the water) on the shore at or adjacent to some research sites. Pinnipeds have been recorded at 63 of the survey sites. Accessing portions of the intertidal habitat at these locations may cause incidental Level B (behavioral) harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another or during occasions when they replace survey marker bolts using a hand drill. No motorized equipment is involved in conducting these surveys.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence at survey sites in California and Oregon and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2018 Pacific Marine Mammal SARs (Carretta *et al.* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE STUDY AREAS

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-; N	257,606 (n/a; 233,515; 2014).	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-; N	41,638 (n/a; 41,638; 2015).	2,498	108
Family Phocidae (earless seals):						

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE STUDY AREAS—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Harbor seal	*Phoca vitulina richardii*	California/Oregon/Washington.	-; N	30,968 (0.157; 27,348; 2012 [CA])/. UNK (n/a; n/a [OR/WA][4].	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California	-; N	179,000 (n/a; 81,368; 2010).	4,882	8.8

1—Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
2—NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.
3—These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.
4—The most recent abundance estimate is >8 years old, there is no current estimate of abundance available for this stock.

All species that could potentially occur in the proposed survey areas are included in Table 1. As described below, all four species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

In addition, the southern sea otter may be found from San Francisco south to the Channel Islands. However, they are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

California Sea Lions

California sea lions (*Zalophus californianus*) are distributed along the west coast of North America from British Columbia to Baja California and throughout the Gulf of California. Breeding occurs on offshore islands along the west coast of Baja California and the Gulf of California as well as on the California Channel Islands. There are three recognized California sea lion stocks (U.S. stock, Western Baja stock, and the Gulf of California stock) with the U.S. stock ranging from the U.S./Mexico border into Canada. Although there is some movement between stocks, U.S. rookeries are considered to be isolated from rookeries off of Baja California (Barlow *et al.* 1995).

California sea lions were hunted for several thousand years by indigenous peoples and early hunters. In the early 1900s, sea lions were killed in an effort to reduce competition with commercial fisheries. They were also hunted commercially from the 1920–1940s. Following the passage of the MMPA in 1972, as well as limits on killing and harassment in Mexico, the population has rapidly increased (Reeves *et al.* 2002). Declines in pup production did occur during the 1983–84, 1992–93, 1997–98, and 2003 El Niño events, but production returned to pre- El Niño levels within 2–5 years (Carretta *et al.* 2016). In 2013, NOAA declared an Unusual Mortality Event (UME) due to the elevated number of sea lion pup strandings in southern California. The cause of this event is thought to be nutritional stress related to declines in prey availability. This UME is on-going. They have been observed in the project vicinity at 28 of the research sites (see application Table 4).

Steller Sea Lion

Steller sea lions (*Eumetopias jubatus*) range along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Large numbers of individuals widely disperse when not breeding (late May to early July) to access seasonally important prey resources (Muto *et al.* 2019). In 1997 NMFS identified two distinct population segments (DPSs) of Steller sea lions under the ESA: A Western DPS and an Eastern DPS (62 FR 24345, May 5, 1997). The Eastern DPS is not ESA listed, the Western DPS is. For MMPA purposes the Eastern DPS is called the Eastern U.S. stock and the Western DPS is called the Western U.S. stock. The Steller sea lions along the Oregon and California coasts are part of the Eastern Stock (and DPS). Steller sea lions are rare in the research areas. They have only been observed in the project vicinity at Cape Arago in 2009 and have not been observed during this research project since then.

Northern Elephant Seal

Northern elephant seals (*Mirounga angustirostris*) range widely throughout the eastern Pacific for most of the year to forage. They return to haulout locations along the west coast of the continental United States including the Channel Islands, the central California coast, and islands off Baja California, to breed and molt. Breeding occurs from December through early spring, with males returning to haul-out locations earlier than females to establish dominance hierarchies. Molting occurs from late April to August, with juveniles and adult females returning earlier than adult males (Reeves *et al.* 2002). Due to very little movement between colonies in Mexico and those in California, the California population is considered to be a separate stock (Carretta *et al.* 2019).

This species was hunted by indigenous peoples for several thousand years and by commercial sealers in the 1800s. By the late 1800s, the species was thought to be extinct, although several were seen on Guadalupe Island in the 1880s and a few dozen to several hundred survived off of Mexico (Stewart *et al.* 1994). The population began increasing in the early 1900s and progressively colonized southern and central California through the 1980s (Reeves *et al.* 2002). The species abundance has grown at 3.8 percent annually since 1988 (Lowry *et al.* 2014).

They have been observed in the project vicinity at 13 of the research sites (see application Table 5).

Pacific Harbor Seal

Pacific harbor seals (*Phoca vitulina richardii*) inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They are divided into two subspecies: *P.* v. *stejnegeri* in the western North Pacific, near Japan, and *P.* v. *richardii* in the northeast Pacific Ocean. The latter subspecies, includes two MMPA stocks in the project area: The Oregon and Washington Coast stock in the outer coastal waters of Oregon and Washington states, and the California stock.

In Oregon there are over 40 haulout sites (Brown *et al.* 2005) while in California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.* 2005). Harbor seals mate at sea, and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July.

A 1999 census of the Oregon/Washington harbor seal stock found 16,165 individuals, of which 5,735 were in Oregon (Carretta *et al.* 2016). The population was estimated to number 24,732 individuals in the Oregon/Washington stock (Carretta *et al.* 2016). However, the most recent abundance estimate for the Oregon/Washington stock is over 8 years old, therefore the abundance estimate for this stock is considered unofficial. They have been observed in the project vicinity at 49 of the research sites (see application Table 3).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The appearance of researchers may have the potential to cause Level B behavioral harassment of any pinnipeds hauled out at sampling sites. Although marine mammals are never deliberately approached by survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent study plots. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (*e.g.,* turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that flee some distance or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking (see below). Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.* 1985; Suryan and Harvey 1999). The Hawaiian monk seal (*Neomonachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon 1972). Moreover, in one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon 1962).

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. The three situations are: (1) Falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of elephant seal pups by large males during a stampede. UCSC/PISCO researchers have only recorded one instance of stampeding, which occurred in 2013.

Because hauled out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (*e.g.,* cliffs). Shoreline habitats near the survey areas tend to consist of steeply sloping rocks with unimpeded and non-obstructed access to the water. Disturbed, hauled out animals in these situations are likely to move toward the water slowly without risk of unexpectedly falling off cliffs or encountering barriers or hazards or that would otherwise prevent them from leaving the area. Therefore, research activity poses no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations and thus there is no risk that these disturbances will result in Level A harassment or mortality/serious injury.

Few pups are anticipated to be encountered during the proposed monitoring surveys. A small number of harbor seal, northern elephant seal and California sea lion pups, however, have been observed during past years. Though elephant seal pups are occasionally present when researchers visit survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence than the other two species. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. Pups are also typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. Finally, the caution used by researchers in approaching sites generally precludes the possibility of behaviors, such as stampeding, that could result in extended separation of mothers and dependent pups, or trampling of pups.

The only habitat modification associated with the proposed activity is the placement of permanent bolts and temporary sampling equipment in the intertidal zone. The installation of bolts and sampling equipment is conducted under the appropriate permits (National Marine Sanctuary, California State Parks). Once a particular study has ended, the respective sampling equipment is removed; the bolts remain. No trash or field gear is left at a site. Sampling activities are also not expected to result in any long-term modifications of haulout use or abandonment of haulouts since these sites are only visited one to two times per year, which minimizes repeated disturbances. During periods of low tide (*e.g.,* when tides are 0.6 m (2 ft) or less and low enough for pinnipeds to haulout), we would expect the pinnipeds to return to the haulout site within 60 minutes of the disturbance (Allen *et al.* 1985). The effects to pinnipeds appear at most to displace the animals temporarily from their haulout sites, and we do not expect, and have not observed during previous authorizations, that the pinnipeds would permanently abandon a haulout site during the conduct of rocky intertidal surveys. Additionally, impacts to prey species from survey activities are not anticipated. Thus, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to researchers. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Take estimates are based on historical marine mammal observations from 2013–2018 at each site from previous UCSC/PISCO survey activities. Marine mammal observations are done as part of research site observations, which include notes on physical and biological conditions at the site, completed on each study day. From 2013–2018 observations were categorized on a four point scale:

- 0 = observation by researchers from a distance, no reaction by pinniped
- 1 = pinniped reacted to presence of researchers with movement <1 meter
- 2 = pinniped reacted to presence of researchers with short movement of 1–3 meters
- 3 = pinniped flushed to the water or moved >3 meters in retreat

A marine mammal is counted as an ''encounter'' (at least level 0 on the above scale) if it is seen on access ways to the site, at the site, or immediately up-coast or down-coast of the site, regardless of whether that animal was considered a ''take'' under the MMPA. Marine mammals in the water immediately offshore are also recorded. Under the above scale, ''take'' was only considered to be level 2 or 3 observations from the above scale. The maximum number of marine mammals, by species, seen at any given time throughout the sampling day (categories 0 through 4) is recorded at the conclusion of sampling. Any other relevant information, including the location of a marine mammal relevant to the site, any unusual behavior, and the presence of pups is also noted.

Take Calculation and Estimation

The observations described above formed the basis from which researchers with extensive knowledge and experience at each site estimated the actual number of marine mammals that may be subject to take. Take estimates for each species for which take would be authorized were based on the following equation:

Take estimate per survey site = number of expected animals per site * number of planned survey events per survey site

For take estimates, UCSC/PISCO summed the total number of marine mammals, by species, ''encountered'' at each research site during the period from 2013 to 2018 (*i.e.,* all observations score 0 to 4 on the above scale). We then summed the number of sampling events where marine mammals were encountered at each site and calculated the average number of encounters per event (see Tables 2–5). These are the ''number of expected animals per site'' for the equation above. Note the number of these historical encounters that qualified as Level B take was less than 40 percent of all encounters (see application Section 6), so take estimates are expected to be conservative and consider potential temporal variation. The maximum number of planned survey events per survey site is listed in Tables 2–5. For Steller sea lions the one sighting from 2009 was used in this analysis. The take estimate by species per survey site calculation results can also be found in Tables 2–5.

TABLE 2—DATA AND CALCULATIONS TO ESTIMATE PROPOSED TAKE OF HARBOR SEALS

Site	Encounters/event	Expected maximum # of survey events 2020–2024	Calculated take 2020–2024
Andrew Molera	1	10	10
Boat House	5	10	50
Bob Creek	1	5	5
Bodega	9	5	45
Cat Rock	2	1	2
Cayucos	6	10	60
Del Mar Landing	5	1	5
Eel Point	1	2	2
Enderts	1	5	5
False Klamath Cove	1	5	5
Fitzgerald Marine Reserve	46	1	46
Fogarty Creek	8	5	40
Franklin Point	6	5	30
Government Point	38	10	380
Hopkins	14	10	140
Horseshoe Cove	6	1	6
Kibesillah Hill	8	5	40
Launcher Beach	10	1	10
MacKerricher	2	1	2
Mal Coombs	5	1	5
Mill Creek	1	10	10
Occulto	3	10	30
Old Home Beach	10	1	10
Partington Cove	2	10	20

TABLE 2—DATA AND CALCULATIONS TO ESTIMATE PROPOSED TAKE OF HARBOR SEALS—Continued

Site	Encounters/event	Expected maximum # of survey events 2020–2024	Calculated take 2020–2024
Pebble Beach	16	5	80
Piedras Blancas	3	10	30
Point Arena	2	1	2
Point Lobos	1	10	10
Point Pinos	7	5	35
Point Sierra Nevada	1	10	10
Sandhill Bluff	1	10	10
Scott Creek	1	10	10
Sea Ranch	2	5	10
Sea Ridge	10	1	10
Shell Beach	1	10	10
Shelter Cove	4	5	20
Soberanes	2	10	20
Stillwater	9	10	90
Stornetta	3	5	15
Terrace Point	1	10	10
Treasure Island	6	1	6
Vista del Mar	12	10	120
Waddell	1	10	10
Total	N/A	264	1466

TABLE 3—DATA AND CALCULATIONS TO ESTIMATE PROPOSED TAKE OF CALIFORNIA SEA LIONS

Site	Encounters/event	Expected maximum # of survey events 2020–2024	Calculated take 2020–2024
Bodega	3	5	15
Cape Arago	21	5	105
Crook Point	3	1	3
Cuyler Harbor	1	1	1
Del Mar Landing	1	1	1
Eel Point	2	2	4
Enderts	3	5	15
False Klamath Cove	2	5	10
Franklin Point	2	5	10
Government Point	11	10	110
Kibesillah Hill	2	5	10
Old Stairs	2	1	2
Piedras Blancas	25	10	250
Point Lobos	1	10	10
Point Pinos	1	5	5
Point Sierra Nevada	1	10	10
Purisma	1	5	5
Shell Beach	1	10	10
Soberanes	3	10	30
Stairs	1	10	10
Stornetta	2	5	10
Terrace Point	1	10	10
Total	N/A	131	636

TABLE 4—DATA AND CALCULATIONS TO ESTIMATE PROPOSED TAKE OF ELEPHANT SEALS

Site	Encounters/event	Expected maximum # of survey events 2020–2024	Calculated take 2020–2024
Ano Nuevo	5	1	5
Chimney Rock	3	4	12
Crook Point	2	1	2
Cuyler Harbor	2	1	2
Government Point	3	10	30
Harmony Headlands	1	5	5
Mill Creek	1	10	10

TABLE 4—DATA AND CALCULATIONS TO ESTIMATE PROPOSED TAKE OF ELEPHANT SEALS—Continued

Site	Encounters/event	Expected maximum # of survey events 2020–2024	Calculated take 2020–2024
Piedras Blancas	8	10	80
Point Sierra Nevada	1	10	10
Total	N/A	50	156

TABLE 5—DATA AND CALCULATIONS TO ESTIMATE PROPOSED TAKE OF STELLER SEA LIONS

Site	Encounters/event	Expected maximum # of survey events 2020–2024	Calculated take 2020–2024
Cape Arago	5	5	25
Total	N/A	5	25

Individual species' totals for each survey site were summed to arrive at a total estimated take number for the entire project. This is the take that is proposed to be authorized here (Table 6).

TABLE 6—PROPOSED AUTHORIZED LEVEL B TAKE AND PERCENT OF MMPA STOCK PROPOSED TO BE TAKEN

Species	Proposed authorized take	
	Level B	Percent of population
Harbor Seal	1466	2.6
California sea lion	636	0.25
Northern elephant seal	156	0.09
Steller Sea Lion	25	0.06

Proposed Mitigation

In order to issue regulations and an LOA under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

UCSC/PISCO will implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures are listed below.

- Researchers will observe a site from a distance for at least five minutes, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* site surveys will not be conducted if other pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled out individuals and to reduce flushing/stampeding of individuals).
- Researchers will avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds).
- Researchers will avoid making loud noises (*i.e.,* using hushed voices) and keep bodies low to the ground (crouched) in the visual presence of pinnipeds.
- Researchers will monitor the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters. Note that UCSC/PISCO has never observed an offshore predator while researchers were present at any of the survey sites.

• Intentional approach will not occur if dependent pups are present to avoid mother/pup separation and trampling of pups. Staff shall reschedule work at sites where pups are present, unless other means of accomplishing the work can be done without causing disturbance to mothers and dependent pups.

• Researchers will promptly vacate sites at the conclusion of sampling.

The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. Each visit to a given study site will last for approximately 4–6 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of researchers. Also, by arriving before low tide, worker presence will tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue regulations and an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

UCSC/PISCO will contribute to the knowledge of pinnipeds in California and Oregon by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Proposed monitoring requirements in relation to UCSC/PISCO's rocky intertidal monitoring will include observations made by the applicant. Information recorded will include species counts (with numbers of pups/juveniles) of animals present before approaching, numbers of observed disturbances (based on the scale below), and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 7. Note that only observations of disturbance Levels 2 and 3 should be recorded as takes.

TABLE 7—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

In addition, observations regarding the number and species of any marine mammals observed, either in the water or hauled out, at or adjacent to a site, are recorded as part of field observations during research activities. Information regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted are also noted. This information will be incorporated into a monitoring report for NMFS and raw data will be provided.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by these regulations or LOA, such as an injury (Level A harassment), serious injury, or mortality, UCSC/PISCO shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

(1) Time and date of the incident;

(2) Description of the incident;

(3) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(4) Description of all marine mammal observations in the 24 hours preceding the incident;

(5) Species identification or description of the animal(s) involved;

(6) Fate of the animal(s); and

(7) Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with UCSC/PISCO to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. UCSC/PISCO may not resume the activities until notified by NMFS via letter, email, or telephone.

In the event that UCSC/PISCO discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), UCSC/PISCO shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with UCSC/PISCO to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the regulations and LOA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UCSC/PISCO shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. UCSC/PISCO shall provide photographs, video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

A draft annual report shall be submitted to NMFS Office of Protected Resources within 90 days after the conclusion of each annual field season. The final annual report after year five may be included as part of the final report (see below). The report will include a summary of the information gathered pursuant to the monitoring requirements set forth above and in the LOA. A final annual report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report. If no comments are received from NMFS, the draft annual report will be considered the final report.

A draft final report shall be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report shall be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS West Coast Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

Monitoring Results From Previously Authorized Activities

UCSC/PISCO complied with the mitigation and monitoring that were required under the prior IHAs issued from 2013 to 2019. In compliance with those IHAs, they submitted reports detailing the activities and marine mammal monitoring they conducted. The IHAs required UCSC/PISCO to conduct counts of pinnipeds present at study sites prior to approaching the sites and to record species counts and any observed reactions to the presence of the researchers. These monitoring results were discussed above in the *Estimated Take* section.

Based on the results from the monitoring reports, we conclude that these results support our original findings that the mitigation measures set forth in the recent IHAs effected the least practicable impact on the species or stocks. There were no stampede events during these years and most disturbances were Level 1 and 2 from the disturbance scale (Table 3) meaning the animal did not fully flush but observed or moved slightly in response to researchers. Those that did fully flush to the water did so slowly. Most of these animals tended to observe researchers from the water and then re-haulout farther up-coast or down-coast of the site within approximately 30 minutes of the disturbance.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 7, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Research activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment from researchers movements and equipment handling. Potential takes could occur if individuals of these species are present nearby when these activities are underway.

No injuries or mortalities are anticipated to occur as a result of UCSC/PISCO's rocky intertidal monitoring surveys and none are proposed to be authorized. The risk of marine mammal injury, serious injury, or mortality associated with rocky intertidal monitoring increases somewhat if disturbances occur during breeding season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.,* through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. Few pups are anticipated to be encountered during the proposed surveys. As shown in previous monitoring reports, however, limited numbers of harbor seal, northern elephant seal, and California sea lion pups have been observed at several sites during past years. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. Although elephant seal pups are occasionally present when researchers visit survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence compared to the other two species. Further, elephant seal pups are typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. The caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups. Finally, UCSC/PISCO shall reschedule work at sites where pups are present, unless other means of accomplishing the work can be done without causing disturbance to mothers and dependent pups. The potential for harassment is further minimized through the approach method and the implementation of the planned mitigation measures (see *Proposed Mitigation* section).

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term behavioral disturbance. In any given study season, researchers will visit select sites one to two times per year for 4–6 hours per visit. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods. These short periods of disturbance lasting less than a day are separated by months or years. Community Structure sites are visited at most twice per year and the visits occur in different seasons. Biodiversity surveys take place at a given location once every 3–5 years.

Of the marine mammal species anticipated to occur in the proposed activity areas, none are listed under the ESA. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary abandonment of haulout sites, pinnipeds are not expected to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual monitoring counts. No adverse effects to prey species are anticipated and habitat impacts are limited and highly localized, consisting of the placement of permanent bolts and temporary research equipment in the intertidal zone. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from UCSC/PISCO's rocky intertidal monitoring program will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment, is anticipated or authorized.
- Only a small number of pups are expected to be disturbed;
- Effects of the survey activities would be limited to short-term, localized behavioral changes;
- Nominal impacts to pinniped habitat are anticipated; and
- Mitigation measures are anticipated to be effective in minimizing the number and severity of takes by Level B harassment, which are expected to be of short duration.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is 0.06 to 2.6 percent of any stock's best population estimate (Table 7). These are all likely conservative estimates because they assume all encounters result in take, which has not historically been the case. The Oregon/Washington stock of harbor seals has no official NMFS abundance estimate as the most recent estimate is greater than eight years old. Nevertheless, the most recent estimate was 27,348 animals and it is highly unlikely this number has drastically declined.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the UCSC/PISCO request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. UCSC/PISCO is the sole entity that would be subject to the requirements in these proposed regulations, and UCSC/PISCO is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: January 7, 2020.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart K to part 217 to read as follows:

Subpart K—Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

§ 217.100 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the University of California Santa Cruz's Partnership for Interdisciplinary Studies of Coastal Oceans (UCSC/PISCO) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occur incidental to rocky intertidal monitoring research surveys.

(b) The taking of marine mammals by UCSC/PISCO may be authorized in a Letter of Authorization (LOA) only if it occurs on the coasts of Oregon or California.

§ 217.101 Effective dates.

Regulations in this subpart are effective from April 12, 2020 through April 11, 2025.

§ 217.102 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.106, the Holder of the LOA (hereinafter ''UCSC/PISCO'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.100(b) by Level B harassment associated with rocky intertidal monitoring activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.103 Prohibitions.

Notwithstanding takings contemplated in § 217.100 and authorized by a LOA issued under § 216.106 of this chapter and § 217.106, no person in connection with the activities described in § 217.100 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.106;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified in § 217.102;

(d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.104 Mitigation requirements.

When conducting the activities identified in § 217.100(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.106 must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) Researchers will observe a site from a distance for at least five minutes, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* site surveys will not be conducted if other species of pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals).

(2) Researchers will avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to approach a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds).

(3) Researchers will avoid making loud noises (*i.e.,* using hushed voices) and keep bodies low to the ground in the visual presence of pinnipeds.

(4) Researchers will monitor the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters.

(5) Researchers will promptly vacate sites at the conclusion of sampling.

(b) Pup protection measure:

(1) Intentional approach will not occur if dependent pups are present to avoid mother/pup separation and trampling of pups. Staff shall reschedule work at sites where pups are present, unless other means of accomplishing the work can be done without causing

disturbance to mothers and dependent pups.

(2) [Reserved]

§ 217.105 Requirements for monitoring and reporting.

(a) *Visual monitoring program.* (1) Standard information recorded will include species counts (with numbers of pups/juveniles when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event.

(2) UCSC/PISCO will note observations of:

(i) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel;

(ii) Tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and

(iii) Rare or unusual species of marine mammals for agency follow-up.

(3) For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 1. Only observations of disturbance Levels 2 and 3 should be recorded as takes.

TABLE 1 TO PARAGRAPH (a)(3)—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

(4) Information regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted are also noted.

(b) *Prohibited Take.* (1) If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by these regulations or LOA, such as an injury (Level A harassment), serious injury, or mortality, UCSC/PISCO shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s) (if equipment is available).

(2) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with UCSC/PISCO to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. UCSC/PISCO may not resume the activities until notified by NMFS via letter, email, or telephone.

(c) *Notification of dead or injured marine mammals.* (1) In the event that UCSC/PISCO discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), UCSC/PISCO shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (b)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with UCSC/PISCO to determine whether additional mitigation measures or modifications to the activities are appropriate.

(2) In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the regulations and LOA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UCSC/PISCO shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. UCSC/PISCO shall provide photographs, video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

(d) *Annual report.* (1) A draft annual report shall be submitted to NMFS Office of Protected Resources within 90 days after the conclusion of each annual field season. The final annual report after year five may be included as part of the final report (see below). The report will include a summary of the information gathered pursuant to the monitoring requirements set forth above and in the LOA.

(2) A final annual report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report. If no comments are received from NMFS, the draft annual report will be considered the final report.

(e) *Final report.* (1) A draft final report shall be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report shall be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS West Coast Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

§ 217.106 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, UCSC/PISCO must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, UCSC/PISCO may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an

LOA, UCSC/PISCO must apply for and obtain a modification of the LOA as described in § 217.107.

(e) The LOA shall set forth:

(1) Permissible methods and numbers of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 217.107 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.106 for the activity identified in § 217.100(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS' Office of Protected Resources determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS' Office of Protected Resources may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.106 for the activity identified in § 217.100(a) may be modified by NMFS' Office of Protected Resources under the following circumstances:

(1) Adaptive Management—NMFS' Office of Protected Resources may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with UCSC/PISCO regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from UCSC/PISCO's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS' Office of Protected Resources will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS' Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 217.106, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 217.108–217.109 [Reserved]

[FR Doc. 2020–00394 Filed 1–14–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 10
Wednesday, January 15, 2020

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972, the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, and the Federal Public Lands Recreation Enhancement Act. Additional information concerning the Board, including meeting agendas and meeting summary/minutes, can be found by visiting the Board's website at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, February 19, 2020, at 1:00 p.m. All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Forest Service Center, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216 or by email at *scott.j.jacobson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide:

1. Motorized Trail Strategy Recommendation;
2. Alvin Categorical Exclusion (CE);
3. Orientation Topic: Forest Service Trust Fund;
4. Forest Inventory Analysis (FIA);
5. Timber Sustainability Working Group;
6. Over-Snow (Fat Tire Bikes) Working Group; and,
7. Election of Chair/Vice Chair.

The meeting is open to the public. If time allows, the public may make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by February 10, 2020, to be scheduled on the agenda. Anyone who would like to bring related letters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *scott.j.jacobson@usda.gov,* or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: January 8, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–00457 Filed 1–14–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Sipsey Fork of the West Fork National Wild and Scenic River, Bankhead National Forest, Lawrence and Winston Counties, Alabama

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of the Sipsey Fork of the West Fork National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting the National Forests in Alabama Supervisor's Office, 2946 Chestnut Street, Montgomery, AL 36107; (334) 832–4470.

SUPPLEMENTARY INFORMATION: The Sipsey Fork of the West Fork Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Yates Building, 14th and Independence Avenue SW, Washington, DC 20024; Southern Region, 1720 Peachtree Street NW, Atlanta, GA 30309; and, National Forests in Alabama Supervisor's Office, 2946 Chestnut Street, Montgomery, AL 36107.

The Sipsey Wild and Scenic Rivers Act and Alabama Addition Act (Pub. L. 100–547) of October 28, 1988 designated Sipsey Fork of the West Fork, Alabama, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. While Public Law 100–547 used the name ''Sipsey Fork of the West Fork'' in designating the river, it is commonly known as the Sipsey Fork of the Black Warrior River. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: December 23, 2019.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–00458 Filed 1–14–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Rio Chama National Wild and Scenic River, Santa Fe National Forest, Carson National Forest, and Bureau of Land Management Taos Field Office, Rio Arriba County, New Mexico

AGENCY: Forest Service, USDA, and Bureau of Land Management, USDOI.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of the Rio Chama National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Santa Fe National Forest Supervisor's Office, 11 Forest Lane, Santa Fe, NM 87508; (505) 438–5300; or, Bureau of Land Management New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508; (505) 954–2000.

SUPPLEMENTARY INFORMATION: The Rio Chama Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Yates Building, 14th and Independence Avenue SW, Washington, DC 20024; Santa Fe National Forest Supervisor's Office, 11 Forest Lane, Santa Fe, NM 87508; USDOI, Bureau of Land Management National Office, National Conservation Lands Division (WO–410), 20 M Street SE, Washington, DC 20003; and, Bureau of Land Management Taos Field Office, 226 Cruz Alta Road, Taos, NM 87571.

Public Law 100–633 of November 7, 1988 designated Rio Chama, New Mexico, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture and Secretary of Interior. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: December 23, 2019.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–00456 Filed 1–14–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Allegheny Resource Advisory Committee (RAC) will meet in Warren, Pennsylvania. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/detail/allegheny/workingtogether/advisorycommittees/?cid=fseprd497392*.

DATES: Three meeting dates are set for 2020: February 21, February 28 and March 26, 2020. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Allegheny National Forest's Supervisors Office, 4 Farm Colony Drive, Warren, PA 16365.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Allegheny National Forest's Supervisors Office. Please call ahead at 814–723–5150 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hatfield, Designated Federal Officer, by phone at 814–363–6098 or via email at *richard.hatfield@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meetings are to:

1. Review current RAC membership and terms;
2. Update the status of new members; and
3. Discuss, recommend, and approve new Title II projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, February 14, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Richard Hatfield, Designated Federal Officer, 29 Forest Service Drive, Bradford, PA 16701 or by email to *richard.hatfield@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

All reasonable accommodation requests are managed on a case by case basis.

Dated: January 8, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–00455 Filed 1–14–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Monthly Wholesale Trade Survey.

OMB Control Number: 0607–0190.

Form Number(s): SM4217–A, SM4217–E.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 4,200.

Average Hours per Response: 7 minutes.

Burden Hours: 5,880.

Needs and Uses: The U.S. Census Bureau requests a three-year extension of the Monthly Wholesale Trade Survey (MWTS). The MWTS canvasses firms primarily engaged in merchant wholesale trade that are located in the United States, excluding manufacturers' sales branches and offices (MSBOs). This survey provides the only continuous measure of monthly wholesale sales, end-of-month inventories, and inventories-to-sales ratios. The sales and inventories estimates produced from the MWTS provide current trends of economic activity by kind of business for the United States. Also, the estimates compiled from this survey provide valuable information for economic policy decisions by the government and are widely used by private businesses, trade organizations, professional associations, and other business research and analysis organizations.

Estimates from the MWTS are released in three different reports each month. High level aggregate estimates for end-of-month inventories are first released as part of the Advance Economic Indicators Report. Second, the full Monthly Wholesale Trade Report containing both sales and inventories estimates is released. Lastly, high level sales and inventories estimates from the MWTS are also released as part of the Manufacturing and Trade Inventories and Sales (MTIS) report.

As one of the Census Bureau's principal economic indicators, the estimates produced by the MWTS are critical to the accurate measurement of total economic activity of the United States. The estimates of sales made by wholesale locations represent only merchant wholesalers, excluding MSBOs, who typically take title to goods bought for resale and sell to other businesses. The sales estimates include sales made on credit as well as on a cash basis, but exclude receipts from sales taxes and interest charges from credit sales.

The estimates of inventories represent all merchandise held in wholesale locations, warehouses, and offices, as well as goods held by others for sale on consignment or in transit for distribution to wholesale establishments. The estimates of inventories exclude fixtures and supplies not for resale, as well as merchandise held on consignment, which are owned by others. Inventories are an important component in the Bureau of Economic Analysis' (BEA) calculation of the investment portion of the Gross Domestic Product (GDP).

The Census Bureau publishes wholesale sales and inventories estimates based on the North American Industry Classification System (NAICS), which has been widely adopted throughout both the public and private sectors.

The Census Bureau tabulates the collected data to provide, with measurable reliability, statistics on sales, end-of-month inventories, and inventories-to-sales ratios for merchant wholesalers, excluding MSBOs.

The BEA is the primary Federal user of data collected in the MWTS. The BEA uses estimates from this survey to prepare the national income and product accounts (NIPA), input-output accounts (I–O), and gross domestic product (GDP) by industry. End-of-month inventories are used to prepare the change in private inventories component of GDP. The BEA also uses the Advance Economic Indicators Report to improve the inventory valuation adjustments applied to estimates of the Advance Gross Domestic Product. Sales are used to prepare estimates of real inventories-to-sales ratios in the NIPAs, extrapolate proprietors' income for wholesalers (until tax return data become available) in the NIPAs, and extrapolate annual current-dollar gross output for the most recent year in annual I–O tables, GDP-by-industry, and advance GDP-by-industry estimates.

The Bureau of Labor Statistics uses the data as input to its Producer Price Indexes and in developing productivity measurements. Private businesses use the wholesale sales and inventories data in computing business activity indexes. Other government agencies and businesses use this information for market research, product development, and business planning to gauge the current trends of the economy.

Affected Public: Business and other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00461 Filed 1–14–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–848, C–533–894, C–475–841, C–570–116]

Forged Steel Fluid End Blocks From the Federal Republic of Germany, India, Italy and the People's Republic of China: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Palmer at (202) 482–9068 (Germany), Ethan Talbot at (202) 482–1030 (India and Italy), and Janae Martin at (202) 482–0238 (China), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On December 19, 2019, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of forged steel fluid end blocks (fluid end blocks) from the Federal Republic of Germany (Germany), India, Italy and the People's Republic of China (China), filed in proper form on behalf of the FEB Fair Trade Coalition, Ellwood Group,[1] and Finkl Steel [2] (collectively, the petitioners), domestic producers of fluid end blocks.[3] The Petitions were accompanied by antidumping duty (AD) petitions concerning imports of fluid end blocks from Germany, India and Italy.[4]

On December 23, 2019 and January 2, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[5]

[1] Ellwood City Forge Company, Ellwood Quality Steels Company, and Ellwood National Steel Company (collectively, the Ellwood Group).

[2] A. Finkl & Sons (Finkl Steel).

[3] *See* Petitioners' Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fluid End Blocks from China, Germany, India, and Italy,'' dated December 19, 2019 (the Petitions).

[4] *Id.*

[5] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, and Italy and Countervailing Duties on Imports from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Supplemental Questions,'' (General Issues Supplemental); ''Petition for the Imposition of Countervailing

Continued

The petitioners filed responses to the supplemental questionnaires on December 30, 2019 through January 6, 2020.[6] On January 6 and 7, 2020, the Governments of India and Italy, respectively, filed comments regarding the programs alleged in the Petitions.[7]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Governments of Germany, India, Italy and China are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of fluid end blocks in Germany, India, Italy, and China, and that imports of such products are materially injuring, or threatening material injury to, the domestic fluid end blocks industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (F) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigations.[8]

Periods of Investigation

Because the Petitions were filed on December 19, 2019, the periods of investigation (POI) are January 1, 2018 through December 31, 2018, or the most recently completed fiscal year for the foreign governments and all of the companies under investigation, provided the foreign governments and the companies have the same fiscal year.

Scope of the Investigations

The products covered by these investigations are fluid end blocks from Germany, India, Italy and China. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on the Scope of the Investigations

During our review of the Petitions, we contacted the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[9] As a result, the scope of the Petitions was modified to clarify the description of the merchandise covered by the Petitions.[10] The description of the merchandise covered by these investigations, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[11] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[12] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on January 28, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 7, 2020, which is 10 calendar days from the initial comment deadline.[13]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[14] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the Governments of Germany, India, Italy and China of the receipt of the Petitions and provided them the opportunity for consultations with respect to the Petitions.[15] Consultations were held with the Government of India on January 6, 2020, and with the Governments of Germany and Italy on January 8, 2020.[16] The

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Duties on Imports of Forged Steel Fluid End Blocks from the People's Republic of China: Supplemental Questions;'' ''Petition for the Imposition of Countervailing Duties on Imports of Forged Steel Fluid End Blocks from the Federal Republic of Germany: Supplemental Questions;'' ''Petition for the Imposition of Countervailing Duties on Imports of Forged Steel Fluid End Blocks from India: Supplemental Questions;'' and ''Petition for the Imposition of Countervailing Duties on Imports of Forged Steel Fluid End Blocks from Italy: Supplemental Questions,'' all dated December 23, 2019; *see also* Memorandum, ''Phone Call with Counsel to the Petitioners,'' dated January 2, 2020 (Phone Memo).

[6] *See* Petitioners' Letters, ''Fluid End Blocks from China, Germany, India and Italy: Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated December 30, 2019 (Petition Supplement); ''Fluid End Blocks from China, Germany, India and Italy: Second Amendment of Petitions,'' dated January 3, 2020; and ''Fluid End Blocks from China, Germany, India and Italy: Third Amendment of Petitions,'' dated January 6, 2020.

[7] *See* the Government of Italy's Letter dated January 7, 2020; *see also* the Government of India's Letter, ''Pre-Initiation Consultation Note on the Petition for Initiation of Countervailing Duty Investigation on Forged Steel Fluid End Blocks from India,'' dated January 6, 2020.

[8] *See infra,* section on ''Determination of Industry Support for the Petition.''

[9] *See* General Issues Supplemental.

[10] *See* Petition Supplement.

[11] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[12] *See* 19 CFR 351.102(b) (21) (defining ''factual information'').

[13] *See* 19 CFR 351.303(b).

[14] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[15] *See* Commerce's Letters, ''Countervailing Duty Petition on Forged Steel Fluid End Blocks from the People's Republic of China: Invitation for Consultations'' and ''Countervailing Duty Petition on Forged Steel Fluid End Blocks from the Federal Republic of Germany: Invitation for Consultations,'' both dated December 19, 2019; *see also* ''Countervailable Duty Petition on Forged Steel Fluid End Blocks from Italy: Invitations for Consultations to Discuss the Countervailing Duty Petition'' and ''Countervailable Duty Petition on Forged Steel Fluid End Blocks from India: Invitations for Consultations to Discuss the Countervailing Duty Petition,'' both dated December 20, 2019.

[16] *See* Memoranda, ''Consultations with Government Officials from India on the Countervailing Duty Petition on Forged Steel Fluid End Blocks from India,'' dated January 6, 2020, ''Consultations with Government Officials from the Federal Republic of Germany and the European

Government of China did not request consultations.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[17] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[18]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[19] Based on our analysis of the information submitted on the record, we have determined that fluid end blocks, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[20]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix to this notice. To establish industry support, the petitioners provided the 2018 production of the domestic like product for the U.S. producers that support the Petitions.[21] The petitioners estimated the production of the domestic like product for the entire domestic industry based on shipment/sales data, because shipments/sales and production of fluid end blocks correlate with one another and shipments/sales are a reasonable proxy for production in the fluid end blocks industry.[22] The petitioners compared the production of the companies supporting the Petitions to the estimated total shipments/sales of the domestic like product for the entire domestic industry.[23] We relied on data provided by the petitioners for purposes of measuring industry support.[24]

Our review of the data provided in the Petitions, the Petition Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[25] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[26] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[27] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[28] Accordingly, Commerce

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Union on the Countervailing Duty Petition on Forged Steel Fluid End Blocks from the Federal Republic of Germany,'' dated January 8, 2020, and ''Consultations with Government Officials from Italy and the European Union on the Countervailing Duty Petition on Forged Steel Fluid End Blocks from Italy,'' dated January 8, 2020.

[17] *See* section 771(10) of the Act.

[18] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[19] *See* Volume I of the Petitions, at 26–28; *see also* Petition Supplement, at 5–7.

[20] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from the People's Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fluid End Blocks the People's Republic of China, the Federal Republic of Germany, India, and Italy (Attachment II); *see also* Countervailing Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from the Federal Republic of Germany (Germany CVD Initiation Checklist), at Attachment II; Countervailing Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from India (India CVD Initiation Checklist), at Attachment II; and Countervailing Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from Italy (Italy CVD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[21] *See* Volume I of the Petitions, at 4–5 and Exhibit GEN–7.

[22] *See* Volume I of the Petitions, at 4–5 and Exhibits GEN–1 and GEN–2; *see also* Petition Supplement, at 8.

[23] *See* Volume I of the Petitions, at 4–5 and Exhibits GEN–1, GEN–2, GEN–3 and GEN–7; *see also* Petition Supplement, at 8.

[24] *See* Volume I of the Petitions, at 4–5 and Exhibits GEN–1, GEN–2, GEN–3 and GEN–7; *see also* Petition Supplement, at 8. For further discussion, *see* China CVD Initiation Checklist, at Attachment II; *see also* Germany CVD Initiation Checklist, at Attachment II; India CVD Initiation Checklist, at Attachment II; and Italy CVD Initiation Checklist, at Attachment II.

[25] *See* China CVD Initiation Checklist, at Attachment II; *see also* Germany CVD Initiation Checklist, at Attachment II; India CVD Initiation Checklist, at Attachment II; and Italy CVD Initiation Checklist, at Attachment II.

[26] *See* section 702(c)(4)(D) of the Act; *see also* China CVD Initiation Checklist, at Attachment II; Germany CVD Initiation Checklist, at Attachment II; India CVD Initiation Checklist, at Attachment II; and Italy CVD Initiation Checklist, at Attachment II.

[27] *See* China CVD Initiation Checklist, at Attachment II; *see also* Germany CVD Initiation Checklist, at Attachment II; India CVD Initiation Checklist, at Attachment II; and Italy CVD Initiation Checklist, at Attachment II.

[28] *See* China CVD Initiation Checklist, at Attachment II; *see also* Germany CVD Initiation Checklist, at Attachment II; India CVD Initiation

Continued

determines that the Petitions were filed on behalf of the domestic industry, within the meaning of section 702(b)(1) of the Act.[29]

Injury Test

Because China, Germany, India, and Italy are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China, Germany, India and/or Italy materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[30] In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least developed countries must exceed the negligibility threshold of four percent. The petitioners also demonstrate that subject imports from India, which has been designated as a developing country under section 771(36)(A) of the Act, exceed the negligibility threshold of four percent.[31]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a decline in the domestic industry's financial performance and profitability.[32] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[33]

Initiation of CVD Investigations

Based on the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of fluid end blocks from China, Germany, India, and Italy benefit from countervailable subsidies conferred by the Governments of China, Germany, India, and Italy. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

China

Based on our review of the Petition for China, we find that there is sufficient information to initiate a CVD investigation on all of the 24 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Germany

Based on our review of the Petition for Germany, we find that there is sufficient information to initiate a CVD investigation on all of the16 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Germany CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petition for India, we find that there is sufficient information to initiate a CVD investigation on 25 of the 29 alleged programs. For a full discussion of the basis for our decision to initiate (or not initiate) on each program, *see* India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Italy

Based on our review of the Petition for Italy, we find that there is sufficient information to initiate a CVD investigation on 18 of the 20 alleged programs. For a full discussion of the basis for our decision to initiate (or not initiate) on each program, *see* Italy CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioner named 38 companies in China, five companies in Germany, two companies in India, and 18 companies in Italy, as producers/exporters of fluid end blocks.[34]

In the event Commerce determines that the number of companies in each country is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigations. However, for these investigations, the HTSUS numbers under which the subject merchandise would enter (7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055) are basket categories containing a wide variety of manufactured steel products unrelated to fluid end blocks. We, therefore, cannot rely on CBP entry data in selecting respondents. Except as noted below for India, we instead intend to issue Q&V questionnaires to each potential respondent for which the petitioners have provided a complete address.

Exporters and producers of fluid end blocks from China, Germany and Italy that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from the Enforcement and Compliance website, at *http://trade.gov/enforcement/news.asp.* Responses to the Q&V questionnaire must be submitted by the relevant Chinese, German and Italian exporters/producers no later than 5:00 p.m. ET on January 21, 2020. All Q&V

Checklist, at Attachment II; and Italy CVD Initiation Checklist, at Attachment II.

[29] *See* China CVD Initiation Checklist, at Attachment II; *see also* Germany CVD Initiation Checklist, at Attachment II; India CVD Initiation Checklist, at Attachment II; and Italy CVD Initiation Checklist, at Attachment II.

[30] *See* Volume I of the Petitions, at 29–30 and Exhibit GEN–2.

[31] *Id.*

[32] *See* Volume I of the Petitions, at 1, 25–26, 29–45 and Exhibits GEN–2, GEN–50, and GEN–51; *see also* Petition Supplement, at 9 and Exhibit SUP–GEN–1.

[33] *See* China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy (Attachment III); *see also* Germany CVD Initiation Checklist, at Attachment III; India CVD Initiation Checklist, at Attachment III; and Italy CVD Initiation Checklist, at Attachment III.

[34] *See* Volume I of the Petitions, at 14–20.

responses must be filed electronically via ACCESS.

For India, the petitioner identified two companies as producers/exporters of fluid end blocks (*i.e.,* Bharat Forge Limited and Ultra Engineers) and provided independent, third-party information as support.[35] We currently know of no additional producers/exporters of fluid end blocks from India. Accordingly, Commerce intends to examine all known producers/exporters in the investigation for India (*i.e.,* the companies cited above).

Parties wishing to comment on respondent selection for India must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Germany, India, Italy and China via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the CVD Petitions to each exporter named in the CVD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the CVD Petitions were filed, whether there is a reasonable indication that imports of fluid end blocks from Germany, India, Italy, and/or China are materially injuring, or threatening material injury to, a U.S. industry.[36] A negative ITC determination in any country will result in the investigation being terminated with respect to that country.[37] Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[38] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[39] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[40] Parties must use the certification formats provided in 19 CFR 351.303(g).[41] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702(c)(2) and 777(i) of the Act and 19 CFR 351.203(c).

Dated: January 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The products covered by these investigations are forged steel fluid end blocks (fluid end blocks), whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps.

The term ''forged'' is an industry term used to describe the grain texture of steel resulting from the application of localized compressive force. Illustrative forging standards include, but are not limited to, American Society for Testing and Materials (ASTM) specifications A668 and A788.

For purposes of these investigations, the term ''steel'' denotes metal containing the following chemical elements, by weight: (i) Iron greater than or equal to 60 percent; (ii) nickel less than or equal to 8.5 percent; (iii) copper less than or equal to 6 percent; (iv) chromium greater than or equal to 0.4 percent, but less than or equal to 20 percent; and (v) molybdenum greater than or equal to 0.15 percent, but less than or equal to 3 percent. Illustrative steel standards include, but are not limited to, American Iron and Steel Institute (AISI) or Society of

[35] *See* Volume I of the Petitions, at 19 and Exhibit GEN–2; *see also* Petition Supplement, at 1 and Exhibit SUP–GEN–1.

[36] *See* section 703(a)(2) of the Act.

[37] *See* section 703(a)(1) of the Act.

[38] *See* 19 CFR 351.301(b).

[39] *See* 19 CFR 351.301(b)(2).

[40] *See* section 782(b) of the Act.

[41] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Automotive Engineers (SAE) grades 4130, 4135, 4140, 4320, 4330, 4340, 8630, 15–5, 17–4, F6NM, F22, F60, and XM25, as well as modified varieties of these grades.

The products covered by these investigations are: (1) Cut-to-length fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) of 11 inches (279.4 mm) to 75 inches (1,905.0 mm); and (2) strings of fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) up to 360 inches (9,144.0 mm).

The products included in the scope of these investigations have a tensile strength of at least 70 KSI (measured in accordance with ASTM A370) and a hardness of at least 140 HBW (measured in accordance with ASTM E10).

A fluid end block may be imported in finished condition (*i.e.,* ready for incorporation into a pump fluid end assembly without further finishing operations) or unfinished condition (*i.e.,* forged but still requiring one or more finishing operations before it is ready for incorporation into a pump fluid end assembly). Such finishing operations may include: (1) Heat treating; (2) milling one or more flat surfaces; (3) contour machining to custom shapes or dimensions; (4) drilling or boring holes; (5) threading holes; and/or (6) painting, varnishing, or coating.

The products included in the scope of these investigations may enter under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055. While these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2020–00490 Filed 1–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–905]

4th Tier Cigarettes From the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Ariela Garvett, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–3609, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On December 18, 2019, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of 4th tier cigarettes (cigarettes or 4th tier cigarettes) from the Republic of Korea (Korea), filed in proper form by the Coalition Against Korean Cigarettes (the Coalition or the petitioner), the members of which are domestic producers of cigarettes.[1]

On December 20, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition in a supplemental questionnaire.[2] The petitioner filed its response to the supplemental questionnaire on December 27, 2019.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of cigarettes from Korea are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing cigarettes in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegation.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in sections 771(9)(C) and (E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.[4]

Period of Investigation

Because the Petition was filed on December 18, 2019, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is October 1, 2018 through September 30, 2019.

Scope of the Investigation

The product covered by this investigation is cigarettes from Korea. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on the Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[5] As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition.

Commerce has not, however, adopted the following language, which was included in the scope provided by the petitioner:

> Excluded from the scope of this investigation are cigarettes that legally bear the valid and enforceable brand and/or trademark of a company who is a participating member of the Master Settlement Agreement (MSA) of November 1998.[6]

This language would not actually exclude any subject merchandise from the scope. This is because, according to the petitioner, the sole producer/exporter of 4th tier cigarettes in Korea is not a participating manufacturer in the MSA.[7] Accordingly, the language would be unnecessary and add confusion to the administration and enforcement of this scope.[8]

In addition, the purpose of a scope in an antidumping investigation is to define the physical merchandise that is being investigated and possibly sold for less than normal value. However, the language quoted above does not use brands or trademarks to define the physical merchandise proposed to be excluded, but instead relies on brands and trademarks to identify producers or exporters whose products might or might not be subject to the investigation. This is an additional reason that we are

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping Duties on 4th Tier Cigarettes from the Republic of Korea,'' dated December 18, 2019 (Petition). The members of the Coalition are Xcaliber International and Cheyenne International. *See* Volume I of the Petition, at 1.

[2] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of 4th Tier Cigarettes from the Republic of Korea: Supplemental Questions,'' dated December 20, 2019 (Supplemental Questionnaire).

[3] *See* Petitioner's Letter, ''4th Tier Cigarettes from the Republic of Korea: Response to Department of Commerce Questionnaire,'' dated December 27, 2019 (Petition Supplement).

[4] *See infra,* section on ''Determination of Industry Support for the Petition''; Antidumping Duty Initiation Checklist: 4th Tier Cigarettes from the Republic of Korea (Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering 4th Tier Cigarettes from the Republic of China (Attachment II).

[5] *See* Supplemental Questionnaire; *see also* Petition Supplement.

[6] *See* Petition Supplement, at Exhibit I–Supp–11.

[7] *See* Petition Supplement, at 1, 4–5, and 9.

[8] The statute provides Commerce with the sole authority to determine the scope of its investigations. *See Canadian Solar, Inc.* v. *United States*, 918 F.3d 909, 917 (Fed. Cir. 2019).

not incorporating the proposed language into the scope at this time.

Consistent with the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on January 27, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 6, 2020, which is 10 calendar days from the initial comment deadline.[11]

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the record of the investigation.

Commerce will consider all comments received and, if necessary, consult with the interested parties prior to the issuance of the preliminary determination.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[12] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of 4th tier cigarettes to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe 4th tier cigarettes, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all product characteristics comments must be filed by 5:00 p.m. ET on January 27, 2020, which is 20 calendar days from the signature date of this notice.[13] Any rebuttal comments must be filed by 5:00 p.m. ET on February 6, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See* 19 CFR 351.303(b).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[13] *See* 19 CFR 351.303(b).

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

definition of the domestic like product distinct from the scope of the Petition.[16] Based on our analysis of the information submitted on the record, we have determined that 4th tier cigarettes, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

On January 3, 2020, we received comments on industry support from KT&G Corporation (KT&G), a foreign producer of cigarettes.[18] On January 6, 2020, the petitioner responded to KT&G's industry support comments.[19] On January 7, 2020, we received additional comments on industry support from KT&G.[20]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided data on its own 2018 production of the domestic like product and compared this to the estimated total production of the domestic like product for the entire domestic industry.[21] We relied on data provided by the petitioner for purposes of measuring industry support.[22]

Our review of the data provided in the Petition, the Petition Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[23] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[24] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[25] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[26] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[27]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declining financial performance; a decline in the domestic industry's capacity utilization and production and related workers; shuttered manufacturing facilities and bankruptcies; and actual and potential negative effects on cash flow.[28] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[29]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of cigarettes from Korea. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Initiation Checklist.

Export Price

The petitioner based export price (EP) on the average unit value of the official U.S. import statistics obtained from the ITC's Dataweb (Dataweb). The petitioner made deductions from U.S. price for foreign inland freight and foreign brokerage and handling charges.[30]

Normal Value

The petitioner based NV on home market price quotes obtained through market research for cigarettes produced in and sold, or offered for sale, in Korea within the POI.[31] The petitioner deducted foreign inland freight and taxes and fees from the home market prices.[32] The petitioner provided information indicating that the home market prices were below the cost of production (COP) and, therefore, the petitioner calculated NV based on constructed value (CV).[33] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.'' [34]

Normal Value Based on Constructed Value

As noted above, the home market prices were below COP; accordingly, the petitioner based NV on CV. Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, and profit. The petitioner calculated the

[16] *See* Volume I of the Petition, at 9–13 and Exhibits I–8 through I–14.

[17] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Initiation Checklist, at Attachment II. This checklist is dated concurrently with this notice and on file electronically via ACCESS. Documents filed via ACCESS are also available in the Central Records Unit, Room B8024 of the main Commerce building.

[18] *See* KT&G's Letter, ''Fourth Tier Cigarettes from the Republic of Korea: Pre-Initiation Comments on Industry Support,'' dated January 3, 2020.

[19] *See* Petitioner's Letter, ''4th Tier Cigarettes from the Republic of Korea: Response to KT&G's Comments on Petitioner's Standing,'' dated January 6, 2020.

[20] *See* KT&G's Letter, ''Fourth Tier Cigarettes from the Republic of Korea: Further Information and Argument Related to Industry Support,'' dated January 7, 2020.

[21] *See* Volume I of the Petition, at 2–3 and Exhibits I–2 and I–3; *see also* Petition Supplement, at 13–14 and Exhibit I–Supp–19.

[22] *See* Volume I of the Petition, at 2–3 and Exhibits I–2 and I–3; *see also* Petition Supplement, at 13–14 and Exhibit I–Supp–19. For further discussion, *see* Initiation Checklist, at Attachment II.

[23] *See* Initiation Checklist, at Attachment II. We address comments raised by KT&G Corporation and the petitioner after the filing of the Petition Supplement in Attachment II.

[24] *See* section 732(c)(4)(D) of the Act; *see also* Initiation Checklist, at Attachment II.

[25] *See* Initiation Checklist, at Attachment II.

[26] *Id.*

[27] *See* Volume I of the Petition, at 18–19 and Exhibit I–5.

[28] *Id.* at 7–9, 14–28 and Exhibits I–2, I–5, I–7, I–8 and I–16 through I–24.

[29] *See* Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering 4th Tier Cigarettes from the Republic of China (Attachment III).

[30] *See* Initiation Checklist at 6–7.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

COM based on the input factors of production and usage rates from a U.S. producer of cigarettes. The input factors of production were valued using publicly available data on costs specific to Korea, during the proposed POI.[35] Specifically, the prices for raw materials and energy inputs were valued using publicly available import and domestic price data for Korea.[36] Labor costs were valued using publicly available sources for Korea.[37] The petitioner calculated factory overhead, SG&A expenses, financial expenses, and profit for Korea based on the ratios found in the experience of a Korean producer of identical merchandise.[38]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of cigarettes from Korea are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margin for cigarettes from Korea ranges from 7.10 to 113.06 percent.[39]

Initiation of LTFV Investigation

We find that the Petition and supplemental response meet the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of cigarettes from Korea are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

Although Commerce normally relies on import data from using United States Customs and Border Protection import statistics to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, the petitioner identified only one company in Korea, *i.e.,* KT&G, as a producer/exporter of cigarettes and provided independent, third-party information as support.[40] We currently know of no additional producers/exporters of cigarettes from Korea. Accordingly, Commerce intends to examine all known producers/exporters (*i.e.,* KT&G). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. ET by the specified deadline.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the Government of Korea via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of cigarettes from Korea are materially injuring, or threatening material injury to, a U.S. industry.[41] A negative ITC determination will result in the investigation being terminated.[42] Otherwise, this AD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[43] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[44] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.[45] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) sets a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.

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[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See* Volume I of the Petition, at 6 and 26 and Exhibits I–4, I–7, and I–17, Volume II of the Petition, at Exhibit II–2; *see also* Petition Supplement at 1 and Exhibit I–Supp–21.

[41] *See* section 733(a) of the Act.

[42] *Id.*

[43] *See* 19 CFR 351.301(b).

[44] *See* 19 CFR 351.301(b)(2).

[45] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.[46] Parties must use the certification formats provided in 19 CFR 351.303(g).[47] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under Administrative Protective Order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

[46] *See* section 782(b) of the Act.

[47] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Dated: January 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is certain tobacco cigarettes, commonly referred to as ''4th tier cigarettes.'' The subject cigarettes are composed of a tobacco blend rolled in paper, have a nominal minimum total length of 7.0 cm but do not exceed 12.0 cm in total nominal length, and have a nominal diameter of less than 1.3 cm. These sizes of cigarettes are frequently referred to as ''Kings'' and ''100's,'' but subject merchandise that meets the physical description of the scope is included regardless of the marketing description of the size of the cigarettes. Subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems.

Subject merchandise is typically sold in packs of 20 cigarettes per pack which generally includes the marking ''20 Class A Cigarettes'' but are included regardless of packaging. 4th tier cigarette packages are typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack.

Both menthol and non-menthol cigarettes and cigarettes with or without a filter attached are covered by the scope of this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2402.20.8000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.

[FR Doc. 2020–00452 Filed 1–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–847, A–533–893, A–475–840]

Forged Steel Fluid End Blocks From the Federal Republic of Germany, India, and Italy: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Jaron Moore at (202) 482–3640 or Katherine Johnson at (202) 482–4929 (Germany), and Yang Jin Chun at (202) 482–5760 (India and Italy), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On December 19, 2019, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of forged steel fluid end blocks (fluid end blocks) from the Federal Republic of Germany (Germany), India, and Italy filed in proper form on behalf of the FEB Fair Trade Coalition, Ellwood Group,[1] and Finkl Steel [2] (collectively, the petitioners), domestic producers of fluid end blocks.[3] The Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of fluid end blocks from the People's Republic of China, Germany, India, and Italy.[4]

On December 23, 2019 and January 2, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[5] The petitioners filed responses to the supplemental questionnaires on December 30, 2019 through January 6, 2020.[6]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of fluid end blocks from Germany, India, and Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the

[1] Ellwood City Forge Company, Ellwood Quality Steels Company, and Ellwood National Steel Company (collectively, the Ellwood Group).

[2] A. Finkl & Sons (Finkl Steel).

[3] *See* Petitioners' Letter, ''Fluid End Blocks from China, Germany, India, and Italy: Antidumping and Countervailing Duty Petitions,'' dated December 19, 2019 (the Petitions).

[4] *Id.*

[5] *See* Commerce's Letters, ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fluid End Blocks from Germany: Supplemental Questions,'' dated December 23, 2019; ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fluid End Blocks from India: Supplemental Questions,'' dated December 23, 2019; ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fluid End Blocks from Italy: Supplemental Questions,'' dated December 23, 2019; and ''Petitions for the Imposition of Antidumping Duties on Imports of Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, and Italy and Countervailing Duties on Imports from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Supplemental Questions,'' dated December 23, 2019 (General Issues Supplemental); *see also* Memorandum, ''Phone Call with Counsel to the Petitioners,'' dated January 2, 2020.

[6] *See* Petitioners' Letters, ''Fluid End Blocks from China, Germany, India and Italy: Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated December 30, 2019 (Petition Supplement); ''Fluid End Blocks from China, Germany, India, and Italy: Second Amendment to Antidumping and Countervailing Duty Petitions,'' dated January 3, 2020; and ''Fluid End Blocks from China, Germany, India, and Italy: Third Amendment of Petitions,'' dated January 6, 2020.

meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the domestic fluid end blocks industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (F) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested AD investigations.[7]

Periods of Investigation

Because the Petitions were filed on December 19, 2019, the period of investigation (POI) for the Germany, India, and Italy AD investigations is October 1, 2018 through September 30, 2019, pursuant to 19 CFR 351.204(b)(1).[8]

Scope of the Investigations

The products covered by these investigations are fluid end blocks from Germany, India, and Italy. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

During our review of the Petitions, we contacted the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[9] As a result, the scope of the Petitions was modified to clarify the description of the merchandise covered by the Petitions.[10] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[11] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[12] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on January 28, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 7, 2020, which is ten calendar days from the initial comment deadline.[13]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[14] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of fluid end blocks to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe fluid end blocks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on January 28, 2020, which is 20 calendar days from the signature date of this notice.[15] Any rebuttal comments must be filed by 5:00 p.m. ET on February 7, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition

[7] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[8] *See* 19 CFR 351.204(b)(1).

[9] *See* General Issues Supplemental.

[10] *See* Petition Supplement.

[11] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[12] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[13] *See* 19 CFR 351.303(b).

[14] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[15] *See* 19 CFR 351.303(b).

does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[16] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[17]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[18] Based on our analysis of the information submitted on the record, we have determined that fluid end blocks, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided the 2018 production of the domestic like product for the U.S. producers that support the Petitions.[20] The petitioners estimated the production of the domestic like product for the entire domestic industry based on shipment/sales data, because shipments/sales and production of fluid end blocks correlate with one another and shipments/sales are a reasonable proxy for production in the fluid end blocks industry.[21] The petitioners compared the production of the companies supporting the Petitions to the estimated total shipments/sales of the domestic like product for the entire domestic industry.[22] We relied on data provided by the petitioners for purposes of measuring industry support.[23]

Our review of the data provided in the Petitions, the Petition Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[24] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[25] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[26] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[27] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[28]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[29]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a decline in the domestic industry's financial performance and profitability.[30] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and

[16] *See* section 771(10) of the Act.

[17] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[18] *See* Volume I of the Petitions, at 26–28; *see also* Petition Supplement, at 5–7.

[19] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from the Federal Republic of Germany (Germany AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fluid End Blocks the People's Republic of China, the Federal Republic of Germany, India, and Italy (Attachment II); *see also* Antidumping Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from India (India AD Initiation Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from Italy (Italy AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Commerce building.

[20] *See* Volume I of the Petitions, at 4–5 and Exhibit GEN–7.

[21] *See* Volume I of the Petitions, at 4–5 and Exhibits GEN–1 and GEN–2; *see also* Petition Supplement, at 8.

[22] *See* Volume I of the Petitions, at 4–5 and Exhibits GEN–1, GEN–2, GEN–3 and GEN–7; *see also* Petition Supplement, at 8.

[23] *See* Volume I of the Petitions, at 4–5 and Exhibits GEN–1, GEN–2, GEN–3 and GEN–7; *see also* Petition Supplement, at 8. For further discussion, *see* Germany AD Initiation Checklist, at Attachment II; *see also* India AD Initiation Checklist, at Attachment II; and Italy AD Initiation Checklist, at Attachment II.

[24] *See* Germany AD Initiation Checklist, at Attachment II; *see also* India AD Initiation Checklist, at Attachment II; and Italy AD Initiation Checklist, at Attachment II.

[25] *See* section 732(c)(4)(D) of the Act; *see also* Germany AD Initiation Checklist, at Attachment II; India AD Initiation Checklist, at Attachment II; and Italy AD Initiation Checklist, at Attachment II.

[26] *See* Germany AD Initiation Checklist, at Attachment II; *see also* India AD Initiation Checklist, at Attachment II; and Italy AD Initiation Checklist, at Attachment II.

[27] *Id.*

[28] *Id.*

[29] *See* Volume I of the Petitions, at 29–30 and Exhibit GEN–2.

[30] *See* Volume I of the Petitions, at 1, 25–26, 29–45 and Exhibits GEN–2, GEN–50, and GEN–51; *see also* Petition Supplement, at 9 and Exhibit SUP–GEN–1.

we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[31]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of fluid end blocks from Germany, India, and Italy. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

Export Price

The petitioners based export price (EP) on pricing information for sales of or sales offers for fluid end blocks produced in, and exported from Germany, India, and Italy. For Germany and Italy, the petitioners deducted from U.S. price international freight expenses and import duties.[32] For India, the petitioners deducted from U.S. price foreign inland freight and foreign brokerage and handling expenses, international freight expenses, and import duties.[33]

Normal Value

The petitioners were unable to obtain pricing information for fluid end blocks produced in and sold, or offered for sale, in Germany, India, or Italy or in third country markets.[34] The petitioners therefore calculated NV based on constructed value (CV).[35] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value'' below.[36]

Normal Value Based on Constructed Value

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, and profit. For Germany, India and Italy, the petitioners calculated the COM based on input factors of production and usage rates of a U.S. producer of fluid end blocks. The input factors of production were valued using publicly available data on costs specific to Germany, India and Italy during the proposed POI.[37] Specifically, the prices for raw materials and energy inputs were valued using publicly available import and domestic price data for Germany, India and Italy.[38] Labor costs were valued using publicly available sources for Germany, India, and Italy.[39] Overhead costs were valued using the experience of a U.S. producer of fluid end blocks. The petitioners calculated SG&A expenses, financial expenses, and profit for Germany, India, and Italy based on the ratios found in the experience of a producer of comparable or identical merchandise from Germany, India, and Italy, respectively.[40]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of fluid end blocks from Germany, India, and Italy are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to CV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for fluid end blocks for each of the countries covered by this initiation are as follows: (1) Germany—83.37 percent;[41] (2) India—198.85 percent;[42] and (3) Italy—87.04 percent.[43]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of fluid end blocks from Germany, India, and Italy are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioners named five companies in Germany,[44] two companies in India,[45] and 18 companies in Italy[46] as producers/exporters of fluid end blocks.

In the event Commerce determines that the number of companies in each country is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Following standard practice in AD investigations involving market economy countries, Commerce would normally select respondents based on U.S. Customs and Border Protection (CBP) entry data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigations. However, for these investigations, the HTSUS numbers under which the subject merchandise would enter (7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055) are basket categories containing a wide variety of manufactured steel products unrelated to fluid end blocks. We, therefore, cannot rely on CBP entry data in selecting respondents. Except as noted below for India, we intend to issue Q&V questionnaires to each potential respondent for which the petitioners have provided a complete address.

Exporters and producers of fluid end blocks from Germany and Italy that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from the Enforcement and Compliance website, at *http://trade.gov/enforcement/news.asp.* Responses to the Q&V questionnaire must be submitted by the relevant German and Italian exporters/producers no later than 5:00 p.m. ET on January 21, 2020. All Q&V responses must be filed electronically via ACCESS.

For India, the petitioners identified two companies as producers/exporters of fluid end blocks (*i.e.,* Bharat Forge Limited and Ultra Engineers) and provided independent, third-party

[31] *See* Germany AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy (Attachment III); *see also* India AD Initiation Checklist, at Attachment III; and Italy AD Initiation Checklist, at Attachment III.

[32] *See* Germany, India, and Italy AD Initiation Checklists.

[33] *Id.*

[34] *See* Germany, India, and Italy AD Initiation Checklists.

[35] *Id.*

[36] In accordance with 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[37] *See* Germany, India, and Italy AD Initiation Checklists.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *See* Germany AD Initiation Checklist.

[42] *See* India AD Initiation Checklist.

[43] *See* Italy AD Initiation Checklist.

[44] *See* Volume I of the Petitions, at 18.

[45] *Id.* at 19.

[46] *Id.* at 19–20.

information as support.[47] We currently know of no additional producers/exporters of fluid end blocks from India. Accordingly, Commerce intends to examine all known producers/exporters in the investigation for India (*i.e.,* the companies cited above).

Parties wishing to comment on respondent selection for India must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of Germany, India, and Italy via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of fluid end blocks from Germany, India, and/or Italy are materially injuring, or threatening material injury to, a U.S. industry.[48] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[49] Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[50] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[51] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.[52] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[53] Parties must use the certification formats provided in 19 CFR 351.303(g).[54] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,*

[47] *See* Volume I of the Petitions, at 19 and Exhibit GEN–2; *see also* Petition Supplement, at 1 and Exhibit SUP–GEN–1.

[48] *See* section 733(a) of the Act.

[49] *Id.*

[50] *See* 19 CFR 351.301(b).

[51] *See* 19 CFR 351.301(b)(2).

[52] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[53] *See* section 782(b) of the Act.

[54] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: January 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The products covered by these investigations are forged steel fluid end blocks (fluid end blocks), whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps.

The term ''forged'' is an industry term used to describe the grain texture of steel resulting from the application of localized compressive force. Illustrative forging standards include, but are not limited to, American Society for Testing and Materials (ASTM) specifications A668 and A788.

For purposes of these investigations, the term ''steel'' denotes metal containing the following chemical elements, by weight: (i) Iron greater than or equal to 60 percent; (ii) nickel less than or equal to 8.5 percent; (iii) copper less than or equal to 6 percent; (iv) chromium greater than or equal to 0.4 percent, but less than or equal to 20 percent; and (v) molybdenum greater than or equal to 0.15 percent, but less than or equal to 3 percent. Illustrative steel standards include, but are not limited to, American Iron and Steel Institute (AISI) or Society of Automotive Engineers (SAE) grades 4130, 4135, 4140, 4320, 4330, 4340, 8630, 15–5, 17–4, F6NM, F22, F60, and XM25, as well as modified varieties of these grades.

The products covered by these investigations are: (1) Cut-to-length fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) of 11 inches (279.4 mm) to 75 inches (1,905.0 mm); and (2) strings of fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) up to 360 inches (9,144.0 mm).

The products included in the scope of these investigations have a tensile strength of at least 70 KSI (measured in accordance with ASTM A370) and a hardness of at least 140 HBW (measured in accordance with ASTM E10).

A fluid end block may be imported in finished condition (*i.e.,* ready for incorporation into a pump fluid end assembly without further finishing operations) or unfinished condition (*i.e.,* forged but still requiring one or more finishing operations before it is ready for incorporation into a pump fluid end assembly). Such finishing operations may include: (1) Heat treating; (2) milling one or more flat surfaces; (3) contour machining to custom shapes or dimensions; (4) drilling or boring holes; (5) threading holes; and/or (6) painting, varnishing, or coating.

The products included in the scope of these investigations may enter under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055. While these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2020–00493 Filed 1–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–030]

Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty order on certain cold-rolled steel flat products from the People's Republic of China (China) for the period of review (POR) January 1, 2018, through December 31, 2018.

DATES: Applicable January 15, 2020.

FOR FURTHER INFORMATION CONTACT: John C. McGowan or Glenn T. Bass Jr., AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3019 or (202) 482–8338, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the countervailing duty order on certain cold-rolled steel flat products from China.[1] On July 31, 2019, Commerce received a timely request for review from ArcelorMittal USA LLC, California Steel Industries, Inc., Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners) and Mitsui & Co. (U.S.A) Inc. (Mitsui) (an interested party). [2] The petitioners and Mitsui each filed their request for review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b). No other interested party requested an administrative review of any company for this segment of the proceeding.

On September 9, 2019, Commerce published in the **Federal Register** a notice of initiation with respect to the 12 companies.[3] On December 4 and 6, 2019, the petitioners and Mitsui timely withdrew their requests for an administrative review for all companies for which each had initially requested a review.[4]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioners and Mitsui withdrew their requests for review for all companies by the 90-day deadline, and no other party requested an administrative review of this order. Accordingly, Commerce is rescinding the administrative review of the antidumping duty order on certain cold-rolled steel flat products from China covering the period January 1, 2018, through December 31, 2018, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 31295 (July 1, 2019).

[2] *See* Petitioners' Letter, ''Cold-Rolled Steel Flat Products from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order,'' July 31, 2019; and Letter from Mitsui, ''Certain Cold-Rolled Steel Flat Products from China: Request for Administrative Review,'' dated July 31, 2019. We note that Mitsui, as the petitioners, requested review of Hoa Sen Group and Tong Dong A Corporation.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242, 47252 (September 9, 2019).

[4] *See* Petitioners' Letter, ''Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Withdrawal of Request for Administrative Review of Countervailing Duty Order,'' dated December 6, 2019; Letter from Mitsui, ''Certain Corrosion-Resistant Steel Products from the People's Republic of China: Withdrawal of Review Request of Countervailing Duty Order,'' dated December 6, 2019; and Memorandum, ''Countervailing Duty Administrative Review of Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Clarification of Mitsui & Co. (U.S.A.) Inc.'s December 6, 2019 Withdrawal of Review Request,'' dated December 20, 2019.

withdrawal from warehouse, for consumption, during the period January 1, 2018 to December 1, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the countervailing duties occurred and the subsequent assessment of doubled countervailing duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an 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 violation which is subject to sanction. This notice is issued and published in accordance with sections 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: January 9, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–00491 Filed 1–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 24th Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting the 24th administrative review of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (China). The period of review (POR) for this administrative review is November 1, 2017 through October 31, 2018. Commerce preliminarily determines that mandatory respondent, Shijiazhuang Goodman Trading Co., Ltd. (Goodman), sold subject merchandise to the United States at less than normal value (NV). We also preliminarily find that the review requests made by the Coalition for Fair Trade in Garlic, and its individual members (collectively, the CFTG), and Roots Farm Inc. (Roots Farm) were not valid, and accordingly have preliminarily rescinded the review with respect to nineteen companies, including the other mandatory respondent, Zhengzhou Harmoni Spice Co., Ltd. (Harmoni). We invite interested parties to comment on these preliminary results.

DATES: Applicable January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace or Alex Cipolla, 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) 482–6251 or (202) 482–4956, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 2019, Commerce initiated the 24th administrative review of the AD order on fresh garlic from China with respect to 23 companies and invited interested parties to comment.[1] On March 14, 2019, Commerce initiated this review with respect to ten companies that were inadvertently omitted from the *Initiation Notice*.[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results, after tolling, was September 11, 2019. On August 23, 2019, Commerce extended the deadline for the preliminary results of this review.[4] The revised deadline for the preliminary results is now January 9, 2020.

Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.30.0005, 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, *see* ''Scope of the Order'' in the accompanying Preliminary Decision Memorandum.[5]

Partial Rescission of Administrative Review

On February 6 and March 14, 2019, Commerce initiated the 24th administrative review of the AD order on fresh garlic from China with respect to 33 companies.[6] On June 11, 2019, the petitioners[7] timely withdrew their sole requests for review of eight companies.[8] Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is partially rescinding this administrative review with respect to the companies listed in Appendix II.

Preliminary Rescission of Administrative Review

In addition, as discussed at ''Partial Rescission of Administrative Review'' in

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019) (*Initiation Notice*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019) (*Second Initiation*).

[3] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Fresh Garlic from the People's Republic of China—24th Administrative Review (2017–2018): Extension of Deadline for the Preliminary Results of the Review,'' dated August 23, 2019.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 2017–2018 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See Initiation Notice;* and *Second Initiation.*

[7] The petitioners are the Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic.

[8] *See* Petitioners' Letter, ''24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Partial Withdrawal of Review Request,'' dated June 11, 2019.

the accompanying Preliminary Decision Memorandum, Commerce has preliminarily determined that the review requests submitted by the CFTG and Roots Farm were invalid, and is preliminarily rescinding the administrative review with respect to the 19 companies solely requested by the CFTG and Roots Farm. These companies are listed in Appendix III.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214. Export prices were calculated in accordance with section 772(a) of the Act. Because China is a non-market economy (NME) within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided in Appendix I. 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 *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024, of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[9] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* $4.71 per kilogram (kg)) is not subject to change. Aside from the no shipments companies discussed below, and the companies for which the review is being rescinded, Commerce considers all other companies for which a review was requested, and which did not preliminarily qualify for a separate rate, to be part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we intend to verify the information provided by respondents using standard verification procedures, including on-site inspection of the producer's and exporter's facilities, and examination of relevant sales and financial records. Our verification results will be outlined in the verification report for the respective respondents after completion of the verification.

Preliminary Determination Regarding the ''No Shipments'' Company

As discussed at ''Preliminary Determination Regarding the 'No Shipments' Company'' in the accompanying Preliminary Decision Memorandum, one company, Jinxiang Infang Fruit & Vegetable Co., Ltd. (Infang), timely filed a ''no shipment'' certification stating that it had no entries into the United States of subject merchandise during the POR. However, the only review request for this company was found to be invalid *ab initio,* therefore, we are rescinding the review with respect to Infang.

Preliminary Determination of Separate Rates for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, Commerce employed a limited examination methodology, as it determined that it would not be practicable to individually examine all companies for which a review request was made.[10] There are three exporters of subject merchandise from China that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These three exporters are listed in Appendix IV.

Neither the Act nor Commerce's regulations address the establishment of the rate applied to individual companies not selected for examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs Commerce to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations. In this administrative review, Goodman is the only reviewed respondent that received a weighted-average margin. Therefore, for the preliminary results, Commerce has preliminarily determined to assign Goodman's rate to the non-selected separate-rate companies.

Preliminary Results of Administrative Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the administrative review covering the period November 1, 2017 through October 31, 2018:

Exporter	Weighted-average margin (dollars per kg)
Shijiazhuang Goodman Trading Co., Ltd	4.37
Jinxiang Feiteng Import & Export Co., Ltd	4.37
Chengwu Yuanxiang Industry & Commerce Co., Ltd	4.37
Qingdao Sea-Line International Trading Co., Ltd	4.37
China-Wide Entity	4.71

Disclosure, Public Comment, and Opportunity To Request a Hearing

Commerce intends to disclose the calculations used in our analyses to parties in this review within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted no later than seven days after the date on which the final verification report is issued in these proceedings and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding 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.[12] All electronically filed documents must be received successfully in their entirety

[9] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[10] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: 2017–2018: Selection of Respondents for Individual Examination,'' dated May 30, 2019.

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* 19 CFR 351.309(c)(2).

via Commerce's electronic records system, ACCESS, by the date and time it is due.

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 30 days 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 to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. If a party requests a hearing, Commerce will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

Commerce intends to issue the final results of this review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce will direct CBP to assess rates based on the per-unit (*i.e.,* per kg) amount on each entry of the subject merchandise during the POR. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of review.

Commerce announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the China-wide rate. In addition, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2) of the Act: (1) For the companies listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that 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 which have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of $4.71 per kg; 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 the Chinese exporter that supplied that non-Chinese exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice 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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

[13] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Dated: January 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Rescission of Administrative Review
V. Preliminary Determination Regarding the ''No Shipments'' Company
VI. Discussion of the Methodology
VII. Normal Value
VIII. Currency Conversion
IX. Recommendation

Appendix II

Companies for Which Administrative Reviews Have Been Rescinded

1. Chengwu County Yuanxiang Industries
2. Jiang Hua Yao Autonomous County Nikko Biotechnology Co., Ltd.
3. Jiangsu Lvhui Food Co., Ltd.
4. Jiangyong Foreign Trade Corp.
5. Lianyungang Xiangjiang Food Co., Ltd.
6. Qingdao Ritai Food Co., Ltd.
7. Tianjin Calgry Import Export
8. Weifang Naike Food Co., Ltd.

Appendix III

Companies for Which Administrative Reviews Have Been Preliminarily Rescinded

1. Hebei Golden Bird Trading Co., Ltd.
2. Jining Yongjia Trade Co., Ltd.
3. Jinxiang Changwei Agricultural Products Co., Ltd.
4. Jinxiang Dingyu Agricultural Products Co., Ltd.
5. Jinxiang Fitow Trading Co., Ltd.
6. Jinxiang Guihua Food Co., Ltd.
7. Jinxiang Hejia Co., Ltd.
8. Jinxiang Honghua Foodstuff Co., Ltd.
9. Jinxiang Infang Fruit & Vegetable Co., Ltd.
10. Jinxiang Kingkey Trade Co., Ltd.
11. Jinxiang Wanxing Garlic Products Co. Ltd.
12. Qingdao Doo Won Foods Co., Ltd.
13. Qingdao Joinseafoods Co. Ltd.
14. Shandong Chengwu Longxing Farm Produce & By-Product Co., Ltd.
15. Weifang Hongqiao International Logistics Co., Ltd.
16. Xinjiang Longping Hongan Xiwannian Chili Products Co., Ltd.
17. Yantai Jinyan Trading, Inc.
18. Zhengzhou Harmoni Spice Co., Ltd.
19. Zhengzhou Yudishengjin Farm Products Co., Ltd.

Appendix IV

Non-Selected Separate Rate Companies

1. Jinxiang Feiteng Import & Export Co., Ltd.
2. Qingdao Sea-Line International Trading Co., Ltd.
3. Chengwu Yuanxiang Industry & Commerce Co., Ltd.

[FR Doc. 2020–00492 Filed 1–14–20; 8:45 a.m.]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR077]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Gustavus Ferry Terminal Improvements Project

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

ACTION: Notice; proposed issuance of an Incidental Harassment Authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for authorization to take marine mammals incidental to pile driving and construction associated with the Gustavus Ferry Terminal Improvements Project in Gustavus, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations, and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 14, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online *at https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On November 20, 2019, NMFS received a request from the ADOT&PF for an IHA to take marine mammals incidental to in-water construction in Gustavus, Alaska. NMFS previously issued an IHA to ADOT&PF to incidentally take seven species of marine mammal, by Level A and Level B harassment, during construction activities associated with the Gustavus Ferry Terminal Improvements project. The IHA, issued on April 4, 2017 (82 FR 17209; April 10, 2017), had effective dates of December 15, 2017 through December 14, 2018. However, ADOT&PF was unable to conduct any of the work and, therefore, requested a new IHA. NMFS issued a second IHA with effective dates of December 15, 2018 through December 14, 2019 (83 FR 55348; November 11, 2018) to cover the incidental take analyzed and authorized in the first IHA. There were minor modifications to the number of piles driven but these had no effect on authorized take numbers, monitoring requirement, or reporting measures, which remained the same as stated in the original 2017–2018 IHA.

ADOT&PF was unable to meet the fall pile driving window (September 1 through November 30, 2019) as originally anticipated. Due to this setback, construction is planned to begin in spring 2020. ADOT&PF submitted an addendum to the original application requesting that a supplementary two-week timeframe be included in the spring window from February 15 through May 31, 2020. During this two-week timeframe, the contractor would begin vibratory removal of structures in order to get ahead of schedule while also accommodating for one last sailing of the ferry to the community before the ferry terminal's closure for the remainder of construction. The only difference between this proposed and previously issued IHAs is a construction start date of February 15 instead of March 1. The proposed IHA would be effective from February 15, 2020 through February 14, 2021. Take numbers would be the same as authorized previously, and the mitigation, monitoring, and reporting requirements would remain the same as authorized for the 2018–2019 IHA referenced above. The specified activities are expected to result in the take of seven species of marine mammals including harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*).

Description of the Proposed Activity and Anticipated Impacts

The proposed 2020–2021 IHA would cover the same construction associated with the modernization of the Gustavus Ferry Terminal as described in the 2017–2018 and 2018–2019 IHAs. NMFS refers the reader to the documents related to the previously issued IHAs for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2018–2019 IHA (83 FR 55348; November 11, 2018) for the Gustavus Ferry Terminal Improvements project; the **Federal Register** notice of the issuance of the 2017–2018 IHA (82 FR 17209; April 10, 2017); ADOT&PF's application; the addendum from ADOT&PF dated November 20, 2019; and all associated references and documents, which may be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* A detailed description of the proposed vibratory and impact pile driving activities at the ferry terminal improvements project is found in these documents. These descriptions remain accurate with the exception of moving up the construction start date by two weeks to February 15, 2020 during the spring work window instead of starting on March 1, 2020.

Detailed Description of the Action

Differences between the issued 2017–2018 IHA and the issued 2018–2019 IHA are shown in Table 1, for historical reference, but the proposed 2020–2021 IHA would be identical to the 2018–2019 IHA. Because the fullest detailed description of the activity was included in the materials describing the 2017–2018 IHA, we highlight the difference between the current 2020–2021 IHA and that one. Pile driving and removal would occur over the same number of days (50) with installation and removal of 16 additional piles over 21 additional hours. These changes represent a 3.5 percent increase in the number of piles installed and a 21.9 percent increase in the number of piles removed. The duration of impact driving would remain the same while the time spent vibratory driving would increase by 18.4 percent. The additional time required for vibratory driving is due to the increase in anticipated number of piles removed. Note that these proposed changes would have a nominal impact on the calculated Level A harassment isopleths and no effect on Level B harassment isopleths. Therefore, the sizes of the Level A harassment and Level B harassment zones would remain unchanged.

TABLE 1—GUSTAVUS FERRY PILE INSTALLATION AND REMOVAL SUMMARY

Pile size (inches)	Number of piles—2017–2018 IHA	Number of piles—2018–2019 and 2020–2021 proposed IHA
30	14	18.
24	40	34 install/12 remove.
18	0	4 remove.
16	0	4 install/4 remove.
12.75	3 install/16 remove	3 install/9 remove.
Total installed/total Piles	57/73	59/89.
Driving time duration	2017–2018 IHA (hours)	2018–2019 proposed IHA (hours)
Impact Driving	57	57.
Vibratory Driving	114	135.
Total	171	192.

Description of Marine Mammals

Marine mammals expected to occur near the project area are shown in Table 2. A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to the proposed 2020–2021 IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the 2017–2018 IHA.

TABLE 2—MARINE MAMMALS OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR)	UND	0
Humpback Whale	*Megaptera novaeangliae*	Central N Pacific (Hawaii and Mexico DPS).	-, -, Y	10,103 (0.3, 7,891, 2006) (Hawaii DPS 9,487,[a] Mexico DPS 606 [a]).	83	*25
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Gulf of Alaska Transient	-, -, N	587 c (N/A, 587, 2012)	5.9	1
		Northern Resident	-, -, N	302 c (N/A, 302, 2018) *	*2.2	*0.2
		West Coast Transient	-, -, N	243 c (N/A, 243, 2009)	2.4	0
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	AK	-, -, N	83,400 (0.097, N/A, 1991)	UND	38
Harbor Porpoise	*Phocoena phocoena*	Southeast Alaska	-, -, Y	see SAR (see SAR, see SAR, 2012).	*See SAR	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	*Eumetopias jubatus*	Western DPS	E, D, Y	53,624 (see SAR, 53,624, 2018) *.	*322	247
		Eastern DPS	T, D, Y	43,201 (see SAR, 43,201, 2017) *.	*2,592	*113
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Glacier Bay/Icy Strait	-, -, N	7,455 (see SAR, 6,680, 2017) *	*120	104

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note: Italicized species are not expected to be taken or proposed for authorization.

[a] Under the MMPA humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for distinct population segments (DPSs) listed under the ESA. Using the stock assessment from Muto et al. 2019 for the Central North Pacific stock (10,103) and calculations in Wade et al. 2016, 93.9% of the humpback whales in Southeast Alaska are expected to be from the Hawaii DPS and 6.1% are expected to be from the Mexico DPS.

* Updated information from Muto *et al.* 2019. Draft Alaska Marine Mammal Stock Assessments, 2019. Available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

Potential Effects on Marine Mammals

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in these previous documents, which remains applicable to the issuance of the proposed 2020–2021 IHA. There is no new information on potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for the proposed 2020–2021 IHA are identical to those used in the 2017–2018 IHA. The source levels also remain unchanged from the previously issued IHAs. Observational data was used to calculate daily take rates in the absence of density data. Since the number of pile-driving days (50) planned for the 2017–2018 IHA, 2018–2019 IHA and proposed 2020–2021 IHA are the same, the total estimated take projections will be identical. Additionally, marine mammal occurrences are more frequent in the late spring near the Gustavus ferry terminal. Moving the start date forward by two weeks would reduce the amount of in-water construction occurring later in the spring when animal occurrences are elevated. Therefore, the total recorded take amounts may be reduced. Note that since abundance estimates of some stocks have been updated in the Draft 2019 SAR (Muto *et al.* 2019) the percentage of stock taken has also changed. These changes are shown in Table 3.

TABLE 3—ESTIMATED NUMBER OF INSTANCES OF EXPOSURES THAT MAY BE SUBJECT TO LEVEL A AND LEVEL B HARASSMENT AND PERCENTAGE OF STOCKS

Species	Level A authorized takes	Level B authorized takes	Total proposed authorized takes	Stock(s) abundance estimate	Instances of take as a percentage of total stock
Steller Sea Lion	0	709	709	53,624 (western distinct population segment in Alaska)/43,201 (eastern stock).	1.3 */1.6*.
Humpback whale	0	600/(36 [1])	600/(36 [1])	10,103 (Central North Pacific Stock)/3,264 (Mexico DPS).	5.9/1.1.
Harbor Seal	38	616	654	7,455 (Glacier Bay/Icy Strait)	8.7*.
Harbor Porpoise	26	127	153	11,146 (Southeast Alaska)	1.37.
Killer whale	0	126	126	302 (Northern resident)/587 (Gulf of Alaska transient)/243 (West Coast transient).	41.7 */21.4/51.8.
Minke whale	0	42	42	Unknown	Unknown.
Dall's Porpoise	7	35	42	83,400	<0.01.

[1] 6.1 percent of humpbacks whales in southeast Alaska (36) are from Mexico DPS (Wade *et al.* 2016).
* Updated information from Muto *et al.* 2019. Draft Alaska Marine Mammal Stock Assessments, 2019. Available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

Description of Proposed Mitigation, Monitoring and Reporting Measures

A description of proposed mitigation, monitoring, and reporting measures is found in the previous documents, which are identical to those contained in this proposed 2020–2021 IHA. The following measures would apply to ADOT&PF's mitigation requirements:

• *Implementation of Shutdown Zone*—For all pile driving activities, ADOT&PF will implement a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). In this case, shutdown zones (Table 4) are intended to contain areas in which sound pressure levels (SPLs) equal or exceed acoustic injury criteria for some authorized species, based on NMFS' acoustic technical guidance (NMFS 2018).

• *Implementation of Monitoring Zones*—ADOT&PF must monitor Level A harassment zones as shown in Table 4. These zones are areas beyond the shutdown zones where animals may be exposed to sound levels that could result in permanent threshold shift (PTS). ADOT&PF must also monitor the Level B harassment disturbance zones as shown in Table 4 which are areas where SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity, and also allows for the collection of marine mammal and effects data. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (82 FR 17209; April 10, 2017) which are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in this proposed 2020–2021 IHA.

TABLE 4—SHUTDOWN, INJURY AND BEHAVIORAL HARASSMENT ISOPLETHS FROM IMPACT AND VIBRATORY PILE DRIVING

Species	Shutdown zone—impact/vibratory (m)	Level A harassment zone—impact (m)	Level B harassment zone—impact/vibratory (m)
Steller Sea Lion	25/10	n/a	2,090/3,265
Humpback whale	550/20	n/a	2,090/3,265
Harbor Seal	100/10	285	2,090/3,265
Harbor Porpoise	100/20	630	2,090/3,265
Killer whale	25/10	n/a	2,090/3,265
Minke whale	550/20	n/a	2,090/3,265
Dall's Porpoise	100/20	630	2,090/3,265

• *Temporal and Seasonal Restrictions*—Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted and all in-water construction will be limited to the periods February 15 through May 31, 2020, and September 1 through November 30, 2020.

• *Soft Start*—The use of a soft-start procedure is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to implement soft start procedures. Soft Start is not required during vibratory pile driving and removal activities.

• *Visual Marine Mammal Observation*—Monitoring must be conducted by qualified marine mammal observers (MMOs), who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the 2017–2018 IHA (82 FR 17209; April 4, 2017). In order to effectively monitor the pile driving monitoring zones, two MMOs must be positioned at the best practical vantage point(s). If waters exceed a sea-state which restricts the observers' ability to make observations within the shutdown zone (*e.g.,* excessive wind or fog), pile installation and removal will cease. Pile driving will not be initiated until the entire shutdown zone is visible. MMOs shall record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the 2017–2018 IHA (82 FR 17209; April 10, 2017). At the conclusion of the in-water construction work, ADOT&PF will provide NMFS with a monitoring report, which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

• ADOT&PF must conduct sound source verification (SSV) testing of impact and vibratory pile driving for this project within seven days after underwater pile driving work is initiated. An acoustic monitoring plan must be submitted to NMFS for review and approval. The SSV testing must be conducted by an acoustical firm with prior experience conducting SSV tests in Alaska. Results must be sent to NMFS no later than 14 days after field testing has been completed. If necessary, the shutdown, Level A, and Level B harassment zones will be adjusted to meet MMPA requirements within 7 days of NMFS receiving results.

Determinations

ADOT&PF proposes to conduct activities similar to those covered in the previous 2017–2018 and 2018–2019 IHAs. As described above, the number of estimated takes of the same stocks of marine mammals are the same as those authorized in the 2017–2018 and 2018–2019 IHAs that were found to meet the negligible impact and small numbers standards. Our analysis showed that less than 9 percent of the populations of affected stocks, with the exception of minke and killer whales, could be taken by harassment. For Northern resident and West Coast transient killer whales, the percentages, when instances of take are compared to abundance, are 41.7 percent and 51.8 percent, respectively. However, the takes estimated for these stocks (up to 126 instances assuming all takes are accrued to a single stock) are not likely to represent unique individuals. Instead, we anticipate that there will be multiple takes of a smaller number of individuals.

The Northern resident killer whale stock are most commonly seen in the waters around the northern end of Vancouver Island, and in sheltered inlets along British Columbia's Central and North Coasts. They also range northward into Southeast Alaska in the winter months. Pile driving operations are not permitted from December through February. It is unlikely that such a large portion of Northern resident killer whales with ranges of this magnitude would be concentrated in and around Icy Passage.

NMFS believes that small numbers of the West coast transient killer whale stock would be taken based on the limited region and duration of exposure in comparison with the known distribution of the transient stock. The West coast transient stock ranges from Southeast Alaska to California, while the proposed project activity would be stationary. A notable percentage of West coast transient whales have never been observed in Southeast Alaska. Only 155 West coast transient killer whales have been identified as occurring in Southeast Alaska according to Dahlheim and White (2010). The same study identified three pods of transients, equivalent to 19 animals that remained almost exclusively in the southern part of Southeast Alaska (*i.e.* Clarence Strait and Sumner Strait). This information indicates that only a small subset of the entire West coast Transient stock would be at risk for take in the Icy Passage area because a sizable portion of the stock has either not been observed in Southeast Alaska or consistently remains far south of Icy Passage.

There is no current abundance estimate for minke whale since population data on this species is dated. However, the proposed take of 42 minke whales may be considered small. A visual survey for cetaceans was conducted in the central-eastern Bering Sea in July–August 1999, and in the southeastern Bering Sea in 2000. Results of the surveys in 1999 and 2000 provide provisional abundance estimates of 810 and 1,003 minke whales in the central-eastern and southeastern Bering Sea, respectively (Moore *et al.,* 2002). Additionally, line-transect surveys were conducted in shelf and nearshore waters in 2001–2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 for this area (Zerbini *et al.,* 2006). However, these estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. (Allen and Anglis 2012). Clearly, 42 authorized takes should be considered a small number, as it constitutes only 5.2 percent of the smallest abundance estimate generated during the surveys just described and each of these surveys represented only a portion of the minke whale range.

Note that the numbers of animals authorized to be taken for all species, with the exception of Northern resident and West coast transient killer whales, would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

The proposed 2020–2021 IHA includes mitigation, monitoring, and reporting requirements that are identical to those depicted in the 2017–2018 and 2018–2019 IHAs, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

In order to comply with the ESA, NMFS Alaska Regional Office (AKR) Protected Resources Division issued a Biological Opinion on March 21, 2017 under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section 101(a)(5)(D) of the MMPA. This consultation concluded that the project was likely to adversely affect but unlikely to jeopardize the continued existence of the threatened Mexico DPS of humpback whale (*Megaptera novaeangliae*) or the endangered western DPS of Steller sea lion (*Eumatopias jubatus*), or adversely modify designated critical habitat for Steller sea lions. In a memo dated June 13, 2018, NMFS AKR concluded that re-initiation of section 7 consultation was not necessary for the issuance of the 2018–2019 IHA. NMFS PR1 has been in contact with AKR Protected Resources Division and expects a similar outcome for the proposed 2020–2021 IHA. The only modification to the project is a time shift of approximately one year and moving the spring start date forward by approximately two weeks. No additional take has been requested by ADOT&PF or is proposed for authorization by NMFS. All mitigation measures described in the Biological Opinion would be implemented to reduce harassment of marine mammals and document take of marine mammals. For these reasons, we anticipate no new or changed effects of the action beyond what was considered in the 2017 Biological Opinion. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization and Request for Public Comments

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ADOT&PF for conducting pile driving and removal activities as part of the Gustavus Ferry Terminal Improvements Project for a period of one year from February 15, 2020 through February 14, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements from the 2018–2019 IHA are incorporated. We request comment on our analyses and the proposed issuance of the IHA which would be identical to the previous IHA with the exception of a construction start date of February 15 instead of March 1. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed ADOT&PF project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

• A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

• The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

• Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 9, 2020.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–00470 Filed 1–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act (PRA) of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before March 16, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Adam Bailey, National Marine Fisheries Service, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701, phone: 727–824–5305, or email: *adam.bailey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension with revisions to the existing reporting requirements approved under the Office of Management and Budget's (OMB) Control Number 0648–0205, Southeast Region Permit Family of Forms. The NMFS Southeast Regional Office (SERO) Permits Office administers Federal fishing permits in the U.S. exclusive economic zone (EEZ) of the Caribbean Sea, Gulf of Mexico (Gulf), and South Atlantic under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801. The SERO Permits Office also proposes to revise parts of the current collection-of-information approved under OMB Control Number 0648–0205.

The NMFS Southeast Region manages the U.S. Federal fisheries in the Caribbean, Gulf, and South Atlantic under the fishery management plans (FMPs) for each region. The regional fishery management councils prepared the FMPs pursuant to the Magnuson-Stevens Act. The regulations implementing the FMPs, including those that have recordkeeping and reporting requirements, are located at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. The NMFS Southeast Region requests information from fishery participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the Federal fisheries in the Caribbean, Gulf, and South Atlantic.

The SERO Permits Office proposes to revise the collection-of-information approved under OMB Control Number 0648–0205. NMFS proposes to revise the Federal permit applications for Vessels Fishing in the EEZ (Vessel EEZ), Change of Information Form, Vessel Fishing in the Colombian Treaty Waters, Duplicate Federal Fishery Permits, Operator Card or Decal, Aquacultured Live Rock (new permit), Aquacultured Live Rock (permit renewal), Harvest of Aquacultured Live Rock in the EEZ, Southeast Region Issued Operator Card, Consolidate Gulf of Mexico Reef Fish permits, Vessels Fishing for Wreckfish in the South Atlantic States (Wreckfish), Income Qualification Affidavit for Spiny Lobster, and the Annual Dealer permit.

The purpose of revising certain NMFS SERO permit application forms is to better comply with National Standard 4 (NS4) of the Magnuson-Stevens Act, the Regulatory Flexibility Act (RFA) and the Small Business Administration's regulations implementing the RFA, Executive Order 12898, and the ''fairness and equitable distribution'' provisions of the Magnuson-Stevens Act, including NS4 and section 303(b)(6).

The proposed revisions to the specified application forms are administrative and would update outdated URLs, telephone numbers, and office hours. NMFS estimates that the proposed revisions would not change the annual number of respondents or responses, or annual costs to affected permit applicants from estimates in the currently approved collection. Across the application forms, NMFS estimates these revisions would not increase the overall time burden.

The SERO Permits Office also proposes to modify the limited access permits by updating the form field name related to the selling price of the permit, along with removing the section related to the permit's selling price. NMFS does not anticipate these revisions will materially change the time burden to the applicants.

The SERO Permits Office also proposes to modify the Vessel EEZ application to include a checkbox and language related to the compliance of regulatory requirements. NMFS does not anticipate these revisions to the form will materially change the time burden to the applicants.

II. Method of Collection

Respondents complete applications on paper forms, and then can either mail or bring applications to the SERO Permits Office. Online application renewals are currently available only for some of the permits included on the Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone. The SERO Permits Office can mail applications and instructions or they can be downloaded from the SERO Permits Office website at *https://www.fisheries.noaa.gov/southeast/resources-fishing/southeast-fisheries-permits.*

III. Data

OMB Control Number: 0648–0205.

Form Number(s): None.

Type of Review: Regular submission—revision and extension of current information collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 13,909.

Estimated Time per Response:

- Dealer Permit Application, 30 minutes.
- Vessel EEZ Permit Application, including Golden Tilefish Endorsement and Smoothhound Shark Permit, 40 minutes.
- Wreckfish Permit Application, 40 minutes.
- Vessel Operator Card Application for Dolphin/Wahoo or Rock Shrimp, 21 minutes.
- Fishing in Colombian Treaty Waters Vessel Permit Application, 30 minutes.
- Golden Crab Permittee Zone Transit Notification, 12 minutes.
- Notifications of Authorization for Retrieval of Lost or Stolen Traps (golden crab, reef fish, snapper-grouper, spiny lobster), 13 minutes.
- Vessel Permit Transfers and Notarizations, 10 minutes.
- Annual Landings Report for Gulf of Mexico Shrimp, 20 minutes.
- International Maritime Organization (IMO) Number Registration, 30 minutes.
- Aquacultured Live Rock Permitting and Reporting—New Permit—Deposit Harvest Report, 15 minutes; Notice of Intent to Harvest, 5 minutes; Site Evaluation Report, 20 minutes; Federal Permit Application, including Site Evaluation Report, 50 minutes; and
- Aquacultured Live Rock Permitting and Reporting—Renew Permit—Deposit Harvest Report, 15 minutes; Notice of Intent to Harvest, 5 minutes; Federal Permit Application, 30 minutes.

Estimated Total Annual Burden Hours: 7,940.

Estimated Total Annual Cost to Public: $483,828 in recordkeeping or reporting costs.

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. 2020–00506 Filed 1–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Analysis of and Participation in Ocean Exploration Video Products.

OMB Control Number: 0648–0748.

Form Number(s): N/A.

Type of Request: Regular (revision of a currently approved collection).

Number of Respondents: 3,000.

Average Hours per Response: 10 minutes.

Burden Hours: 664 hours.

Needs and Uses: This collection is revised to add two new forms resulting in an increased number of respondents (1,000), responses (1,400), and burden hours (16).

It is important to address the needs of the shore-based scientists and public to maintain a high level of participation. We use voluntary surveys to identify the needs of users of data and best approaches to leverage expertise of shore-based participants for meaningful public engagement focused on ocean exploration. This information collection consists of four forms. (1) Sailing Contact Information (new). This form is sent to the few scientists that directly sail on NOAA Ship *Okeanos Explorer.* The ship's operational officer needs certain information such as: If a sailing individual has securely submitted their proper medical documents to NOAA's Office of Marine and Aviation Operations, if the person is up to date with required security documents such as a passport, if the ship is traveling to a foreign port, or any dietary restrictions so that the person will be served food that is safe. (2) *Okeanos Explorer* Participation Assessment. This voluntary form is sent to the scientists that sailed on any *Okeanos Explorer* cruise funded by NOAA's Office of Ocean Exploration and Research to record any feedback they wish to provide to the office about their experience. The office uses their feedback in assessments for improving the utility and experience of these scientific guests sailing on the *Okeanos Explorer.* (3) EX Collaboration Tools Feedback (new). This voluntary form is sent to members of the marine scientific community at the beginning of a fiscal year to ask if members would like to participate in any of the upcoming cruises and to what degree, such as simply asking to be included in emailed updates or if they want to be on a direct line to the ship for remotely operated vehicle dive operations. (4) Citizen Scientist. This voluntary form is available to general members of the public and is used for members to improve the annotation efforts when watching short video clips of 30 seconds to 5 minutes.

Affected Public: Targeted towards the greater ocean exploration community Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal government.

Frequency: EX Collaboration Tools Feedback: annually; all other forms are on occasion.

Respondent's Obligation: Sailing Contact Information: Required to obtain or retain benefits; all other forms are voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00536 Filed 1–14–20; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Nautical Discrepancy Reporting System

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before March 16, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kristen Crossett, (240) 533–0113, *kristen.crossett@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

NOAA's Office of Coast Survey is the nation's nautical chartmaker, maintaining and updating over a thousand charts covering the 3.5 million square nautical miles of coastal waters in the U.S. Exclusive Economic Zone and the Great Lakes. The marine transportation system relies on charting accuracy and precision to keep navigation safe and coastal communities protected from environmental disasters at sea.

Coast Survey also writes and publishes the *United States Coast Pilot*®, a series of nine nautical books that supplement nautical charts with essential marine information that cannot be shown graphically on the charts and are not readily available elsewhere. Subjects include, but are not limited to, channel descriptions, anchorages, bridge and cable clearances, tides and tidal currents, prominent features, pilotage, towage, weather, ice conditions, wharf descriptions, dangers, routes, traffic separation schemes, small craft facilities and Federal Regulations applicable to navigation.

The marine environment and shorelines are constantly changing. NOAA makes every effort to update information portrayed in charts and described in the Coast Pilot. Sources of information include, but are not limited to: Pilot associations, shipping companies, towboat operators, state marine authorities, city marine authorities, local port authorities, marine operators, hydrographic research vessels, naval vessels, Coast Guard cutters, merchant vessels, fishing vessels, pleasure boats, U.S. Power Squadron Units, U.S. Coast Guard Auxiliary Units, and the U.S. Army Corps of Engineers.

The purpose of NOAA's Nautical Discrepancy Reporting System is to offer a formal, standardized instrument for recommending changes, corrections, and updates to nautical charts and the Coast Pilot, and to monitor and document the accepted changes. Coast Survey solicits information through the stakeholder engagement and feedback tool ASSIST (*https://www.nauticalcharts.noaa.gov/customer-service/assist/*).

Coast Survey is proposing to add a Citizen Science component to the collection, which would allow boating groups or individuals to submit reports to update the charts. Adding the Citizen Science component to the collection method will benefit Coast Survey by allowing the public to ''adopt'' a product or part of a product and provide annual data updates that directly affect that product or products. Data obtained through these systems is used to update U.S. nautical charts and the *United States Coast Pilot.*

II. Method of Collection

Respondents can submit discrepancy reports electronically or by telephone (888–990–6622).

III. Data

OMB Control Number: 0648–0007.

Form Number(s): None.

Type of Review: Regular submission (Revision of a currently approved collection).

Affected Public: Business or other for profit; individuals or households; not for-profit institutions; federal government; state, local or tribal government.

Estimated Number of Respondents: 900.

Estimated Time per Response: 10 min.

Estimated Total Annual Burden Hours: 150.

Estimated Total Annual Cost to Public: $0 in record keeping/reporting costs.

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. 2020–00507 Filed 1–14–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Natural Resource Damage Assessment Restoration Project Information Sheet.

OMB Control Number: 0648–0497.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 55.

Average Hours per Response: Reports 20 minutes, updates 10 minutes.

Burden Hours: 43.

Needs and Uses: This request is for an extension of a currently approved information collection.

The purpose of this information collection is to assist state and federal Natural Resource Trustees in more efficiently carrying out the restoration planning phase of Natural Resource Damage Assessments (NRDA), in compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4370d; 40 CFR 1500–1500 and other federal and local statutes and regulations as applicable. The NRDA Restoration Project Information Sheet is designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration, during the restoration planning phase of the NRDA process.

Affected Public: State, local, or tribal governments; individuals or households; business or other for-profits organizations; not-for-profit institutions; farms; and the federal government.

Frequency: Annually and on occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00462 Filed 1–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0010]

Agency Information Collection Activities; Comment Request; Statewide Longitudinal Data System (SLDS) Survey 2020–2022

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 16, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0010. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Statewide Longitudinal Data System (SLDS) Survey 2020–2022.

OMB Control Number: 1850–0933.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 112.

Total Estimated Number of Annual Burden Hours: 140.

Abstract: As authorized by the Educational Technical Assistance Act of 2002, Title II, the Statewide Longitudinal Data Systems (SLDS) Grant Program has awarded competitive, cooperative agreement grants to states since 2005. Through grants and a growing range of services and resources, the program has helped propel the successful design, development, implementation, and expansion of K12 and P–20W (early learning through the workforce) longitudinal data systems. These systems are intended to enhance the ability of States to efficiently and accurately manage, analyze, and use education data, including individual student records. The SLDSs should help states, districts, schools, educators, and other stakeholders to make data-informed decisions to improve student learning and outcomes; as well as to facilitate research to increase student achievement and close achievement gaps. The SLDS grants extend for three to five years for up to twenty million dollars per grantee, and grantees are obligated to submit annual reports and a final report on the development and implementation of their systems. All 50 states, five territories, and the District of Columbia are eligible to apply, and each state can apply multiple times to develop different aspects of their data system. Since November 2005, 97 grants have been awarded. In addition to the grants, the program offers many services and resources to assist education agencies with SLDS-related work. Best practices, lessons learned, and non-proprietary products/solutions developed by recipients of these grants and other states are disseminated to aid all state and local education agencies. The request to formalize the annual SLDS Interim Progress Report (IPR) as the SLDS Survey, intended to provide insight on state and U.S. territory SLDS capacity for automated linking of K–12, teacher, postsecondary, workforce, career and technical education (CTE), adult education, and early childhood data, and to conduct the annual SLDS Survey from 2017 through 2019 was approved in February 2017 with the latest change request approved in August 2019 (1850–0933 v.1–7). The SLDS Survey helps inform ongoing evaluation and targeted technical assistance efforts to enhance the quality of the SLDS Program's support to states. This request is to conduct the annual SLDS Survey from 2020 through 2022, and introduces a new online form for data collection.

Dated: January 9, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–00460 Filed 1–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0139]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Student Aid User Experience Design Research Generic Clearance

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 14, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0139. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Student Aid User Experience Design Research Generic Clearance.

OMB Control Number: 1845—New.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 262,400.

Total Estimated Number of Annual Burden Hours: 74,975.

Abstract: Federal Student Aid (FSA) seeks to obtain OMB approval of a Fast Track Process (5-day) generic clearance to collect qualitative feedback for the Next Generation Financial Services Environment (Next Gen). FSA will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current service delivery and make improvements based on feedback. The solicitation of feedback will target areas such as: consistency, personalization, intuitiveness, accessibility, ease of use, proactive communication, and efficiency. The collection of this information will allow FSA to deliver clear, consistent information and readily accessible self-service options at every stage of the student aid lifecycle. The insights collected from our customers and stakeholders will help ensure that users have a consistent, efficient, and satisfying experience with FSA's programs.

Dated: January 10, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division Office of Chief Data Officer.

[FR Doc. 2020–00498 Filed 1–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates for Variable-Rate Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), and Federal Direct PLUS Loans (Direct PLUS Loan) with first disbursement dates before July 1, 2006, and for Federal Direct Consolidation Loans (Direct Consolidation Loans) for which the application was received before February 1, 1999. The rates announced in this notice are in effect for the period July 1, 2019, through June 30, 2020. Catalog of Federal Domestic Assistance (CFDA) Number: 84.268.

FOR FURTHER INFORMATION CONTACT: Jon Utz, U.S. Department of Education, 830 First Street NE, 11th Floor, Washington, DC 20202. Telephone: (202) 377–4040 or by email: *Jon.Utz@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: Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans (collectively referred to as ''Direct Loans'') may have either fixed or variable interest rates, depending on when the loan was first disbursed or, in the case of a Direct Consolidation Loan, when the application for the loan was received. Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed before July 1, 2006, and Direct Consolidation Loans for which the application was received before February 1, 1999, have variable interest rates. For these loans, a new rate is determined annually and is in effect during the period from July 1 of one year through June 30 of the following year.

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006, and Direct Consolidation Loans for which the application was received on or after February 1, 1999, have fixed interest rates that apply for the life of the loan.

This notice announces the interest rates for variable-rate Direct Loans that will apply during the period from July 1, 2019, through June 30, 2020. Interest rate information for fixed-rate Direct Loans is announced in a separate notice published in the **Federal Register**.

Interest rates for variable-rate Direct Loans are determined in accordance with formulas specified in section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)). The formulas vary depending on loan type and when the loan was first disbursed or, for certain Direct Consolidation Loans, when the application for the loan was received. The HEA specifies a maximum interest rate for these loan types. If the interest rate formula results in a rate that exceeds the statutory maximum rate, the rate is the statutory maximum rate.

Variable-Rate Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans

For Direct Subsidized Loans and Direct Unsubsidized Loans with first disbursement dates before July 1, 2006, and for Direct PLUS Loans with first disbursement dates on or after July 1, 1998, and before July 1, 2006, the interest rate is equal to the lesser of—

(1) The bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before the June 1 immediately preceding the 12-month period to which the interest rate applies, plus a statutory add-on percentage; or

(2) 8.25 percent (for Direct Subsidized Loans and Direct Unsubsidized Loans) or 9.00 percent (for Direct PLUS Loans).

For Direct Subsidized Loans and Direct Unsubsidized Loans with first disbursement dates on or after July 1, 1995, and before July 1, 2006, the statutory add-on percentage varies depending on whether the loan is in an in-school, grace, or deferment status, or in any other status. For all other loans, the statutory add-on percentage is the same during any status.

The bond equivalent rate of 91-day Treasury bills auctioned on May 28, 2019, is 2.362 percent, rounded to 2.36 percent.

For Direct PLUS Loans with first disbursement dates before July 1, 1998, the interest rate is equal to the lesser of—

(1) The weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before the June 26 preceding the 12-month period to which the interest rate applies, plus a statutory add-on percentage; or

(2) 9.00 percent.

The weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26, 2019, is 1.98 percent.

Variable-Rate Direct Consolidation Loans

A Direct Consolidation Loan may have up to three components, depending on the types of loans that were repaid by the consolidation loan and when the application for the consolidation loan was received. The three components are called Direct Subsidized Consolidation Loans, Direct Unsubsidized Consolidation Loans, and (only for Direct Consolidation Loans made based on applications received before July 1, 2006) Direct PLUS

Consolidation Loans. In most cases the interest rates for variable-rate Direct Subsidized Consolidation Loans, Direct Unsubsidized Consolidation Loans, and Direct PLUS Consolidation Loans are determined in accordance with the same formulas that apply to Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans, respectively.

Interest Rate Charts

Charts 1 and 2 show the interest rate formulas used to determine the interest rates for all variable-rate Direct Loans and the rates that are in effect during the 12-month period from July 1, 2019, through June 30, 2020.

Chart 1 shows the interest rates for loans with rates based on the 91-day Treasury bill rate. Chart 2 shows the interest rates for loans with rates based on the weekly average of the one-year constant maturity Treasury yield.

CHART 1—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, DIRECT SUBSIDIZED CONSOLIDATION LOANS, DIRECT UNSUBSIDIZED CONSOLIDATION LOANS, DIRECT PLUS LOANS, AND DIRECT PLUS CONSOLIDATION LOANS

[Interest rates based on 91-day Treasury bill]

Loan type	Cohort	91-Day T-bill rate 05/28/19 (%)	Add-on (%)		Maximum rate (%)	Interest rate 07/01/19 through 06/30/20 (%)	
Subsidized, Unsubsidized	First disbursed on/after 07/01/98 and before 07/01/06.	2.36	*1.70	†2.30	8.25	*4.06	†4.66
Subsidized Consolidation, Unsubsidized Consolidation.	First disbursed on/after 07/01/98 and before 10/01/98; or Application received before 10/01/98 and first disbursed on/after 10/01/98.						
PLUS	First disbursed on/after 07/01/98 and before 07/01/06.	2.36	3.10		9.00	5.46	
PLUS Consolidation	First disbursed on/after 07/01/1998 and before 10/01/1998; or Application received before 10/01/98 and first disbursed on/after 10/01/98.	....	....	....	....	....	....
Subsidized, Unsubsidized, Subsidized Consolidation, Unsubsidized Consolidation.	First disbursed on/after 07/01/95 and before 07/01/98.	2.36	*2.50	†3.10	8.25	*4.86	†5.46
Subsidized, Unsubsidized, Subsidized Consolidation, Unsubsidized Consolidation.	First disbursed before 07/01/95	2.36	3.10		8.25	5.46	
Subsidized Consolidation, Unsubsidized Consolidation, PLUS Consolidation.	Application received on/after 10/01/98 and before 02/01/99.	2.36	2.30		8.25	4.66	

CHART 2—DIRECT PLUS LOANS AND DIRECT PLUS CONSOLIDATION LOANS

[Interest rates based on weekly average of one-year constant maturity Treasury yield]

Loan type	Cohort	Weekly average of 1-year constant maturity treasury yield for last calendar week ending on or before 06/26/19 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/19 through 06/30/20 (%)
PLUS, PLUS Consolidation	First disbursed before 07/01/98	1.98	3.10	9.00	5.08

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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: January 9, 2020.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2020–00572 Filed 1–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates for Variable-Rate Federal Student Loans Made Under the Federal Family Education Loan Program Prior to July 1, 2010

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the Federal Family Education Loan (FFEL) Program that have variable interest rates. The rates announced in this notice are in effect for the period July 1, 2019, through June 30, 2020. Catalog of Federal Domestic Assistance (CFDA) Number: 84.032.

FOR FURTHER INFORMATION CONTACT: Jon Utz, U.S. Department of Education, 830 First Street NE, 11th Floor, Washington, DC 20202. Telephone: (202) 377–4040 or by email: *Jon.Utz@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: Section 427A of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1077a), provides formulas for determining the interest rates charged to borrowers on loans made under the FFEL Program, including Federal Subsidized and Unsubsidized Stafford Loans (Stafford Loans), Federal PLUS Loans (PLUS Loans), Federal Consolidation Loans (Consolidation Loans), and Federal Supplemental Loans for Students (SLS Loans). No new loans have been made under the FFEL Program since June 30, 2010.

The FFEL Program includes loans with variable interest rates that change each year and loans with fixed interest rates that remain the same for the life of the loan. For loans with a variable interest rate, the specific interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan or, in the case of a Consolidation Loan, the date the application for the loan was received. If a loan has a variable interest rate, a new rate is determined annually and is in effect during the period from July 1 of one year through June 30 of the following year.

This notice announces the interest rates for variable-rate FFEL Program loans that will be in effect during the period from July 1, 2019, through June 30, 2020. Interest rates for fixed-rate FFEL Program loans may be found in a **Federal Register** notice published on September 15, 2015 (80 FR 55342).

For the majority of variable-rate FFEL Program loans, the annual interest rate is equal to the lesser of—

(1) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage; or

(2) A statutorily established maximum interest rate.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 28, 2019, is 2.362 percent, rounded to 2.36 percent.

For PLUS Loans first disbursed before July 1, 1998, and for all SLS Loans, the annual interest rate is equal to the lesser of—

(1) The weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 of each year, plus a statutory add-on percentage; or

(2) A statutorily established maximum interest rate.

The weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26, 2019, is 1.98 percent.

For Consolidation Loans that have a variable interest rate, the annual interest rate for the portion of a Consolidation Loan that repaid loans other than loans made under the Health Education Assistance Loans (HEAL) Program is equal to—

(1) The bond equivalent rate of the 91-day Treasury bill auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage; or

(2) A statutorily established maximum interest rate.

If a Consolidation Loan (whether a variable-rate loan or a fixed-rate loan) repaid loans made under the HEAL Program, the interest rate on the portion of the Consolidation Loan that repaid HEAL loans is a variable rate that is equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus a statutory add-on percentage. For the portion of a Consolidation Loan that repaid HEAL loans, there is no maximum interest rate.

The average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending on June 30, 2019, is 2.37 percent.

The statutory add-on percentages and maximum interest rates vary depending on loan type and when the loan was first disbursed. In addition, the add-on percentage for certain Stafford Loans is different depending on whether the loan is in an in-school, grace, or deferment status, or in any other status. If the interest rate calculated in accordance with the applicable formula exceeds the statutory maximum interest rate, the statutory maximum rate applies.

Charts 1 through 4 show the interest rate formulas that are used to determine the interest rates for all variable-rate FFEL Program loans and the interest rates that are in effect during the 12-month period from July 1, 2019, through June 30, 2020. Unless otherwise indicated, the cohorts shown in each chart include all borrowers, regardless of prior borrowing.

Chart 1 shows the interest rates for loans with rates based on the 91-day Treasury bill, with the exception of ''converted'' variable-rate Federal Stafford Loans and certain Federal Consolidation Loans.

Chart 2 shows the interest rates for loans with rates based on the weekly average of the one-year constant maturity Treasury yield.

Chart 3 shows the interest rates for ''converted'' variable-rate Federal Stafford Loans. These are loans that originally had varying fixed interest rates.

Finally, Chart 4 shows the interest rates for variable-rate Federal Consolidation Loans, and for the portion of any Federal Consolidation Loan that repaid loans made under the HEAL Program.

CHART 1—SUBSIDIZED FEDERAL STAFFORD LOANS, UNSUBSIDIZED FEDERAL STAFFORD LOANS, AND FEDERAL PLUS LOANS

[Interest rate based on 91-day Treasury bill]

Loan type	Cohort	91-Day T-bill rate 05/28/19 (%)	Add-on (%)		Maximum rate (%)	Interest rate 07/01/19 through 06/30/20 (%)	
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 07/01/98 and before 07/01/06.	2.36	* 1.70	† 2.30	8.25	* 4.06	† 4.66
PLUS	First disbursed on/after 07/01/98 and before 07/01/06.	2.36	3.10		9.00	5.46	
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 07/01/95 and before 07/01/98.	2.36	* 2.50	† 3.10	8.25	* 4.86	† 5.46
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 07/01/94 and before 07/01/95, for a period of enrollment that included or began on or after 07/01/94.	2.36	3.10		8.25	5.46	
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on/after 10/01/92 and before 07/01/94; and First disbursed on/after 07/01/94, for a period of enrollment ending before 07/01/94 (new borrowers).	2.36	3.10		9.00	5.46	

* (in-school, grace, deferment).
† (any other status).

CHART 2—FEDERAL PLUS LOANS AND SLS LOANS

[Interest rate based on weekly average of one-year constant maturity Treasury yield]

Loan type	Cohort	Weekly average of 1-year constant maturity treasury yield for last calendar week ending on or before 06/26/19 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/19 through 06/30/20 (%)
PLUS	First disbursed on/after 07/01/94 and before 07/01/98.	1.98	3.10	9.00	5.08
PLUS	First disbursed on/after 10/01/92 and before 07/01/94.	1.98	3.10	10.00	5.08
SLS	First disbursed on/after 10/01/92,for a period of enrollment beginning before 07/01/94.	1.98	3.10	11.00	5.08
PLUS SLS	First disbursed before 10/01/92	1.98	3.25	12.00	5.23

CHART 3—"CONVERTED" VARIABLE-RATE SUBSIDIZED AND UNSUBSIDIZED FEDERAL STAFFORD LOANS

[Interest rate based on 91-day Treasury bill]

Loan type	Cohort	Original fixed interest rate (later converted to variable rate) (%)	91-Day T-bill rate 05/28/19 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/19 through 06/30/20 (%)
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	8.00, increasing to 10.00.	2.36	3.10	10.00	5.46
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	9.00	2.36	3.10	9.00	5.46
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	8.00	2.36	3.10	8.00	5.46
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 07/01/94 (prior borrowers).	7.00	2.36	3.10	7.00	5.46
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/23/92 and before 10/01/92 (new borrowers).	8.00, increasing to 10.00.	2.36	3.25	10.00	5.61
Subsidized Stafford, Unsubsidized Stafford.	First disbursed on or after 07/01/88 and before 07/23/92.	8.00, increasing to 10.00.	2.36	3.25	10.00	5.61

CHART 4—FEDERAL CONSOLIDATION LOANS

Consolidation loan component	Cohort	91-Day T-bill rate 05/28/19 (%)	Average of the bond equivalent rates of the 91-day T-bills auctioned for the quarter ending 06/30/19 (%)	Add-on (%)	Maximum rate (%)	Interest rate 07/01/19 through 06/30/20 (%)
Portion of loan that repaid loans other than HEAL loans.	Application received on/after 11/13/97 and before 10/01/98.	2.36	N/A	3.10	8.25	5.46
Portion of the loan that repaid HEAL loans.	Application received on/after 11/13/97 ...	N/A	2.37	3.00	None	5.37

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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Program Authority: 20 U.S.C. 1071 *et seq.*

Dated: January 9, 2020.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2020–00570 Filed 1–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates for Fixed-Rate Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), and Federal Direct PLUS Loans (Direct PLUS Loans) made under the William D. Ford Federal Direct Loan (Direct Loan) Program with first disbursement dates on or after July 1, 2019, and before July 1, 2020. Catalog of Federal Domestic Assistance (CFDA) Number: 84.268.

FOR FURTHER INFORMATION CONTACT: Jon Utz, U.S. Department of Education, 830 First Street NE, 11th Floor, Washington, DC 20202. Telephone: (202) 377–4040 or by email: *Jon.Utz@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: Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans (collectively referred to as ''Direct Loans'') may have either fixed or variable interest rates, depending on when the loan was first disbursed or, in the case of a Direct Consolidation Loan, when the application for the loan was received. Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006, and Direct Consolidation Loans for which the application was received on or after February 1, 1999, have fixed interest rates that apply for the life of the loan. Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed before July 1, 2006, and Direct Consolidation Loans for which the application was received before February 1, 1999, have variable interest rates that are determined annually and are in effect during the period from July 1 of one year through June 30 of the following year.

This notice announces the fixed interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans with first disbursement dates on or after July 1, 2019, and before July 1, 2020, and provides interest rate information for other fixed-rate Direct Loans. Interest rate information for variable-rate Direct Loans is announced in a separate **Federal Register** notice.

Fixed-Rate Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans First Disbursed on or After July 1, 2013

Section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)) includes formulas for determining the interest rates for all Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2013. The interest rate for these loans is a fixed rate that is determined annually for all loans first disbursed during any 12-month period beginning on July 1 and ending on June 30. The rate is equal to the high yield of the 10-year Treasury notes auctioned at the final auction held before June 1 of that 12-month period, plus a statutory add-on percentage that varies depending on the loan type and, for Direct Unsubsidized Loans, whether the loan was made to an undergraduate or graduate student. The calculated interest rate may not exceed a maximum rate specified in the HEA. If the interest rate formula results in a rate that exceeds the statutory maximum rate, the rate is the statutory maximum rate. Loans first disbursed during different 12-month periods that begin on July 1 and end on June 30 may have different interest rates, but the rate determined for any loan is a fixed interest rate for the life of the loan.

On May 8, 2019, the United States Treasury Department held a 10-year Treasury note auction that resulted in a high yield of 2.479 percent.

Chart 1 shows the fixed interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2019, and before July 1, 2020.

CHART 1—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 07/01/2019 AND BEFORE 07/01/2020

Loan type	Borrower type	10-Year treasury note high yield 05/08/2019 (%)	Add-on (%)	Maximum rate (%)	Fixed interest rate (%)
Direct Subsidized Loans, Direct Unsubsidized Loans.	Undergraduate students	2.479	2.05	8.25	4.53
Direct Unsubsidized Loans [1]	Graduate and professional students	2.479	3.60	9.50	6.08
Direct PLUS Loans	Parents of dependent undergraduate students, Graduate and professional students.	2.479	4.60	10.50	7.08

[1] Graduate and professional students are not eligible to receive Direct Subsidized Loans.

For reference, Chart 2 compares the fixed interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed during the period July 1, 2019, through June 30, 2020, with the fixed interest rates for loans first disbursed during each previous 12-month period from July 1, 2013, through June 30, 2019.

CHART 2—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 07/01/2013 AND BEFORE 07/01/2020

First disbursed		Fixed interest rates (%)			**Federal Register** notice
On/after	Before	Direct Subsidized Loans, Direct Unsubsidized Loans, (undergraduate students)	Direct Unsubsidized Loans (graduate or professional students)	Direct PLUS Loans	
07/01/2019	07/01/2020	4.53	6.08	7.08	N/A.
07/01/2018	07/01/2019	5.05	6.60	7.60	83 FR 53864 (October 25, 2018).
07/01/2017	07/01/2018	4.45	6.00	7.00	82 FR 29062 (June 27, 2017).
07/01/2016	07/01/2017	3.76	5.31	6.31	81 FR 38159 (June 13, 2016).
07/01/2015	07/01/2016	4.29	5.84	6.84	80 FR 42488 (July 17, 2015).
07/01/2014	07/01/2015	4.66	6.21	7.21	79 FR 37301 (July 1, 2014).
07/01/2013	07/01/2014	3.86	5.41	6.41	78 FR 59011 (September 25, 2013).

Fixed-Rate Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans First Disbursed on or After July 1, 2006, and Before July 2, 2013

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006, and before July 1, 2013, have fixed interest rates that are specified in section 455(b) of the HEA (20 U.S.C. 1087e(b)). Chart 3 shows the interest rates for these loans.

CHART 3—DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 07/01/2006 AND BEFORE 07/01/2013

Loan type	Borrower type	First disbursed on/after	First disbursed before	Interest rate (%)
Subsidized	Undergraduate students	07/01/2011	07/01/2013	3.40
Subsidized	Undergraduate students	07/01/2010	07/01/2011	4.50
Subsidized	Undergraduate students	07/01/2009	07/01/2010	5.60
Subsidized	Undergraduate students	07/01/2008	07/01/2009	6.00
Subsidized	Undergraduate students	07/01/2006	07/01/2008	6.80
Subsidized	Graduate or professional students	07/01/2006	[2] 07/01/2012	6.80
Unsubsidized	Undergraduate and graduate or professional	07/01/2006	07/01/2013	6.80
PLUS	Graduate or professional students and parents of dependent undergraduate students.	07/01/2006	07/01/2013	7.90

[2] Effective for loan periods beginning on or after July 1, 2012, graduate and professional students are no longer eligible to receive Direct Subsidized Loans.

Fixed-Rate Direct Consolidation Loans

Section 455(b) of the HEA specifies that all Direct Consolidation Loans for which the application was received on or after February 1, 1999, have a fixed interest rate that is equal to the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent. For Direct Consolidation Loans for which the application was received on or after February 1, 1999, and before July 1, 2013, the interest rate may not exceed 8.25 percent. However, under 455(b) of the HEA the 8.25 percent interest rate cap does not apply to Direct Consolidation Loans made based on applications received on or after July 1, 2013. Chart 4 shows the interest rates for fixed-rate Direct Consolidation Loans.

CHART 4—DIRECT CONSOLIDATION LOANS MADE BASED ON APPLICATIONS RECEIVED ON OR AFTER 02/01/1999

Application received	Interest rate (%)	Maximum interest rate (%)
On/after 07/01/2013	Weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent.	None
On/after 02/01/1999 and before 07/01/2013	(same as above)	8.25

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Program Authority: 20 U.S.C. 1087, *et seq.*

Dated: January 9, 2020.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2020–00569 Filed 1–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology Meeting

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for an open meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: February 3, 2020; 8:30 a.m. to 5:30 p.m.

February 4, 2020; 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW, Washington, DC 20502.

FOR FURTHER INFORMATION CONTACT: Individuals from the public who wish to attend must register using the following email address: *PCAST@ostp.eop.gov.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis. Questions about the meeting should be directed to Edward McGinnis, Executive Director, PCAST, at: (202) 456–6076 or email: *PCAST@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *whitehouse.gov.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is chaired by Dr. Kelvin Droegemeier, Director, Office of Science and Technology Policy, Executive Office of the President, The White House. Information about PCAST can be found at: *https://science.osti.gov/About/PCAST.*

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda:

Open Portion of the Meeting: During this open portion of the meeting, PCAST is scheduled to discuss the new PCAST subcommittees and the NSB Science and Engineering Indicators Report, among other PCAST-related matters.

Closed Portion of the Meeting: PCAST may hold a closed portion of the meeting currently estimated to last for up to approximately one hour. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments no longer than 20 pages and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on February 4, 2020, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov,* no later than 9:00 a.m. Eastern Time on January 29, 2020. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12:00 p.m. Eastern Time on January 29, 2020 so that the comments may be made available to the PCAST members prior to this meeting for their consideration.

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should email *PCAST@ostp.eop.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Signed in Washington, DC, on January 10, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–00511 Filed 1–14–20; 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: RP20–414–000.
Applicants: Gas Transmission Northwest LLC.
Description: Interruptible Transportation Refund Report for the Coyote Springs Lateral of Gas Transmission Northwest LLC.
Filed Date: 1/7/20.
Accession Number: 20200107–5072.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: RP20–415–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–01–07 Negotiated Rate Agreements to be effective 1/8/2020.
Filed Date: 1/7/20.
Accession Number: 20200107–5105.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: RP20–416–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Industrial Steam Product RP18–923 & RP20–131 Settlement to be effective 1/1/2019.
Filed Date: 1/7/20.
Accession Number: 20200107–5109.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: RP20–417–000.
Applicants: Spire STL Pipeline LLC.
Description: Compliance filing Spire STL Order 587–Y NAESB Compliance Filing to be effective 11/18/2019.
Filed Date: 1/8/20.
Accession Number: 20200108–5007.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: RP20–419–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Jan 2020 Cleanup to be effective 2/8/2020.
Filed Date: 1/8/20.
Accession Number: 20200108–5009.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: RP20–420–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—US Steel RP18–923 & RP20–131 Settlement to be effective 1/1/2019.
Filed Date: 1/8/20.
Accession Number: 20200108–5057.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: RP20–421–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agreements Arsenal Resources Development LLC to be effective 2/1/2020.
Filed Date: 1/8/20.
Accession Number: 20200108–5085.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: RP20–422–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–01–08 Negotiated Rate Agreement to be effective 1/9/2020.
Filed Date: 1/8/20.
Accession Number: 20200108–5122.
Comments Due: 5 p.m. ET 1/20/20.

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 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00514 Filed 1–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–212–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: Supplement to Settlement and Agreement under Docket No. RP20–212–000.
Filed Date: 12/12/19.
Accession Number: 20191212–5205.
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 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 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00515 Filed 1–14–20; 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 rate filings:

Docket Numbers: ER20–758–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5556; Queue No. AE1–123 to be effective 12/10/2019.

Filed Date: 1/9/20.

Accession Number: 20200109–5028.

Comments Due: 5 p.m. ET 1/30/20.

Docket Numbers: ER20–759–000.

Applicants: ISO New England Inc.

Description: Request for Limited Conditional Waiver of ISO–NE Tariff of Section III.13.1.10(b) of ISO New England Inc.

Filed Date: 1/8/20.

Accession Number: 20200108–5144.

Comments Due: 5 p.m. ET 1/29/20.

Docket Numbers: ER20–760–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Orginal WMPA SA No. 5557; Queue No. AE2–057 to be effective 12/11/2019.

Filed Date: 1/9/20.

Accession Number: 20200109–5034.

Comments Due: 5 p.m. ET 1/30/20.

Docket Numbers: ER20–761–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to SAs No. 5128, 5260, 5375, 5376, and 5377 to be effective 6/15/2018.

Filed Date: 1/9/20.

Accession Number: 20200109–5085.

Comments Due: 5 p.m. ET 1/30/20.

Docket Numbers: ER20–762–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Tri-State Master Installation, O M Agmt for Metering (Rev 3) to be effective 3/10/2020.

Filed Date: 1/9/20.

Accession Number: 20200109–5119.

Comments Due: 5 p.m. ET 1/30/20.

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 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00513 Filed 1–14–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0742; FRL–10004–18–OAR]

Information Collection Request; Comment Request; Air Pollution Regulations for Outer Continental Shelf (OCS) Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Air Pollution Regulations for Outer Continental Shelf (OCS) Activities'' (EPA ICR No. 1601.10, OMB Control No. 2060–0249), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of the ICR, which is currently approved through September 30, 2020. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 16, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0724, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ben Garwood, Air Quality Policy Division, Office of Air Quality Planning and Standards, C504–03, U.S. Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541–1358; fax number: (919) 541–4028; email address: *garwood.ben@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 328 of the Clean Air Act (CAA) gives the EPA responsibility for regulating air pollution from OCS sources located offshore of the states along the Atlantic and Pacific Coasts (except the North Slope Borough of Alaska), and along the eastern Gulf of Mexico coast (off the coast of Florida). In general, these OCS sources must obtain OCS permits complying with the EPA's preconstruction permit program (usually Prevention of Significant Deterioration (PSD) requirements) and title V operating permit program, and then maintain ongoing compliance with their permit conditions. Industry respondents include owners or operators of existing and new or modified OCS sources. These respondents must prepare permit applications and, after receiving their permits, conduct testing, monitoring, recordkeeping and reporting as required by their permits. The recordkeeping and reporting requirements are necessary so that the EPA can determine whether these sources are meeting all the requirements that apply to them. The EPA has delegated the authority to implement and enforce the OCS regulations for sources located off the coast of California to four local air pollution control agencies, and for sources located off a portion of the Atlantic Coast to three state agencies. These agency respondents must review sources' permit applications and reports, issue permits, observe performance tests and conduct inspections to ensure that the sources are meeting all the requirements that apply to them. Section 176(c) of the CAA (42 U.S.C. 7401 *et seq.*) requires that all federal actions conform with the State Implementation Plans to attain and maintain the National Ambient Air Quality Standards.

Depending on the type of action, the federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the source is located within 25 miles of the state's seaward boundary as established in the regulations, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area. Sources locating beyond 25 nautical miles from the state seaward boundary are subject to federal air quality requirements which could include the EPA's PSD preconstruction permit program, Part 71 Title V operating permit program, New Source Performance Standards and some standards for Hazardous Air Pollutants promulgated under section 112 of the CAA. State and local air pollution control agencies are usually requested to provide information concerning regulation of offshore sources and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those that must apply for and obtain an OCS permit pursuant the OCS permit program. In addition, state and local agencies that have been delegated authority to implement and enforce the OCS permit program, which must review permit applications and issue permits, are affected entities.

Respondent's obligation to respond: Mandatory [*see* 40 CFR part 55].

Estimated number of respondents: 29 industrial facilities and 7 state and local permitting agencies.

Frequency of response: On occasion, as necessary.

Total estimated burden: 20,223 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,876,567 (per year). This includes $21,496 annually in Operation and Maintenance costs.

Changes in estimates: There is a decrease of 6,707 hours in the total estimated respondent burden compared with the ICR most recently approved by OMB. This decrease is primarily due to a decrease in the projected number of OCS sources subject to the program.

Dated: January 9, 2020.

Scott Mathias,

Acting Director, Air Quality Policy Division.

[FR Doc. 2020–00489 Filed 1–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0978; FRL–10004–17–OECA]

Access by United States Environmental Protection Agency (EPA) Subcontractor to Information Claimed as Confidential Business Information (CBI) Submitted Under Clean Air Act (CAA), Title I, Programs and Activities Air, and Title II Emission Standards for Moving Sources, and Act To Prevent Pollution From Ships (APPS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA's) Office of Enforcement and Compliance Assurance (OECA) plans to authorize a subcontractor to access information that will be submitted to EPA under the Clean Air Act (CAA) Titles I and II and the Act to Prevent Pollution from Ships (APPS) that may be claimed as, or may be determined to be, confidential business information (CBI).

DATES: Comments must be received on or before January 21, 2020. The subcontractors' access to information collected under the CAA Titles I and II, and the APPS, will begin on January 21, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA HQ–OECA–2012–0978, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: docket.oeca@epa.gov.* Include Docket ID No. EPA–HQ–OECA–2012–0978 in the subject line of the message.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air Enforcement Division, Office of Enforcement and Compliance Assurance (Mail Code 8MSU), Environmental Protection Agency, 1595 Wynkoop St., Denver, CO 80202; telephone number: (303) 312–6445; fax number (303) 312–7208; email address: *kimes.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this notice apply to me?

This action is directed to the general public. However, this action may be of particular interest to certain parties, including: Motor vehicle manufacturers and importers; engine manufacturers and importers; motor vehicle fuel and fuel additive producers and importers; manufacturers, importers and distributors of motor vehicle and engine emission control equipment and parts; and any other parties subject to the regulations found in 40 CFR parts 79, 80, 85, 86, 89–92, 94, 1033, 1036, 1037, 1039, 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065, and 1068.

This **Federal Register** document may be of particular relevance to parties that have submitted data to EPA under the above-listed regulations. Because other parties may also be interested, EPA has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

II. How can I get copies of this document and other related information?

A. Electronically

EPA has established a public docket for this **Federal Register** document under Docket ID No. EPA–HQ–OECA–2012–0978.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as CBI or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket ID No. EPA–HQ–OECA–2012–0978 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

III. Description of Programs and Potential Disclosure of Information Claimed as CBI to Contractors.

EPA's OECA has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to give regulated entities flexibility in meeting regulatory requirements (*e.g.,* compliance on average), OECA collects compliance reports and other information from the regulated industry. Occasionally, the information submitted to, or obtained by, EPA, is claimed to be CBI by persons submitting data to EPA. Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B, and in accordance with EPA procedures that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to EPA contractors or subcontractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the EPA contractor and subcontractor and the EPA contractor and subcontractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

On May 29, 2019, EPA provided notice in the **Federal Register** of, and an opportunity to comment on, EPA's determination that subcontractors to EPA contractor Eastern Research Group, Incorporated, (ERG) 14555 Avion Parkway, Suite 200, Chantilly, VA 20151, required access to CBI submitted to EPA under section 114 of the CAA, section 208 of the CAA, and the APPS for the work ERG subcontractors would be conducting under Contract Number 68HERH19C0004. *See* Access by United States Environmental Protection Agency (EPA) Subcontractors to Information Claimed as Confidential Business Information (CBI) Submitted under Clean Air Act (CAA), Title I, Programs and Activities Air, and Title II Emission Standards for Moving Sources, and Act To Prevent Pollution From Ships (APPS), 84 **Federal Register** 103 (May 29, 2019). In accordance with 40 CFR 2.301(h), EPA has now determined that the subcontractor Blum, Shapiro and Company, P.C. (Blum Shapiro) also requires access to CBI submitted to EPA under section 114 of the CAA, section 208 of the CAA, and the APPS, and we are providing notice and an opportunity to comment on Blum Shapiro's access to information claimed as CBI. OECA collects this data in order to monitor compliance with regulations promulgated under the CAA Title II Emission Standards for Moving Sources, the APPS, and the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex VI. We are issuing this **Federal Register** document to inform all affected submitters of information that we plan to grant access to material that may be claimed as CBI to the subcontractor Blum Shapiro on a need-to-know basis.

Under Contract Number 68HERH19C0004, ERG provides enforcement support for EPA's CAA mobile source regulatory and enforcement activities, including field inspections, investigations, audits, and other CAA regulatory and enforcement support that involve access to information claimed as CBI. ERG also employs subcontractors, who support these activities, under the above-listed contract. The subcontractor Blum Shapiro requires access to information claimed as CBI to support EPA enforcement activities described above. Access to data, including information claimed as CBI, will commence six days after the date of publication of this document in the **Federal Register**, and will continue until March 1, 2024. If the contract and associated subcontracts are extended, this access will continue for the remainder of the ERG contract without further notice. If the contract expires prior to March 1, 2024, the access will cease at that time. If ERG employs additional subcontractors to support EPA on a regular basis or on a limited or one-time basis under the above-listed contract, and those subcontractors require access to CBI, EPA will notify affected companies of the contemplated disclosure and provide them with an opportunity to comment by either sending them a letter or by publishing an additional document in the **Federal Register**.

Parties who wish to obtain further information about this **Federal Register** document, or about OECA's disclosure of information claimed as CBI to subcontractors, may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 20, 2019.

Phillip A. Brooks,

Director, Air Enforcement Division.

[FR Doc. 2020–00548 Filed 1–14–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16404]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before March 16, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: BRAZOS TV, INC., NEW(FM), FAC. ID 198774, Channel 263A, From: ANNONA, TX, To: MOUNT VERNON, TX, File No. 0000094085.

The full text of this application is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW, Washington, DC 20554 or electronically via the Licensing and Management System (LMS), *https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2020–00518 Filed 1–14–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice and request for comment.

SUMMARY: The FTC requests that the Office of Management and Budget (OMB) extend for three years the current PRA clearance for information collection requirements contained in the FTC's Consumer Product Warranty Rule (Warranty Rule or Rule). The current clearance expires on January 31, 2020.

DATES: Comments must be received by February 14, 2020.

ADDRESSES: Comments in response to this notice should be submitted to the OMB Desk Officer for the Federal Trade Commission within 30 days of this notice. You may submit comments using any of the following methods:

Electronic: Write ''Consumer Product Warranty Rule: PRA Comment, P072108,'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-based form.

Email: MBX.OMB.OIRA.Submission@OMB.eop.gov.

Fax: (202) 395–5806.

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–3711.

SUPPLEMENTARY INFORMATION:

Title: Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions (Warranty Rule or Rule).

OMB Control Number: 3084–0111.

Type of Review: Extension of a currently approved collection.

Abstract: The Warranty Rule is one of three rules [1] that the FTC implemented pursuant to requirements of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act).[2] The Warranty Rule specifies the information that must appear in a written warranty on a consumer product [3] costing more than $15. The Rule tracks Section 102(a) of the Warranty Act,[4] specifying information that must appear in the written warranty and, for certain disclosures, mandates the exact language that must be used.[5] Neither the Warranty Rule nor the Act requires that a manufacturer or retailer warrant a consumer product in writing, but if they choose to do so, the warranty must comply with the Rule.

On October 4, 2019, the Commission sought comment on the disclosure requirements associated with the Warranty Rule. 84 FR 53149. No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for those information collection requirements.

The following discussion presents the FTC's PRA burden analysis regarding the Warranty Rule. Please be advised that the Commission has updated the estimates that were previously presented in the 60-Day Notice.

Warranty Rule Burden Statement

Total annual hours burden: 242,296 hours.

In its 2016 submission to OMB, the FTC estimated that the information collection burden of including the disclosures required by the Warranty Rule was 140,280 hours per year. Although the Rule's information collection requirements have not changed, the current estimate increases the number of manufacturers subject to the Rule based on recent Census data.[6] Further, because most warrantors likely would continue to disclose the information required by the Rule, even if there were no statute or rule requiring them to do so, staff's estimates likely overstate the PRA-related burden attributable to the Rule. Moreover, the Warranty Rule has been in effect since 1976, and warrantors have long since modified their warranties to include the information the Rule requires.

Based on conversations with various warrantors' representatives over the years, staff has concluded that eight hours per year is a reasonable estimate of warrantors' PRA-related burden attributable to the Warranty Rule.[7] This estimate includes the number of hours warrantors may need to ensure new warranties and any changes to existing warranties comply with the Rule. Based on recent Census data, staff now estimates that there are 30,287 manufacturers covered by the Rule.[8] This results in an annual burden estimate of approximately 242,296 hours (30,287 manufacturers × 8 hours of burden per year).

Total annual labor costs: $32,981,332.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The work required to comply with the Warranty Rule—ensuring that new warranties and changes to existing warranties comply with the Rule—requires a mix of legal analysis (50%), legal support (paralegals) (25%) and clerical help (25%). Staff estimates that half of the total burden hours (121,148 hours) requires legal analysis at an average hourly wage of $250 for legal professionals,[9] resulting in a labor cost of $30,287,000. Assuming that 25% of the total burden hours requires legal support at the average hourly wage of $26.20, and that the remaining 25% requires clerical work at an average hourly wage of $18.28; the resulting labor cost is approximately $2,694,332 ($1,587,039 + 1,107,293). Thus, the total annual labor cost is approximately $32,981,332 ($30,287,000 for legal professionals + $1,587,039 for legal support + $1,107,293 for clerical workers).

Total annual capital or other non-labor costs: $0

[1] The other two rules relate to the pre-sale availability of warranty terms and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] The definition of *consumer product* excludes products purchased solely for commercial or industrial use. 16 CFR 701.1(b).

[4] 15 U.S.C. 2302(a).

[5] 40 FR 60168, 60169–60170.

[6] Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016 release date: 12/18/2018, available at *http://www.census.gov/programs-surveys/susb/technical-documentation/methodology.html.*

[7] FTC staff has previously contacted two manufacturing associations—the Association of Home Appliance Manufacturers and the National Association of Manufacturers—and we have not located additional data that further clarifies this figure.

[8] Because some manufacturers likely make products that are not priced above $15 or not intended for household use—and thus would not be subject to the Rule—this figure is likely an overstatement.

[9] Staff has derived an hourly wage rate for legal professionals based upon industry knowledge. The hourly wage rates for legal support workers and for clerical support are based on mean hourly wages found at *https://www.bls.gov/news.release/ocwage.htm* (''Occupational Employment and Wages–May 2018,'' U.S. Department of Labor, released March 2019, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018'').

The Rule imposes no appreciable current capital or start-up costs. As stated above, warrantors likely have already modified their warranties to include the information the Rule requires. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, which providers would already have available for general business use.

Request for Comment

Your comment—including your name and your state—will be placed on the public record of this proceeding at the *https://www.regulations.gov* website. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential'' —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2020–00487 Filed 1–14–20; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2020–02; Docket No. 2020–0002; Sequence No. 3]

Office of Federal High-Performance Buildings; Green Building Advisory Committee; Notification of Upcoming Conference Calls

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: Notice of this meeting and these conference calls is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the agendas and schedules for the June 11, 2020 meeting of the Green Building Advisory Committee (the Committee) and the schedule for a series of conference calls for two task groups of the Committee. The in-person meeting is open to the public and the site is accessible to individuals with disabilities. The task group conference calls are open for the public to listen in. Interested individuals must register to attend as instructed below under Supplementary Information.

DATES: *Meeting date:* The spring meeting of the Committee will be held on Thursday, June 11, 2020, from 10:00 a.m. to 4:00 p.m. Eastern time (ET), at 1800 F Street NW, Washington, DC 20405, Room 1425.

The *Renewables Outleasing Task Group* will hold recurring, biweekly conference calls on Tuesdays from February 4, 2020, through July 28, 2020, from 4:00 p.m. to 5:00 p.m., ET.

The *Embodied Energy Task Group* will hold recurring, weekly conference calls on Wednesdays from January 29, 2020, through July 29, 2020, from 1:00 p.m. to 2:00 p.m., ET.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW, (Mail-code: MG), Washington, DC 20405, at *ken.sandler@gsa.gov.* Additional information about the Committee, including meeting materials and agendas, will be available on-line at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance and Public Comment

Contact Mr. Ken Sandler at *ken.sandler@gsa.gov* to register to attend the in-person meeting or listen to any of these conference calls. To attend any of these events, submit your full name, organization, email address, and phone number, and which you would like to attend. Requests to attend the conference calls must be received by 5:00 p.m. ET, on Monday, January 27, 2020. (GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site before the calls is recommended.) Requests to attend the June 11, 2020 meeting must be received by 5:00 p.m., ET, on Friday, April 3, 2020.

Contact Mr. Sandler to register to comment during the June 11, 2020 meeting public comment period. Registered speakers/organizations will be allowed a maximum of five minutes each, and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5:00 p.m., ET, on Friday, April 3, 2020.

Background

The Administrator of GSA established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee provides independent policy advice and recommendations to GSA to advance federal building innovations in planning, design, and operations to reduce costs, enable agency missions, enhance human health and performance, and minimize environmental impacts.

The *Renewables Outleasing Task Group* will explore third-party, onsite, renewable power generation, with a focus on solar power and perhaps energy storage, on federal building roofs, parking lots, garages and other parcels where conducive.

The *Embodied Energy Task Group* will study the energy savings as well as pollution and cost savings to be garnered by a more precise focus on the energy embodied in Federal building construction and major renovation.

The conference calls will allow the task groups to develop consensus recommendations to the full Committee, which will, in turn, decide whether to proceed with formal advice to GSA based upon these recommendations.

June 11, 2020 Meeting Agenda

- Updates and introductions
- Renewables outleasing task group findings & recommendations
- Lunchtime speaker (TBD)
- Embodied energy task group findings & recommendations
- Additional topics proposed by Committee members
- Public comment
- Next steps and closing comments

Dated:

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Buildings, General Services Administration.

[FR Doc. 2020–00503 Filed 1–14–20; 8:45 am]

BILLING CODE 6820–14–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Medicare Payment Advisory Commission (MedPAC) Nominations

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. GAO is now accepting nominations for MedPAC appointments that will be effective May 2020. Nominations should be sent to the email or mailing address listed below. Acknowledgement of submissions will be provided within a week of submission.

DATES: Letters of nomination and resumes should be submitted no later than February 14, 2020, to ensure adequate opportunity for review and consideration of nominees prior to appointment.

ADDRESSES: Submit letters of nomination and resumes by either of the following methods: Email: *MedPACappointments@gao.gov* or Mail: U.S. GAO, Attn: MedPAC Appointments, 441 G Street NW, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Gregory Giusto at (202) 512–8268 or *giustog@gao.gov* if you do not receive an acknowledgement or need additional information. For general information, contact GAO's Office of Public Affairs, (202) 512–4800.

Authority: 42 U.S.C. 1395b–6.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2020–00521 Filed 1–14–20; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Treatments for Acute Episodic Migraine

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 Episodic Migraine,* 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 in **Federal Register**.

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 Episodic Migraine. 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 Episodic Migraine,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/migraine-treatments/protocol.*

This is to notify the public that the EPC Program would find the following information on *Treatments for Acute Episodic Migraine* 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)

For patients with acute episodic migraine.

KQ 1. Opioid Therapy

KQ1a. What is the comparative effectiveness of opioid therapy versus: (1) Nonopioid pharmacologic therapy (*e.g.,* acetaminophen, nonsteroidal anti-inflammatory drugs [NSAIDs], triptans, ergots alkaloids, combination analgesics, muscle relaxants, anti-nausea medications, and marijuana/cannabis) or (2) nonpharmacologic therapy (*e.g.,* exercise, cognitive behavioral therapy, acupuncture, biofeedback, neuromodulatory devices) for outcomes related to pain, function, pain relief satisfaction, and quality of life and after follow-up at the following intervals: <1 Day; 1 day to <1 week; 1 week to <2 weeks; 2 weeks to 4 weeks?

KQ1b. How does effectiveness of opioid therapy vary depending on: (1) Patient demographics (*e.g.* age, race, ethnicity, gender, socioeconomic status (SES)); (2) patient medical comorbidities (previous opioid use, body mass index (BMI)); (3) dose of opioids; (4) duration of opioid therapy, including number of opioid prescription refills and quantity of pills used?

KQ1c. 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) medication overuse headache (MOH), (4) other harms including gastrointestinal-related harms, falls, fractures, motor vehicle accidents, endocrinological harms, infections, cardiovascular events, cognitive harms, and psychological harms (*e.g.,* depression)?

KQ1d. How do harms vary depending on: (1) Patient demographics (*e.g.,* age, gender); (2) patient medical comorbidities; (3) the dose of opioid used; (4) the duration of opioid therapy?

KQ1e. What are the effects of prescribing opioid therapy versus not prescribing opioid therapy for acute episodic migraine 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)?

KQ1f. For patients with acute episodic migraine being considered for opioid therapy, what is the accuracy of instruments for predicting risk of opioid misuse, opioid use disorder, or overdose?

KQ1g. For patients with acute episodic migraine being considered for opioid therapy, what is the effectiveness of instruments for predicting risk of opioid misuse, opioid use disorder, or overdose?

KQ1h. For patients with acute episodic migraine being considered for opioid therapy, what is the effect of the following risk mitigation strategies 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 follow-up?

KQ 2. Nonopioid Pharmacologic Therapy

KQ2a. What is the comparative effectiveness of nonopioid pharmacologic therapy (*e.g.,* acetaminophen, nonsteroidal anti-inflammatory drugs [NSAIDs], triptans, ergots alkaloids, combination analgesics, muscle relaxants, anti-nausea medications, and marijuana/cannabis) 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 follow-up at the following intervals: <1 Day; 1 day to <1 week; 1 week to <2 weeks; 2 weeks to 4 weeks?

KQ2b. How does effectiveness of nonopioid pharmacologic therapy vary depending on: (1) Patient demographics (*e.g.* age, race, ethnicity, gender); (2) patient medical comorbidities; (3) the type of nonopioid medication; (4) dose of medication; (5) duration of treatment?

KQ2c. What are the harms of nonopioid pharmacologic therapy versus other nonopioid pharmacologic therapy, or nonpharmacologic therapy with respect to: (1) Misuse, (2) overdose; (3) medication overuse headache (MOH), (4) 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)?

KQ2d. 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?

KQ 3. Nonpharmacologic Therapy

KQ3a. What is the comparative effectiveness of nonpharmacologic therapy versus sham treatment, waitlist, usual care, attention control, and no treatment after follow-up at the following intervals: <1 Day; 1 day to <1 week; 1 week to <2 weeks; 2 weeks to 4 weeks?

KQ3b. What is the comparative effectiveness of nonpharmacologic treatments (*e.g.* exercise, cognitive behavioral therapy, acupuncture, biofeedback, neuromodulatory devices) for outcomes related to pain, function, pain relief satisfaction, and quality of life?

KQ3c. How does effectiveness of nonpharmacologic therapy vary depending on: (1) Patient demographics (*e.g.* age, gender); (2) patient medical comorbidities?

KQ3d. How do harms vary depending on: (1) Patient demographics (*e.g.,* age, gender); (2) patient medical 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 elements	Inclusion criteria	Exclusion criteria
Population	• Patients with acute episodic migraine seeking abortive treatment. • Adults 18 years and older * 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 mental illness. ○ Patients with history of overdose. ○ Pregnant/breastfeeding women. ○ Patients with comorbidities (*e.g.,* kidney disease, sleep disordered breathing).	• Animals. • Children (age <18 years).

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, SETTINGS)—Continued

PICOTS elements	Inclusion criteria	Exclusion criteria
Interventions	KQ 1 a–e: Any systemic opioid abortive therapy, include: • Codeine. • Fentanyl (Actiq, Duragesic, Fentora, Abstral, Onsolis). • Hydrocodone (Hysingla, Zohydro ER). • Hydrocodone/acetaminophen (Lorcet, Lortab, Norco, Vicodin). • Hydromorphone (Dilaudid, Exalgo). • Meperidine (Demerol). • Methadone (Dolophine, Methadose). • Morphine (Kadian, MS Contin, Morphabond). • Oxycodone (OxyContin, Oxaydo). • Oxycodone and acetaminophen (Percocet, Roxicet). • Oxycodone and naloxone. • And other agonists, partial agonists and mixed mechanism opioids. KQ 1 f–g: Instruments and genetic/metabolic tests for predicting risk of misuse, opioid use disorder, and overdose. KQ 1 h: Risk mitigation strategies, including: • Existing opioid management plans. • Patient education. • Clinician and patient values and preferences related to opioids. • Urine drug screening. • Use of prescription drug monitoring program data. • Availability of close follow-up. • And others. KQ 2: Any oral, injection, infusion, topical nonopioid abortive drug, including: • Acetaminophen. • Nonsteroidal anti-inflammatory drugs [NSAIDs] (if compared against active treatment). • Triptans (if compared against active treatment). • Ergots alkaloids. • Combination analgesics. • Muscle relaxants. • Anti-nausea medications. • Marijuana/cannabis. • And others. KQ 3: Any non-invasive nonpharmacologic abortive therapy, including: • Exercise. • Cognitive behavioral therapy. • Acupuncture. • And others.	For all KQs, exclude Invasive treatments, and preventive (prophylactic) treatment. For KQ2, exclude NSAIDs vs placebo and triptans vs placebo.
Comparators	KQ 1: a–e. Usual care, another opioid therapy, nonopioid pharmacologic therapy, nonpharmacologic therapy. KQ 1 f. Reference standard for misuse, opioid use disorder, or overdose; or other benchmarks. KQ g–h. Usual care. KQ 2: Another nonopioid pharmacologic therapy, nonpharmacologic therapy. KQ3: Sham treatment, waitlist, usual care, attention control, and no treatment, another non-invasive nonpharmacologic therapy.	None.
Outcomes	KQ 1. Opioid Therapy: KQ 1a–e. Pain, function, pain relief satisfaction and quality of life, harms/adverse events (including withdrawal, risk of misuse, opioid, OUD, overdose, MOH). KQ 1f. Measures of diagnostic accuracy. KQ 1g–h. Misuse, opioid use disorder, overdose and other harms. KQ 2. Non-Opioid Therapy: Pain, function, pain relief satisfaction, quality of life, and quality of life, harms/adverse events. KQ 3: Non-invasive non-pharm Therapy: Pain, function, pain relief satisfaction, quality of life and quality of life, harms, adverse events.	None.

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, SETTINGS)—Continued

PICOTS elements	Inclusion criteria	Exclusion criteria
Timing	At the following intervals: <1 Day; 1 day to <1 week; 1 week to <2 weeks; 2 weeks to 4 weeks.	None.
Settings	ER, physician's office, hospital	None.
Study design	• Original studies: ○ RCTs. ○ Comparative observational studies. • Any sample size. • Relevant systematic reviews, or meta-analyses (used for identifying additional studies)	In vitro studies, non-original data (*e.g.,* narrative reviews, editorials, letters, or erratum), single-arm observational studies, case series, qualitative studies, cost-benefit analysis, cross-sectional (*i.e.,* non-longitudinal) studies, before-after studies, survey.
Publications	Studies published in English only	Foreign language studies.

Abbreviations: RCT = randomized controlled trial.

Dated: January 9, 2020.

Virginia L. Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2020–00488 Filed 1–14–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. HHS–OS–2019–0015]

Solicitation for Public Comments on Questions From the National Clinical Care Commission

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The National Clinical Care Commission (the Commission) solicits public comments on a set of questions concerning the context, policies, effectiveness, promising practices, and limitations and gaps related to prevention and treatment of diabetes and its complications. The Commission is charged to evaluate and make recommendations to the Secretary of Health and Human Services (HHS) and Congress regarding improvements to the coordination and leveraging of federal programs related to awareness and clinical care for diabetes and its complications. The set of questions is available in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: Electronic or written/paper comments will be accepted through midnight Eastern Standard Time (EST) February 3, 2020.

ADDRESSES: Public comments can be submitted in the following ways:

• Electronic submissions can be filed on the online docket at *http://www.regulations.gov* by following the ''*Instructions for Public Comments*'' section, below. Evidence and information supporting your comments can be submitted as attachments. Comments submitted electronically, including supporting attachments, will be posted to the docket unchanged. Please provide your contact information or organization name on the web-based form for potential follow up by the Commission.

• If you prefer to comment on paper, mail your comments to the following address: *Public Commentary, National Clinical Care Commission,* 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. For mailed submissions, the Office of Disease Prevention and Health Promotion will post your comments, as well as any attachments, to *http://www.regulations.gov.*

Instructions for Public Comments: All electronic submissions must be submitted in the Docket ID HHS–OS–2019–0015 for ''Solicitation for Public Comments on Questions from the National Clinical Care Commission.'' For access to the docket to provide and/or read all comments received, go to *https://www.regulations.gov* and insert the docket ID HHS–OS–2019–0015 into the search box and follow the prompts.

Comments are encouraged from the public and will be accepted through February 3, 2020. The *https://www.regulations.gov* electronic filing system will accept electronic comments until midnight Eastern Standard Time at the end of February 3, 2020. Comments received by mail/courier will be considered if they are postmarked or the delivery service acceptance receipt date is on or before that date. Written comments via mail will be uploaded into *https://www.regulations.gov* and are under the same limitations as for those directly submitted electronically into *https://www.regulations.gov:* 5,000-character limit for text box, and maximum number (10) of attached files and maximum size (10 MB) of each attached file.

FOR FURTHER INFORMATION CONTACT: Linda Harris, Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. Email: *linda.harris@hhs.gov.*

SUPPLEMENTARY INFORMATION: The National Clinical Care Commission Act (Pub. L. 115–80) requires the HHS Secretary to establish the National Clinical Care Commission. The Commission consists of representatives of specific federal agencies and non-federal individuals and entities who represent diverse disciplines and views. The Commission will evaluate and make recommendations to the HHS Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to awareness and clinical care for diabetes and its complications.

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's evaluation of federal programs. Specifically, the Commission requests public comment on the following questions:

1. *Context:* What social, economic, and/or environmental factors have the greatest impact on health care in general—and also on prevention (Type 2) and/or management of diabetes (both Type 1 and Type 2)? What can be done by the federal government to address those social/economic/environmental factors?

2. *Policies:* What policies should the federal government implement to improve diabetes prevention and/or management? What is the evidence to support those?

3. *Effectiveness:* What specific recommendations do you have for federal agencies to be more effective and/or to collaborate better to prevent and/or help manage diabetes? What is the basis for your specific recommendations?

4. *Promising Practices:* What are the best and/or most promising practices to prevent diabetes and/or to improve diabetes outcomes? What is the evidence to support them?

5. *Limitations and gaps:* What are the greatest limitations or gaps in federal programs to prevent diabetes and/or to improve diabetes outcomes? What could the Federal government do to close the gaps? Are there specific research needs? Are there specific research needs or programs that would benefit from new or increased collaboration across federal agencies?

Don Wright,

Deputy Assistant Secretary for Health, Disease Prevention and Health Promotion.

[FR Doc. 2020–00505 Filed 1–14–20; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Voice, Speech, Language Application Review.

Date: February 10, 2020.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDCD, Neuroscience Center, 6001 Executive Blvd., Ste. 8300, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, (301) 496–8683, *yangshi@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing and Balance Application Review.

Date: February 11, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institutes of Health, NIDCD, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, (301) 496–8683, *el6r@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Chemical Senses Fellowship Review.

Date: February 19, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDCD, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institutes of Health, NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Trial Review.

Date: February 21, 2020.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDCD, Neuroscience Building, 6001 Executive Blvd., Ste. 8300, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health, NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *katherine.shim@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Review.

Date: March 10, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDCD, Neuroscience Center, 6001 Executive Blvd., Ste. 8300, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health, NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *katherine.shim@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD (U01) Cooperative Agreement for Clinical Trials in Communication Disorders.

Date: March 12, 2020.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDCD, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institutes of Health, NIDCD, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, (301) 496–8683, *el6r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 9, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00475 Filed 1–14–20; 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: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: February 4, 2020.

Time: 8:00 a.m. to 8:00 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: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 5:00 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: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group;Brain Injury and Neurovascular Pathologies Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.

Date: February 12–13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: February 12–13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

Date: February 12–13, 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 (Virtual Meeting).

Contact Person: Baishali Maskeri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–2864, *maskerib@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 9, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00472 Filed 1–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Transition to Aging Research Award for Predoctoral Students Review.

Date: March 20, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, Conference Room Cabinet Suite, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 480–1266, *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 9, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00474 Filed 1–14–20; 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: Cell Biology Integrated Review Group Development—1 Study Section.

Date: February 10, 2020.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Méridien Delfina, 530 Pico Blvd., Santa Monica, CA 90405.

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Lee S. Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: February 10–11, 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: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: February 10–11, 2020.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: February 11–12, 2020.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC Downtown, 1199 Vermont Ave. NW, Washington, DC 20005.

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: February 11–12, 2020.

Time: 8:00 a.m. to 12:00 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: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: February 11–12, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Molecular and Cellular Hematology Study Section.

Date: February 11–12, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Baltimore Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: February 11–12, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

Contact Person: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20817, 301–867–5309, *robert.gersch@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Instrumentation and Systems Development Study Section.

Date: February 12–13, 2020.

Time: 6:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301–272–4865, *pyonkh2@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

Date: February 12–13, 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: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: February 12–13, 2020.

Time: 8:00 a.m. to 6:00 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: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

(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 9, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00471 Filed 1–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; NIDCR Secondary Data Analysis Application Review Meeting.

Date: February 6, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan_bhattacharyya@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Fellowship Review Meeting.

Date: March 11, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892; 301–451–2405; *nisan_bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 9, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00476 Filed 1–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health (NIH), the authority vested in the Secretary of Health and Human Services to serve as a duly authorized representative of the Department of Health and Human Services, an executive agency under 5 U.S.C. 105, for purposes of making the representations under 39 CFR part 551, and to execute letters from the Department for semipostal stamp proposals related to NIH under the Semipostal Authorization Act (Pub. L. 106–253), which is codified at 39 U.S.C. 416, and implementing regulations, which are codified at 39 CFR part 551.

This authority may not be redelegated. Exercise of this authority shall be in accordance with established policies, procedures, guidelines, and regulations as prescribed by the Secretary. The Secretary retains the authority to submit reports to Congress, including the written reports under 39 U.S.C. 416.

Dated: January 10, 2020.

Alex M. Azar II,

Secretary.

[FR Doc. 2020–00550 Filed 1–14–20; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel CTSA Revision Award.

Date: February 12–13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.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 9, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00473 Filed 1–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act. To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0548.

Project: SAMHSA's Publications and Digital Products Website Registration Surveys (OMB No. 0930–0313)—Reinstatement

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting OMB approval for a reinstatement of SAMHSA's Publications and Digital Products website Registration Survey, formerly under the Registration for Behavioral Health website and Resources (OMB No. 0930–0313). SAMHSA is authorized under section 501(d)(16) of the Public Health Service Act (42 U.S.C. 290aa(d)(16)) to develop and distribute materials for the prevention, treatment, and recovery from mental and substance use disorders. To improve customer service and lessen the burden on the public to locate and obtain these materials, SAMHSA has developed a website that includes more than 500 free publications from SAMHSA and its component Agencies. These products are available to the public for ordering and download. When a member of the public chooses to order hard-copy publications, it is necessary for SAMHSA to collect certain customer information in order to fulfill the request. To further lessen the burden on the public and provide the level of customer service that the public has come to expect from product websites, SAMHSA has developed a voluntary registration process for its publication website that allows customers to create accounts. Through these accounts, SAMHSA customers are able to access their order histories and save their shipping addresses. During the website registration process, SAMHSA will also ask customers to provide optional demographic information that helps SAMHSA to evaluate the use and distribution of its publications and improve services to the public.

SAMHSA is employing a web-based form for information collection to avoid duplication and unnecessary burden on customers who register for an account. Customer information is submitted electronically via web forms on the samhsa.gov domain. Customers can submit the web forms at their leisure, or call SAMHSA's toll-free Call Center and an information specialist will submit the forms on their behalf. The electronic collection of information reduces the burden on the respondent and streamlines the data-capturing process.

SAMHSA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Website Registration Survey	21,082	1	21,082	.033 (2 min.)	696

Written comments and recommendations concerning the proposed information collection should be sent by February 14, 2020 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Jennifer Wilson,

Budget Analyst.

[FR Doc. 2020–00501 Filed 1–14–20; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2019–0016]

Cybersecurity and Infrastructure Security Agency; Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting is open to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on February 18, 2020.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on February 18, 2020.

Meeting Date: The NSTAC will meet on February 20, 2020, from 2:00 p.m. to 3:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. ET on February 18, 2020.

Comments: Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that participants may discuss during the meeting will be available at *www.dhs.gov/cisa/national-security-telecommunications-advisory-committee* for review as of February 5, 2020. Comments may be submitted by 5:00 p.m. ET on February 18, 2020, and must be identified by Docket Number CISA–2019–0016. Comments may be submitted by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting written comments.

• *Email: NSTAC@hq.dhs.gov.* Include the Docket Number CISA–2019–0016 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2019–0016.

A public comment period is scheduled to be held during the meeting from 2:45 p.m.–2:55 p.m. ET. Speakers who wish to participate in the public comment period must register by emailing *NSTAC@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, 703–705–6276, *helen.jackson@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC was established by Executive Order (E.O.) 12382, 47 FR 40531 (September 13, 1982), as amended and continued under the authority of E.O. 13889, dated September 27, 2019. Notice of this meeting is given under the

FACA, 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on February 20, 2020, to discuss issues and challenges related to NS/EP communications. The meeting will include: discussions with senior-level Government stakeholders, and a status update on the NSTAC Software-Defined Networking subcommittee, the current study which tasked the committee with examining the impact of SDN on the Government's NS/EP functions, to include identifying the challenges and opportunities provided by SDN and assessing the use of SDN and other virtualization technologies in support of national security. There will also be discussion on potential NSTAC study topics.

Dated: January 6, 2020.

Helen Jackson,

Designated Federal Officer, NSTAC.

[FR Doc. 2020–00530 Filed 1–14–20; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–58]

30-Day Notice of Proposed Information Collection: OneCPD Technical Assistance and Capacity Building Needs Assessment; OMB #2506–0198

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* February 14, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Anna P.Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 31, 2019 at 84 FR 58407.

A. Overview of Information Collection

Title of Information Collection: OneCPD Technical Assistance and Capacity Building Needs Assessment.

OMB Approval Number: 2506–0198.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, *i.e.,* the technical assistance providers best able to develop efficient and effective programs and projects that increase the supply of affordable housing units, prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities.

Information Collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Targeted Needs Assessment	120.00	1.00	120.00	52.00	6,240.00	$64.16	$400,358.40
Total	120.00	....	....	52.00	6,240.00	64.16	400,358.40

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 19, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–00533 Filed 1–14–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L10300000.PH0000 19X LLWO220000]

Tribal and Alaska Native Biomass Demonstration Projects; Eligibility Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) is establishing eligibility and selection criteria for Tribal Biomass Demonstration Project and Alaska Native Biomass Demonstration Project proposals submitted for BLM-managed lands, as authorized by the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.

DATES: This Notice takes effect on January 15, 2020.

ADDRESSES: Additional information about this notice and program may be obtained on the internet at *https://www.blm.gov/https%3A//www.blm.gov/programs/natural-resources/forests-and-woodlands/biomass-and-bioenergy/tribal-biomass.*

FOR FURTHER INFORMATION CONTACT: Joe Tague, Division Chief, Forest, Range, Riparian, and Plant Conservation, telephone (202) 912–7222; email, *jtague@blm.gov.*

Persons who use a telecommunication device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Tague during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question regarding the project. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Background

Section 202 of Public Law 115–325 amends the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115(a) *et seq.*) for the purpose of establishing tribal and Alaska Native biomass demonstration projects for federally recognized Indian tribes and Alaska Native corporations to promote biomass energy production by providing reliable supplies of woody biomass from Bureau of Land Management and Forest Service lands.

For Tribal Biomass Demonstration Projects, the Act requires, for each of fiscal years 2017 through 2021, the Secretary of Agriculture and the Secretary of the Interior to enter into stewardship contracts or similar agreements (excluding direct service contracts) with Indian tribes to carry out at least four new demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from Federal land.

For Alaska Native Biomass Demonstration Projects, the Act requires, for each of fiscal years 2017 through 2021, the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with an Indian tribe or a tribal organization to carry out at least one new demonstration project to promote biomass energy production (including biofuel, heat, and electricity generation) by providing reliable supplies of woody biomass from Federal land.

Indian tribe means: Any Indian tribe, band, nation or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (25 U.S.C. 5304(e)).

Eligibility

To establish eligibility for a Tribal Biomass Demonstration Project, an Indian tribe (as defined at (25 U.S.C. 5304(e)) must submit an application with the following information:

(1) A description of the Indian forest land under the jurisdiction of the Indian tribe;

(2) A description and location of the biomass utilization facility including its annual biomass consumption and details related to the application evaluation criteria;

(3) A map depicting the BLM lands being proposed for harvest; and

(4) A harvest plan proposing the means to carry out the biomass harvest.

To establish eligibility for an Alaska Native Biomass Demonstration Project, an Indian tribe (as defined at (25 U.S.C. 5304(e)) needs to submit an application with the following information:

(1) A description and location of the biomass utilization facility, including its annual biomass consumption and details related to the application evaluation criteria;

(2) A map depicting the BLM lands being proposed for harvest; and

(3) A harvest plan proposing the means to carry out the biomass harvest.

The statute allows the Secretary of the Interior to establish additional criteria as needed. Such additional criteria will be posted on the website established for this purpose (see **ADDRESSES**).

The eligibility applications comprise a collection of information that requires a control number from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521). 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. For this reason, the BLM will request an OMB control number for these applications.

Application Evaluation Criteria

In accordance with the Act, the BLM will evaluate applications by assessing whether the proposed project would:

(1) Increase the reliability of local or regional energy;

(2) Enhance the economic development of the Indian tribe;

(3) Result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;

(4) Improve the forest health or watersheds of Federal land or Indian forest or rangeland; or

(5) Otherwise promote the use of woody biomass.

Contracts and Agreements Selection

In accordance with the Act, when evaluating applications the BLM will also take into consideration the following factors:

(1) The status of the Indian tribe as an Indian tribe;

(2) The trust status of the Indian forest land or rangeland of the Indian tribe;

(3) The cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(4) The treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(5) The indigenous knowledge and skills of members of the Indian tribe;

(6) The features of the landscape of the land subject to the proposal, including watersheds and vegetation types;

(7) The working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(8) The access by members of the Indian tribe to the land subject to the proposal.

In accordance with the Act, the contract or agreement for a project must exclude from consideration any merchantable logs that have been identified for commercial sale.

Submitting an Application

A federally recognized tribe may submit an application to the BLM field office that has jurisdiction over the land where the project would occur. The application should contain the information outlined in the eligibility section of this notice.

Additional Information for Contract or Agreement Development

After receiving an application to verify eligibility, the BLM will work with the tribe as appropriate to obtain additional information necessary to develop the contract or agreement. The information may include, but is not limited to:

(1) A description of the harvesting methods, annual harvest tonnage, and transportation routes;

(2) A start date and duration of source area usage; and

(3) Information relevant to any necessary analysis of the project under the National Environmental Policy Act.

Casey Hammond,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 2020–00529 Filed 1–14–20; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–29039; PPWODIREP0; PPMPSPD1Y.YM0000]

National Park System Advisory Board; Charter Renewal

AGENCY: National Park Service, Interior.

ACTION: Charter renewal.

SUMMARY: The Secretary of the Interior intends to renew the National Park System Advisory Board, in accordance with section 14(b) of the Federal Advisory Committee Act. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Staff Director for the National Park System Advisory Board, Office of Policy, National Park Service, 202–513–7053.

SUPPLEMENTARY INFORMATION: The Board is authorized by 54 U.S.C. 102303 (part of the 1935 Historic Sites, Buildings and Antiquities Act) and has been in existence almost continuously since 1935. Pursuant to 54 U.S.C. 102303, the legislative authorization for the Board expired January 1, 2010. However, due to the importance of the issues on which the Board advises, the Secretary of the Interior exercised the authority contained in 54 U.S.C. 100906 to re-establish and continue the Board as a discretionary committee from January 1, 2010, until such time as it may be legislatively reauthorized.

The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it is necessary to re-establish the Board to ensure its work is not disrupted. The Board's members are balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The renewal of the Board comports with the requirements of the Federal Advisory Committee Act, as amended.

Certification: I hereby certify that the renewal of the National Park System Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the National Park Service Organic Act (54 U.S.C. 100101(a) *et seq.*), and other statutes relating to the administration of the National Park Service.

Dated: January 8, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–00478 Filed 1–14–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket ID BOEM–2019–0070]

Outer Continental Shelf (OCS), Gulf of Mexico (GOM), Oil and Gas Lease Sales for 2020

AGENCY: Bureau of Ocean Energy Management (BOEM), Department of the Interior (DOI).

ACTION: Notice to Rescind Notice of Intent to Prepare a Supplemental Environmental Impact Statement.

SUMMARY: This Notice advises the public that BOEM is rescinding the Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (EIS) for the OCS Gulf of Mexico (GOM) lease sales for 2020 and subsequent GOM lease sales through 2022.

DATES: This Notice takes effect on January 15, 2020.

FOR FURTHER INFORMATION CONTACT: For information on the status of the environmental review for the 2020 GOM oil and gas lease sales or BOEM's policies associated with this Notice, please contact Ms. Helen Rucker, Chief, Environmental Assessment Section, Office of Environment (GM 623E), Bureau of Ocean Energy Management, New Orleans Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone 504–736–2421, or email at *helen.rucker@boem.gov.*

SUPPLEMENTARY INFORMATION: On December 26, 2018, BOEM published a NOI to initiate the environmental review to inform the decisions for the two proposed lease sales scheduled in 2020 and the subsequent lease sales through 2022. The proposed lease sales include the Western and Central Planning Areas, and a small portion of the Eastern Planning Area not subject to Congressional moratorium.

At the time of publication, BOEM anticipated the first GOM lease sale of 2020 would be conducted under the 2019–2024 National OCS Oil and Gas Leasing Program and planned to prepare a Supplemental EIS for the proposed lease sales scheduled in 2020 through 2022.

However, development of the 2019–2024 Program has been delayed, and BOEM has decided not to prepare a Supplemental EIS at this time, because it is not making any substantial changes in the proposed actions that are relevant to environmental concerns. As a result, it has determined that no new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts have arisen.

Thus, under the standards of 40 CFR 1502.9(c), there is nothing triggering the need for a Supplemental EIS. Accordingly, BOEM has determined NEPA adequacy on the use of the 2018 GOM Supplemental EIS for Lease Sale 254, which tiers from and updates the 2017–2022 GOM Multisale EIS. BOEM is hereby rescinding the December 26, 2018, Notice of Intent to prepare a Supplemental EIS.

Authority: This Notice to rescind the NOI is published pursuant to 43 U.S.C. 1337, 40 CFR 1508.22, and 43 CFR 46.415.

Michael A. Celata,

Regional Director, New Orleans Office, Department of the Interior Regions 1, 2, 4, and 6, Bureau of Ocean Energy Management.

[FR Doc. 2020–00500 Filed 1–14–20; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–636 and 731–TA–1469–1470 (Preliminary)]

Wood Mouldings and Millwork Products From Brazil and China; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–636 and 731–TA–1469–1470 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that 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 wood mouldings and millwork products from Brazil and China, primarily provided for in subheadings 4409.10.40, 4409.10.45, 4409.10.50, 4409.22.40, 4409.22.50, 4409.29.41, and 4409.29.51 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 24, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by March 2, 2020.

DATES: January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Charlie Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on January 8, 2020, by the Coalition of American Millwork Producers (Bright Wood Corporation, Madras, OR; Cascade Wood Products, Inc., White City, OR; Endura Products, Inc., Colfax, NC; Sierra Pacific Industries, Red Bluff, CA; Sunset Moulding, Live Oak, CA; Woodgrain Millwork Inc., Fruitland, ID; and Yuba River Moulding, Yuba City, CA).

For further information concerning the conduct of these investigations 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 B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

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 these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, January 29, 2020, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before January 27, 2020. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 3, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. 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.

In accordance with sections 201.16(c) and 207.3 of the 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.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 9, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00465 Filed 1–14–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1189]

Certain Dissolving Microneedle Patches for Cosmetic and Pharmaceutical Use; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 21, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of TheraJect, Inc. of Fremont, California. Supplements were filed on November 27 and December 2, 2019. A first amended complaint was filed on December 10, 2019, and a second amended complaint was filed on December 19, 2019. The second amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dissolving microneedle patches for cosmetic and pharmaceutical use by reason of infringement of certain claims of U.S. Patent No. 6,945,952 (''the '952 patent''). The second amended complaint further alleges that an industry in the United States is in the process of being established as required by the applicable Federal Statute.

The second amended complaint requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

Addresses: The second amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the second amended complaint, the U.S. International Trade Commission, on January 9, 2020, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–13 of the '952 patent; and whether an industry in the United States is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''dissolving microneedle patch[es]'';

(3) Pursuant to section 210.10(b)(3) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(3), the presiding Administrative Law Judge shall hold an early evidentiary hearing, find facts, and issue an early decision, within 100 days of institution except for good cause shown, as to whether the complainant has satisfied the economic prong of the domestic industry requirement. Notwithstanding any Commission Rules to the contrary, which are hereby waived, any such decision should be issued in the form of an initial determination (ID) under Commission Rule 210.42(a)(3), 19 CFR 210.42(a)(3). The ID will become the Commission's final determination 30 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44, and 210.45, 19 CFR 210.43, 210.44, and 210.45. The issuance of an early ID finding that the complainant does not satisfy the economic prong of the domestic industry requirement shall stay the investigation unless the Commission orders otherwise; any other decision shall not stay the investigation or delay the issuance of a final ID covering the other issues of the investigation;

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: TheraJect, Inc., 39270 Paseo Padre #112, Fremont, CA 94538.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the second amended complaint is to be served: Raphas Co., Ltd, (07793) 62, Magokjingang 8–ro–1–gil, Gangseo-gu, Seoul, Republic of Korea.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the second amended complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the second amended complaint and the notice of investigation. Extensions of time for submitting responses to the second amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the second amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the second amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the second amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 10, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00509 Filed 1–14–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1190]

Certain Wearable Monitoring Devices, Systems, and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 10, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Philips North America, LLC of Andover, Massachusetts and Koninklijke Philips N.V. of Eindhoven, Netherlands. Supplements to the complaint were filed on December 13 and 30, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wearable monitoring devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,845,228 (''the '228 patent''); U.S. Patent No. 9,820,698 (''the '698 patent''); U.S. Patent No. 9,717,464 (''the '464 patent''); and U.S. Patent No. 9,961,186 (''the '186 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 9, 2020, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3 of the '228 patent; claims 1 and 6 of the '698 patent; claims 1 and 6 of the '464 patent; and claims 1, 3–4, and 8 of the '186 patent; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''wearable monitoring devices, such as activity trackers and fitness trackers, including health and activity monitoring devices, that may be worn on the wrist like a watch or bracelet or attached to clothing'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Philips North America, LLC, 3000 Minuteman Road, Andover, Massachusetts 01810

Koninklijke Philips N.V., High Tech Campus 34, 5656 AE Eindhoven, Netherlands

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fitbit, Inc., 199 Fremont Street, 14th Floor, San Francisco, CA 94105

Garmin International, Inc., 1200 E 151st Street, Olathe, KS 66062

Garmin USA, Inc., 1200 E 151st Street, Olathe, KS 66062

Garmin Ltd. d/b/a Garmin Switzerland GmbH, Muhlentalstrasse 2, Schaffhausen, 8200 Switzerland

Ingram Micro Inc., 3351 Michelson Drive, Suite 100, Irvine, CA 92612

Maintek Computer (Suzhou) Co., Ltd., No. 233 Jinfeng Road, Suzhou New District, Jiangsu Province, 215011 China

Inventec Appliances (Pudong), No. 789 Pu Xing Road, Jiangsu Province, Shanghai 201114 China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 10, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00510 Filed 1–14–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0070]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Credit Card Payment Form (1–786)

AGENCY: Criminal Justice Information Services Division, Department of Justice.

ACTION: 60 Day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until March 16, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, Federal Bureau of Investigation, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Clarksburg, WV 26306; phone: 304–625–4320 or email *glbrovey@fbi.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Credit Card Payment Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1–786. The applicable component within the Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. This collection is necessary for individuals to submit payment to receive a copy of their personal identification record.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Annually, the FBI receives 25,000 credit card payment forms, therefore there are 25,000 respondents. The form requires 3.5 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,450 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: January 10, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–00524 Filed 1–14–20; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0001]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Revision of a Previously Approved Collection Report of Theft or Loss of Controlled Substance DEA Form 106

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until March 16, 2020.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; 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 forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Report of Theft or Loss of Controlled Substance.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 106. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: In accordance with current 21 CFR 1301.74, a DEA registrant must notify the Field Division Office of the Administration in writing, of any theft or significant loss of any controlled substance within one business day of discovery of the theft or loss, and must complete and send to the DEA a DEA Form 106 upon determination of a theft or significant loss. The DEA Form 106 is designed to provide a uniform method of reporting and recording thefts and losses of controlled substances as required by 21 U.S.C. 827, 21 CFR 1301.74(c) and 1301.76(b). The form is entitled ''Report of Theft or Loss of Controlled Substances'' and it is used by the DEA to help determine the quantities and types of controlled substances that are stolen or lost. It may also serve as a record of the theft or loss for the registrant.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Estimated Total Number of Respondents: 10,693.

Total Annual Responses: 37,047.

Average Burden per Collection: 0.3333 hour.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 12,349 annual burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: January 10, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–00523 Filed 1–14–20; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 9, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Hampshire in the lawsuit entitled *United States* v. *Charles A. DiDonato,* Civil Action No. 1:20–cv–58–JD. In the filed complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), alleges that Charles A. DiDonato is liable under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for past response costs EPA incurred to respond to releases and threatened releases of hazardous substances into the environment at or from the New Hampshire Dioxane Site located in Atkinson and Hampstead, New Hampshire. The proposed consent decree requires Mr. DiDonato to pay $1,700,000, with interest, to EPA, in settlement of the United States' claim for past response costs against Mr. DiDonato.

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* v. *Charles A. DiDonato,* D.J. Ref. No. 90–11–3–11469/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.00 (25 cents per page reproduction cost), payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2020–00522 Filed 1–14–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; COPS Application Package

AGENCY: Community Oriented Policing Services, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment February 14, 2020.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE, Washington, DC 20530 or at (202) 514–6563. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency form number: 1103–0098* U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: COPS Office grantees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents is 5,000. The estimated hourly burden to the applicant is 11 hours for each respondent to review the instructions and complete the application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 55,000 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Room 3E.405B, Washington, DC 20530.

Dated: January 10, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–00525 Filed 1–14–20; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number1122–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of a new collection.

(2) *Title of the Form/Collection:* Semi-annual progress report for the Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction Program (Tribal Jurisdiction Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–NEW. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the estimated 20 grantees under the Tribal Jurisdiction Program, a new grant program authorized in the Violence Against Women reauthorization Act of 2013. The Tribal Jurisdiction Program is designed to assist Indian tribes in exercising special domestic violence criminal jurisdiction (SDVCJ). Through this grant program, Indian tribes will receive support and technical assistance for planning, developing and implementing changes in their criminal justice systems necessary to exercise SDVCJ. The program encourages collaborations among tribal leadership, tribal courts, tribal prosecutors, tribal attorneys, tribal defenders, law enforcement, probation, service providers, and other partners to ensure that non-Indians who commit crimes of domestic violence, dating violence, and violations of protection orders are held accountable. The Tribal Jurisdiction Program encourages the coordinated involvement of the entire tribal criminal justice system and victim service providers to incorporate systemic change that ensures victim safety and offender accountability.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond/reply: It is estimated that it will take the 20 respondents (Tribal Jurisdiction Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in (*i.e.* victim services, training, prosecutions, law enforcement activities) and grantees will be expected to provide information only in connection with those activities supported by OVW funding.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the annual progress report is 40 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: January 10, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–00527 Filed 1–14–20; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0321]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30 Day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, National Institute of Justice, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until February 14, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark Greene, Technology and Standards Division Director, National Institute of Justice, 810 7th Street NW, Washington, DC 20531, *mark.greene2@usdoj.gov,* 202–307–3384. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the National Institute of Justice, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* National Institute of Justice Compliance Testing Program (NIJ CTP). This collection consists of eight forms: NIJ CTP Applicant Agreement; NIJ CTP Authorized Representatives Notification; NIJ CTP Electronic Signature Agreement; NIJ CTP Body Armor Build Sheet; NIJ CTP Body Armor Agreement; NIJ CTP Manufacturing Location Notification; NIJ CTP Multiple Listee Notification; NIJ Approved Laboratory Application and Agreement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the National Institute of Justice, Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Applicants to the NIJ Compliance Testing Program and Testing Laboratories, which are businesses or other for-profit organizations. The purpose of the voluntary NIJ Compliance Testing Program is to provide confidence that equipment used for law enforcement and corrections applications meets minimum published performance requirements. One type of equipment is ballistic body armor. Ballistic body armor models that are determined to meet minimum requirements by NIJ and listed on the NIJ Compliant Products List are eligible for reimbursement through the Ballistic Vest Partnership.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* As of December 31, 2018, approximately 1,250 unique ballistic armor models have been submitted to the NIJ CTP by approximately 300 companies for compliance testing since OMB Number 1121–0321 was issued in 2009. Approximately one third of the companies that submitted armor are not based in the U.S., however only U.S. companies will be considered for the purpose of estimating the burden on the public. Therefore, a total of 200 responses is estimated for the following three forms over several years:

NIJ CTP Applicant Agreement: Estimated 100 responses at 15 minutes every year (and 50 responses per year after that);

NIJ CTP Authorized Representatives Notification: Estimated 100 responses at 15 minutes every year (and 50 responses per year after that);

NIJ CTP Electronic Signature Agreement: Estimated 100 responses at 15 minutes every year (and 50 responses per year after that).

Each time a new armor model is submitted to the NIJ CTP for testing, the following four forms must be completed. Respondents may submit as many armor models as they choose to the NIJ CTP and are therefore not limited to only one response. The number of overall submissions over the past decade roughly translates to 125 unique ballistic armor models tested per year. A fraction of those armors are submitted by companies not based in the U.S., however only U.S. companies will be considered for the purpose of estimating the burden on the public. Therefore, a total of 100 responses is estimated for the following four forms per year:

NIJ CTP Body Armor Agreement: Estimated 100 responses at 15 minutes every year;

NIJ CTP Body Armor Build Sheet: Estimated 100 responses at 2 hours every year;

NIJ CTP Manufacturing Location Notification: Estimated 100 responses at 15 minutes each every year;

NIJ CTP Listee Notification: Estimated 100 responses at 15 minutes every year; Testing laboratories provide responses to the laboratory agreement form and are therefore considered respondents in this case. There are currently four laboratories that participate in the NIJ CTP, which renew their status with the NIJ CTP roughly every two years.

NIJ Approved Laboratory Application and Agreement: Estimated 4 responses at 8 hours every two years, or a total of 16 hours on average per year.

6. *An estimate of the total public burden (in hours) associated with the collection:* 366 hours the first year and 328.5 hours per year in subsequent years.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: January 10, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–00526 Filed 1–14–20; 8:45 am]

BILLING CODE 4410–AT–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board; Correction

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby *amends* the notice of the scheduling of a teleconference for the transaction of National Science Board business to add an agenda item. The original notice was published in the **Federal Register** on January 7, 2020 at 85 FR 728.

TIME AND DATE: Closed teleconference of the Committee on Strategy of the National Science Board, to be held Monday, January 13, 2020 from 4:00–5:00 p.m. EST.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; Approval of prior meeting minutes; Update on NSF's Fiscal Year 2021 budget passback and budget request to Congress.

In addition, the Committee on Strategy will discuss NSF's approach to the FY2020 Current Plan in response to appropriations language.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Kathy Jacquart, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: (703) 292–7000.

You may find meeting information and updates (time, place, subject matter or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–00595 Filed 1–13–20; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0242]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy to address the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The 2015 Improvements Act amended the Federal Civil Penalties Inflation Adjustment Act (FCPIAA) of 1990, and now requires Federal agencies to adjust their maximum civil monetary penalty annually for inflation.

DATES: This action is effective on January 15, 2020.

ADDRESSES: Please refer to Docket ID NRC–2019–0242 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0242. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *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: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9143, email: *Gerald.Gulla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

In 1990, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), to provide for regular adjustment for inflation of civil monetary penalties (CMPs). As amended by the Debt Collection Improvement Act of 1996, the FCPIAA required that the head of each Federal agency review, and if necessary, adjust by regulation the CMPs assessed under statutes enforced by the agency at least once every four years.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act), which further amended the FCPIAA and requires Federal agencies to adjust their CMPs annually for inflation no later than January 15 of each year. These requirements apply to the NRC's maximum CMP amounts for (1) a violation of the Atomic Energy Act (AEA) of 1954, as amended, or any regulation or order issued under the AEA, codified in § 2.205(j) of title 10 of the *Code of Federal Regulations* (10 CFR), ''Civil Penalties''; and (2) a false claim or statement made under the Program Fraud Civil Remedies Act, codified in § 13.3, ''Basis for Civil Penalties and Assessments.''

Pursuant to the 2015 Improvements Act, today the NRC published in the Rules section of the **Federal Register** a revision to § 2.205(j), increasing the maximum CMP for a violation of the AEA to $303,471 per violation, per day. This adjustment requires a corresponding revision to the NRC Enforcement Policy. Specifically, the maximum CMP amount found in Section 8.0, ''Table of Base Civil Penalties'' of the NRC Enforcement Policy is being updated to $300,000, consistent with the NRC's existing practice of rounding the maximum CMP amount codified in § 2.205(j) down to the nearest multiple of $10,000. Lesser CMP amounts in the table of base civil penalties are also being adjusted to maintain the same proportional relationship amongst the penalty amounts, except for item ''f.'', which is based on the estimated or actual cost of authorized disposal and not on the monetary value codified in § 2.205(j).

Accordingly, the NRC has revised its Policy to read as follows:

8.0—TABLE OF BASE CIVIL PENALTIES

Table A

a. Power reactors, gaseous diffusion uranium enrichment plants, and high-level waste repository	$300,000
b. Fuel fabricators authorized to possess Category I or II quantities of SNM and uranium conversion facilities	150,000
c. All other fuel fabricators, including facilities under construction, authorized to possess Category III quantities of SNM, industrial processors, independent spent fuel and monitored retrievable storage installations, mills, gas centrifuge and laser uranium enrichment facilities	75,000
d. Test reactors, contractors, waste disposal licensees, industrial radiographers, and other large material users	30,000
e. Research reactors, academic, medical, or other small material users	15,000
f. Loss, abandonment, or improper transfer or disposal of regulated material, regardless of the use or type of licensee:	
1. Sources or devices with a total activity greater than 3.7 × 104 MBq (1 Curie), excluding hydrogen-3 (tritium)	54,000
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	17,000
3. Sources and devices not otherwise described above	7,000
g. Individuals who release safeguards information	7,500

II. Paperwork Reduction Act Statement

This policy statement does not contain any new or amended collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collection of information were approved by the Office of Management and Budget (OMB), approval numbers 3150–0010 and 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

III. Congressional Review Act

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

Dated in Rockville, Maryland, this 31st day of December, 2019.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–00305 Filed 1–14–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2019; Order No. 5400]

Postal Service Performance Report and Performance Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: On December 27, 2019, the Postal Service filed the FY 2019 Performance Report and FY 2020 Performance Plan with its FY 2019 Annual Compliance Report. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 28, 2020. *Reply Comments are due:* March 13, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Each year the Postal Service must submit to the Commission its most recent annual performance plan and annual performance report. 39 U.S.C. 3652(g). On December 27, 2019, the Postal Service filed its FY 2019 Annual Report to Congress in Docket No. ACR2019.[1] The FY 2019 Annual Report includes the Postal Service's FY 2019 annual performance report (FY 2019 Report) and FY 2020 annual performance plan (FY 2020 Plan). FY 2019 Annual Report at 18–37.

The FY 2020 Plan reviews the Postal Service's plans for FY 2020. The FY 2019 Report discusses the Postal Service's progress during FY 2019 toward its four performance goals:

- High-Quality Service
- Excellent Customer Experiences
- Safe Workplace and Engaged Workforce
- Financial Health

Each year, the Commission must evaluate whether the Postal Service met the performance goals established in the annual performance plan and annual performance report. 39 U.S.C. 3653(d). The Commission may also ''provide recommendations to the Postal Service related to the protection or promotion of public policy objectives set out in'' title 39. *Id.*

Since Docket No. ACR2013, the Commission has evaluated whether the Postal Service met its performance goals in reports separate from the Annual Compliance Determination.[2] The

[1] United States Postal Service FY 2019 Annual Report to Congress, Library Reference USPS–FY19–17, December 27, 2019 (FY 2019 Annual Report).

[2] *See* Docket No. ACR2013, Postal Regulatory Commission, Review of Postal Service FY 2013 Performance Report and FY 2014 Performance Plan, July 7, 2014; Docket No. ACR2014, Postal Regulatory Commission, Analysis of the Postal Service's FY 2014 Program Performance Report and FY 2015 Performance Plan, July 7, 2015; Docket No. ACR2015, Postal Regulatory Commission, Analysis of the Postal Service's FY 2015 Annual Performance Report and FY 2016 Performance Plan, May 4, 2016;

Commission continues this current practice to provide a more in-depth analysis of the Postal Service's progress toward meeting its performance goals and plans to improve performance in future years. To facilitate this review, the Commission invites public comment on the following issues:

• Did the Postal Service meet its performance goals in FY 2019?

• Do the FY 2019 Report and the FY 2020 Plan meet applicable statutory requirements, including 39 U.S.C. 2803 and 2804?

• What recommendations should the Commission provide to the Postal Service that relate to protecting or promoting public policy objectives in title 39?

• What recommendations or observations should the Commission make concerning the Postal Service's strategic initiatives? [3]

• What other matters are relevant to the Commission's analysis of the FY 2019 Report and the FY 2020 Plan under 39 U.S.C. 3653(d)?

II. Request for Comments

Comments by interested persons are due no later than February 28, 2020. Reply comments are due no later than March 13, 2020. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as Public Representative to represent the interests of the general public in this proceeding with respect to issues related to the Commission's analysis of the FY 2019 Report and the FY 2020 Plan.

III. Ordering Paragraphs

It is ordered:

1. The Commission invites public comment on the Postal Service's FY 2019 Report and FY 2020 Plan.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as Public Representative to represent the interests of the general public in this proceeding with respect to issues related to the Commission's analysis of the FY 2019 Report and the FY 2020 Plan.

3. Comments are due no later than February 28, 2020.

4. Reply comments are due no later than March 13, 2020.

Docket No. ACR2016, Postal Regulatory Commission, Analysis of the Postal Service's FY 2016 Annual Performance Report and FY 2017 Performance Plan, April 27, 2017; Docket No. ACR2017, Postal Regulatory Commission, Analysis of the Postal Service's FY 2017 Annual Performance Report and FY 2018 Performance Plan, April 26, 2018; Docket No. ACR2018, Postal Regulatory Commission, Analysis of the Postal Service's FY 2018 Annual Performance Report and FY 2019 Performance Plan, May 13, 2019.

[3] *See* FY 2019 Annual Report at 36–37.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2020–00450 Filed 1–14–20; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 2020–00056 Filed 1–2–20.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., January 15, 2020.

CHANGES IN THE MEETING: By unanimous vote of the Board, addition of a closed meeting item: SCOTUS decision.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Authority: 5 U.S.C. 552b.

Dated: January 10, 2020.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020–00583 Filed 1–13–20; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87928; File No. SR–NYSEARCA–2019–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change Amending the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-location Services in the Mahwah, New Jersey Data Center

January 9, 2020.

On August 22, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend their co-location fee schedules to offer co-location Users [3] access to the ''NMS Network''—an alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (''SIAC'') is engaged as the exclusive securities information processor (''SIP'')—and establish associated fees. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] On October 24, 2019, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to December 9, 2019.[5] The Commission received one comment letter on the proposal, a response from the Exchanges, and a subsequent letter from the original commenter.[6] On December 9, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] On December 23, 2019, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to 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 services available to Users that use co-location services in the Mahwah, New Jersey data center to add the NMS network to connect to the NMS feeds. This Amendment No. 1, which supersedes the original filing in its entirety, is designed to address comments in the Commission's Order instituting proceedings to determine whether to approve or disapprove the original filing.[8] The proposed change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 9 defining ''Users.''

[4] *See* Securities Exchange Act Release No. 86868 (September 4, 2019), 84 FR 47610.

[5] *See* Securities Exchange Act Release No. 87400, 84 FR 58189 (October 30, 2019).

[6] *See,* respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC (''Nasdaq''), to Vanessa Countryman, Secretary, Commission (''Nasdaq Letter''); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (''NYSE Response Letter''); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (''Second Nasdaq Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2019-61/srnysearca201961.htm.*

[7] *See infra* note 8.

[8] *See* Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 13, 2019) (SR–NYSEArca–2019–61) (''Order'').

available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

This Amendment No. 1 supersedes the original filing in its entirety. In the original filing, the Exchange proposed to amend its co-location services [9] to provide Users [10] with an alternate, dedicated network connection to access the NMS feeds (the ''NMS network'') for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'') and proposed fees for the NMS network.[11]

On December 9, 2019, the Commission issued an Order instituting proceedings to determine whether to approve or disapprove the original filing, and in that Order, raised questions about how the Exchange proposed to charge fees for the NMS network.[12] Because the purpose of the NMS network is to enhance performance of the SIP and not to generate revenue, to address the questions raised in the Order, the Exchange is amending the proposal to eliminate any fee changes associated with the introduction of the NMS network. As amended, this proposed rule change would solely add the NMS network as part of the services available if a User purchases a 10 Gigabit (''Gb'') or 40 Gb connection to one of the two local area networks in the Mahwah data center.

As described below, today Users can connect to Regulation NMS equities and options feeds [13] disseminated by the SIP using either of the co-location local area networks. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds.[14] Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.[15]

The Exchange has recently been authorized to build the NMS network in the Mahwah data center that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. Because a User currently needs to purchase a service that includes access to one of the two local area networks in the data center via either a 10 Gb or 40 Gb connection to connect to the NMS feeds, the Exchange proposes to expand that service to include the option to also connect to the NMS network via a same-sized connection at no additional charge. Accordingly, with this proposed rule change, Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds. The Exchange is not proposing any changes to its fees.

Because the NMS network has been built and tested and is ready to be implemented, subject to approval of this proposed rule change, the Exchange proposes to implement the NMS network as soon as practicable. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[16] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the data center.[17]

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to a 10 Gb or 40 Gb LCN or IP network.[18] In connection with the services available over the local area networks, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4 of the Fee Schedules, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with

[9] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[10] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[11] Specifically, as originally proposed, Users would be eligible for up to eight ''No Fee NMS Network Connections'' that would not be subject to any fees. Users not eligible for the No Fee NMS Network Connection or that needed additional NMS network connections would have been charged at the same rate as the same-sized IP network.

[12] *See* Order, *supra* note 7. The Order also discussed a comment letter submitted in connection with the original proposal.

[13] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds. *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[14] Because of the volume of data, a 1 Gb connection is not sufficient to connect to an NMS feed. *See id.* at 3063.

[15] *See Id.*

[16] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

[17] *See* 82 FR 3061, note 12, *supra.*

[18] As set forth on the Fee Schedules, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity.[19]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;
2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and
3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[20] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[21] and so using the LCN to connect to an NMS feed is slower than using the IP network.[22]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[23] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[24]

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Consistent with the current bandwidth needs to connect to the NMS feeds, connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Even though the NMS network will provide access only to the NMS feeds, the Exchange is funding the build of the NMS network and is not being reimbursed for such expenses by either CTA or OPRA. The Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

Proposed Amendment To Add the NMS Network

The proposed structure for the NMS network has been designed so that the services available in co-location would be expanded so that a User can opt to connect to the NMS network at no additional charge.

To effect the proposed change, the Exchange proposes to amend the services available in co-location to provide that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that access would include a connection to the NMS network of the same size. Although the Exchange is funding and expanding the types of local area network connections that would be available in the data center, the Exchange does not propose to change any of the fees related to purchasing a service that includes a connection to a local area network.

More specifically, the services available in co-location currently include LCN Access, IP Network Access, and Partial Cabinet Solution bundles. In order to implement the proposed change, the Exchange proposes the following amendments to Exchange Rules that describe the following services in co-location:

- In the column titled ''Type of Service,'' the Exchange proposes to amend the text describing the 10 Gb and 40 Gb LCN and IP Network Access options to include text referencing the NMS network.
- In the column titled ''Description,'' the Exchange proposes to amend the descriptions of the 10 Gb LX LCN Circuit, 40 Gb LCN Circuit, Partial Cabinet Solution bundle Option C and Option D, 10 Gb IP Network Circuit and 40 Gb IP Network Circuit to include text referencing the specific NMS Network connection that would be part of the service. In addition, because the descriptions of the LCN and IP network services do not currently reference either ''LCN'' or ''IP Network,'' respectively, the Exchange proposes to add text references as applicable.
- Finally, the Exchange proposes to amend text in the column titled ''Amount of Charge'' to specify that the current initial and monthly recurring charges would not change and that for purposes of such charges, the existing local area network connection and NMS network connection would be together considered one connection. These text changes would make clear that Users would not be subject to two initial or two monthly charges. The Partial Cabinet Solution bundle description already indicates that the charges are ''per bundle'' and therefore no similar clarifying language is proposed.

The Exchange proposes to set forth these changes as follows (proposed new

[19] *See* 82 FR 3061, note 12, *supra,* and Securities Exchange Release No. 85958 (May 29, 2019), 84 FR 25858 (June 4, 2019) (SR–NYSEArca–2019–40). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4.

[20] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[21] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[22] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[23] The alternate network to access the NMS feeds will not be available outside of the data center.

[24] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

text underlined and proposed text for deletion in brackets):

Type of service	Description	Amount of charge
LCN *and NMS Network* Access	10 Gb LX *LCN* Circuit *and 10 Gb NMS Network Circuit*.	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.* *For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
LCN *and NMS Network* Access	40 Gb *LCN* Circuit and *40 Gb NMS Network Circuit.*	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.* *For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
Partial Cabinet Solution bundles. *Note:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under "General Notes.".	No change	No change.
	No change	No change.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), *2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), *2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change.
IP Network *and NMS Network* Access	10 Gb *IP Network* Circuit *and 10 GB NMS Network Circuit*.	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $11,000 monthly *charge* per connection *to both the IP Network and NMS Network.* *For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
IP Network *and NMS Network* Access	40 Gb *IP Network* Circuit *and 40 Gb NMS Network Circuit*.	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $18,000 monthly *charge* per connection *to both the IP Network and NMS Network.* *For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. Once the NMS Network is available, Users can continue to use either their existing LCN or IP Network connection or the new NMS network connection to connect to the NMS feeds.

The Exchange proposes to amend the current General Note 4 to describe what a User obtains when it purchases a service that includes access to the LCN, IP network, or NMS Network.

First, the Exchange proposes to split current Note 4 into three separate notes. The first paragraph of current Note 4 would continue to be numbered Note 4, and would specify which trading and execution services a User can access when it purchases a service that includes access to the LCN or IP network, which are not changing. Because the services that a User purchases may include access to the NMS network in addition to access to the LCN or IP network, the Exchange proposes a non-substantive amendment to the first sentence of this note to add the phrase "a service that includes."

Second, the Exchange proposes that the current second paragraph of Note 4 and following table would be renumbered as Note 5. As the paragraph does currently, Note 5 would specify the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Similar to the proposed amendment to the first sentence of Note 4, the Exchange proposes a non-substantive amendment to add the phrase ''a service that includes'' to the first sentence of new Note 5. In addition, the Exchange proposes a non-substantive amendment to the table to clarify that the NMS feeds are the CTA, CQ, and OPRA feeds.

Finally, the Exchange proposes new Note 6, which would describe in more detail the NMS network. As proposed, Note 6 would provide that when a User purchases a service that includes access to the NMS Network, upon its request it would receive connectivity to the NMS network and any of the NMS feeds that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Consistent with existing Note 4 (proposed Note 5), Note 6 would provide that market data fees for the NMS feeds would be charged by the provider of the NMS data feed. The proposed note would further state that the NMS Network would provide connectivity to the NMS feeds only.

Expected Application of the Proposed Change

The proposed NMS network would be available to all Users that purchase a service that includes a 10 Gb or 40 Gb connection to access either the LCN or IP network, which are the networks currently available to provide connections to the NMS feeds.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [25] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[29] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System

The Exchange believes that the proposed change to include access to the NMS network as part of existing services available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

The Proposed Rule Change Is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. The implementation costs of approximately $3.8 million are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that adding the NMS network as a service that would be included when a User purchases either a 10 Gb or 40 Gb connection to access a local area network is reasonable because the amended service is designed to make the NMS network available at no additional cost to Users. Specifically, as proposed, the NMS network would be included as part of specified existing LCN and IP network services that Users can already purchase, and are already used to connect to the NMS feeds.

Because the fees for LCN and IP network services relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to

[25] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[26] *See* 78 FR 50459, *supra* note 9, at 50459. NYSE, NYSE American and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein and will be amending their respective filings in substantially the same manner. *See* Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592 (September 10, 2019) (SR–NYSE–2019–46) (Notice); 86867 (September 4, 2019), 84 FR 47563 (September 10, 2019) (SR–NYSEAmer–2019–34) (Notice); and 86869 (September 4, 2019), 84 FR 47600 (September 10, 2019) (SR–NYSENAT–2019–19) (Notice).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(4).

the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By adding access to the NMS network to these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not changing the existing fees for such expanded service, Users would not incur any additional charges if they choose to use to the new low-latency, dedicated alternate network to connect to the NMS feeds instead of using a connection to one of the existing local area networks.

The Exchange further believes that expanding the existing services that include access to a 10 Gb and 40 Gb connection to either local area network to also include access to a same-size connection to the NMS network would be reasonable because there would be no differences in fees charged to either current or prospective Users that seek to use co-location services to connect to the NMS feeds. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds. As proposed, when such service is purchased, a User would continue to receive the same local area network service currently available, and would also have the option to connect to the NMS feeds via the NMS network.

The Exchange believes that the proposed changes to describe the NMS network are reasonable because they to promote clarity and transparency regarding which services would be available to Users and the charges for such services. As noted above, the Exchange proposes that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that service would include access to a same-size connection to the NMS network. The Exchange believes that the text changes to Exchange's rules for such services is reasonable because the amendments would provide specificity regarding which specific services would include access to the NMS network. The proposed amendments would also provide specificity that the existing initial and monthly charges would be charged only once, and that a connection to an existing local area network and an NMS network would be considered a single connection for purposes of such charges.

The Exchange also believes that the proposed non-substantive amendment to split Note 4 into three separate Notes is reasonable because it would promote clarity and transparency regarding how services that include a connection to an LCN or IP network could be used. As now, Note 4 would describe the trading and execution services that a User may access if it purchases a service that includes access to the LCN or IP network. Proposed Note 5 would describe the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Proposed Note 6 would be new and is designed to promote clarity and transparency by (a) describing the connectivity that the User would obtain if it purchased service that included access to the NMS Network, subject to any technical provisioning requirements and authorization from the provider of the data feed, and (b) specifying that the NMS network would provide connectivity to the NMS feeds only. The Exchange further believes it is reasonable to identify the specific NMS feeds that are available, which are the CTA, CQ, and OPRA feeds, as this proposed amendment to Note 4 and proposed Note 6 would promote clarity and transparency in Exchange rules.

The Proposed Rule Change Is Equitably Allocated

The Exchange believes that the proposed rule change is equitably allocated. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because the NMS network would be included as part of services that include access to a 10 Gb or 40 Gb connection to either local area network, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging different fees for such expanded services, all Users will be treated equally and charged no differently than how fees are currently charged for access to a 10 Gb or 40 Gb connection to a local area network service.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because access to the NMS network would be included as part of access to the 10 Gb and 40 Gb connection to either local area network, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed change in services available in co-location therefore would not impose any meaningful differences to different types of Users. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging any different fees for such expanded service, all Users will be treated equally and no differently than how fees are currently charged for a 10 Gb or 40 Gb connection to a local area network service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for these processor services. The proposed rule change would amend the services available in co-location to include the NMS network when a User purchases a 10 Gb or 40 Gb connection to access either local area network service. Accordingly, the proposed rule change would expand the services available in co-location without changing any fees for the existing services, or adding fees for the expanded services. All Users would have access to the NMS network and it would be their choice of whether and at what level to subscribe to such services, including whether to utilize the NMS network connection. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2019–61 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2019–61. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2019–61 and should be submitted on or before February 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00483 Filed 1–14–20; 8:45 am]

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[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87929; File No. SR–NYSEAMER–2019–34]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Amendment No. 1 to Proposed Rule Change Amending the NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-Location Services in the Mahwah, New Jersey Data Center

January 9, 2020.

On August 23, 2019, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend their co-location fee schedules to offer co-location Users[3] access to the ''NMS Network''—an alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (''SIAC'') is engaged as the exclusive securities information processor (''SIP'')—and establish associated fees. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] On October 24, 2019, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to December 9, 2019.[5] The Commission received one comment letter on the proposal, a response from the Exchanges, and a subsequent letter from the original commenter.[6] On December 9, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] On December 23, 2019, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to 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 services available to Users that use co-location services in the Mahwah, New

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 9 defining ''Users.''

[4] *See* Securities Exchange Act Release No. 86867 (September 4, 2019), 84 FR 47563.

[5] *See* Securities Exchange Act Release No. 87401, 84 FR 58188 (October 30, 2019).

[6] *See,* respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC (''Nasdaq''), to Vanessa Countryman, Secretary, Commission (''Nasdaq Letter''); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (''NYSE Response Letter''); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (''Second Nasdaq Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyseamer-2019-34/srnyseamer201934.htm.*

[7] *See infra* note 8.

Jersey data center to add the NMS network to connect to the NMS feeds. This Amendment No. 1, which supersedes the original filing in its entirety, is designed to address comments in the Commission's Order instituting proceedings to determine whether to approve or disapprove the original filing.[8] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

This Amendment No. 1 supersedes the original filing in its entirety. In the original filing, the Exchange proposed to amend its co-location services [9] to provide Users [10] with an alternate, dedicated network connection to access the NMS feeds (the ''NMS network'') for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'') and proposed fees for the NMS network.[11]

On December 9, 2019, the Commission issued an Order instituting proceedings to determine whether to approve or disapprove the original filing, and in that Order, raised questions about how the Exchange proposed to charge fees for the NMS network.[12] Because the purpose of the NMS network is to enhance performance of the SIP and not to generate revenue, to address the questions raised in the Order, the Exchange is amending the proposal to eliminate any fee changes associated with the introduction of the NMS network. As amended, this proposed rule change would solely add the NMS network as part of the services available if a User purchases a 10 Gigabit (''Gb'') or 40 Gb connection to one of the two local area networks in the Mahwah data center.

As described below, today Users can connect to Regulation NMS equities and options feeds [13] disseminated by the SIP using either of the co-location local area networks. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds.[14] Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.[15]

The Exchange has recently been authorized to build the NMS network in the Mahwah data center that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. Because a User currently needs to purchase a service that includes access to one of the two local area networks in the data center via either a 10 Gb or 40 Gb connection to connect to the NMS feeds, the Exchange proposes to expand that service to include the option to also connect to the NMS network via a same-sized connection at no additional charge. Accordingly, with this proposed rule change, Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds. The Exchange is not proposing any changes to its fees.

Because the NMS network has been built and tested and is ready to be implemented, subject to approval of this proposed rule change, the Exchange proposes to implement the NMS network as soon as practicable. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[16] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the data center.[17]

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to a 10 Gb or 40 Gb LCN or IP network.[18] In connection with the services available over the local area networks, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4

[8] *See* Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 13, 2019) (SR–NYSEAmer–2019–34) (''Order'').

[9] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[10] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[11] Specifically, as originally proposed, Users would be eligible for up to eight ''No Fee NMS Network Connections'' that would not be subject to any fees. Users not eligible for the No Fee NMS Network Connection or that needed additional NMS network connections would have been charged at the same rate as the same-sized IP network.

[12] *See* Order, *supra* note 7. The Order also discussed a comment letter submitted in connection with the original proposal.

[13] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds. *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126).

[14] Because of the volume of data, a 1 Gb connection is not sufficient to connect to an NMS feed. *See id.* at 3037.

[15] *See id.*

[16] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

[17] *See* 82 FR 3035, note 12, *supra.*

[18] As set forth on the Price List and Fee Schedule, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

of the Price List and Fee Schedule, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity.[19]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;

2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and

3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[20] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[21] and so using the LCN to connect to an NMS feed is slower than using the IP network.[22]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[23] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[24]

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Consistent with the current bandwidth needs to connect to the NMS feeds, connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Even though the NMS network will provide access only to the NMS feeds, the Exchange is funding the build of the NMS network and is not being reimbursed for such expenses by either CTA or OPRA. The Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

Proposed Amendment to Add the NMS Network

The proposed structure for the NMS network has been designed so that the services available in co-location would be expanded so that a User can opt to connect to the NMS network at no additional charge.

To effect the proposed change, the Exchange proposes to amend the services available in co-location to provide that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that access would include a connection to the NMS network of the same size. Although the Exchange is funding and expanding the types of local area network connections that would be available in the data center, the Exchange does not propose to change any of the fees related to purchasing a service that includes a connection to a local area network.

More specifically, the services available in co-location currently include LCN Access, IP Network Access, and Partial Cabinet Solution bundles. In order to implement the proposed change, the Exchange proposes the following amendments to Exchange Rules that describe the following services in co-location:

• In the column titled ''Type of Service,'' the Exchange proposes to amend the text describing the 10 Gb and 40 Gb LCN and IP Network Access options to include text referencing the NMS network.

• In the column titled ''Description,'' the Exchange proposes to amend the descriptions of the 10 Gb LX LCN Circuit, 40 Gb LCN Circuit, Partial Cabinet Solution bundle Option C and Option D, 10 Gb IP Network Circuit and 40 Gb IP Network Circuit to include text referencing the specific NMS Network connection that would be part of the service. In addition, because the descriptions of the LCN and IP network services do not currently reference either ''LCN'' or ''IP Network,'' respectively, the Exchange proposes to add text references as applicable.

• Finally, the Exchange proposes to amend text in the column titled ''Amount of Charge'' to specify that the current initial and monthly recurring charges would not change and that for purposes of such charges, the existing local area network connection and NMS network connection would be together considered one connection. These text changes would make clear that Users

[19] *See* 82 FR 3035, note 12, *supra,* and Securities Exchange Release No. 85960 (May 29, 2019), 84 FR 25848 (June 4, 2019) (SR–NYSEAmer–2019–21). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4.

[20] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[21] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[22] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[23] The alternate network to access the NMS feeds will not be available outside of the data center.

[24] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

would not be subject to two initial or two monthly charges. The Partial Cabinet Solution bundle description already indicates that the charges are "per bundle" and therefore no similar clarifying language is proposed.

The Exchange proposes to set forth these changes as follows (proposed new text italicized and proposed text for deletion in brackets):

Type of service	Description	Amount of charge
LCN *and NMS Network* Access	10 Gb LX *LCN* Circuit *and 10 Gb NMS Network Circuit*.	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.* *For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
LCN *and NMS Network* Access	40 Gb *LCN* Circuit and *40 Gb NMS Network Circuit*.	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.* *For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
Partial Cabinet Solution bundles Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under "General Notes.".	No change	No change
	No change	No change
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), *2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb)*, 2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change
IP Network *and NMS Network* Access	10 Gb *IP Network* Circuit *and 10 GB NMS Network Circuit*.	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $11,000 monthly *charge* per connection *to both the IP Network and NMS Network.* *For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
IP Network *and NMS Network* Access	40 Gb *IP Network* Circuit *and 40 Gb NMS Network Circuit*.	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $18,000 monthly *charge* per connection *to both the IP Network and NMS Network.* *For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. Once the NMS Network is available, Users can continue to use either their existing LCN or IP Network connection or the new NMS network connection to connect to the NMS feeds.

The Exchange proposes to amend the current General Note 4 to describe what a User obtains when it purchases a service that includes access to the LCN, IP network, or NMS Network.

First, the Exchange proposes to split current Note 4 into three separate notes. The first paragraph of current Note 4 would continue to be numbered Note 4, and would specify which trading and execution services a User can access when it purchases a service that includes access to the LCN or IP network, which are not changing. Because the services that a User purchases may include access to the NMS network in addition to access to the LCN or IP network, the Exchange proposes a non-substantive amendment to the first sentence of this note to add the phrase ''a service that includes.''

Second, the Exchange proposes that the current second paragraph of Note 4 and following table would be renumbered as Note 5. As the paragraph does currently, Note 5 would specify the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Similar to the proposed amendment to the first sentence of Note 4, the Exchange proposes a non-substantive amendment to add the phrase ''a service that includes'' to the first sentence of new Note 5. In addition, the Exchange proposes a non-substantive amendment to the table to clarify that the NMS feeds are the CTA, CQ, and OPRA feeds.

Finally, the Exchange proposes new Note 6, which would describe in more detail the NMS network. As proposed, Note 6 would provide that when a User purchases a service that includes access to the NMS Network, upon its request it would receive connectivity to the NMS network and any of the NMS feeds that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Consistent with existing Note 4 (proposed Note 5), Note 6 would provide that market data fees for the NMS feeds would be charged by the provider of the NMS data feed. The proposed note would further state that the NMS Network would provide connectivity to the NMS feeds only.

Expected Application of the Proposed Change

The proposed NMS network would be available to all Users that purchase a service that includes a 10 Gb or 40 Gb connection to access either the LCN or IP network, which are the networks currently available to provide connections to the NMS feeds.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [25] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[29] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System

The Exchange believes that the proposed change to include access to the NMS network as part of existing services available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

The Proposed Rule Change Is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. The implementation costs of approximately $3.8 million are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that adding the NMS network as a service that would be included when a User purchases either a 10 Gb or 40 Gb connection to access a local area network is reasonable because the amended service is designed to make the NMS network available at no additional cost to Users. Specifically, as proposed, the NMS network would be included as part of specified existing LCN and IP network services that Users can already purchase, and are already used to connect to the NMS feeds.

[25] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[26] *See* 78 FR 50471, *supra* note 9, at 50471. NYSE, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein and will be amending their respective filings in substantially the same manner. *See* Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592 (September 10, 2019) (SR–NYSE–2019–46) (Notice); 86868 (September 4, 2019), 84 FR 47610 (September 10, 2019) (SR–NYSEArca–2019–61) (Notice); and 86869 (September 4, 2019), 84 FR 47600 (September 10, 2019) (SR–NYSENAT–2019–19) (Notice).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(4).

Because the fees for LCN and IP network services relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By adding access to the NMS network to these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not changing the existing fees for such expanded service, Users would not incur any additional charges if they choose to use to the new low-latency, dedicated alternate network to connect to the NMS feeds instead of using a connection to one of the existing local area networks.

The Exchange further believes that expanding the existing services that include access to a 10 Gb and 40 Gb connection to either local area network to also include access to a same-size connection to the NMS network would be reasonable because there would be no differences in fees charged to either current or prospective Users that seek to use co-location services to connect to the NMS feeds. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds. As proposed, when such service is purchased, a User would continue to receive the same local area network service currently available, and would also have the option to connect to the NMS feeds via the NMS network.

The Exchange believes that the proposed changes to describe the NMS network are reasonable because they to promote clarity and transparency regarding which services would be available to Users and the charges for such services. As noted above, the Exchange proposes that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that service would include access to a same-size connection to the NMS network. The Exchange believes that the text changes to Exchange's rules for such services is reasonable because the amendments would provide specificity regarding which specific services would include access to the NMS network. The proposed amendments would also provide specificity that the existing initial and monthly charges would be charged only once, and that a connection to an existing local area network and an NMS network would be considered a single connection for purposes of such charges.

The Exchange also believes that the proposed non-substantive amendment to split Note 4 into three separate Notes is reasonable because it would promote clarity and transparency regarding how services that include a connection to an LCN or IP network could be used. As now, Note 4 would describe the trading and execution services that a User may access if it purchases a service that includes access to the LCN or IP network. Proposed Note 5 would describe the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Proposed Note 6 would be new and is designed to promote clarity and transparency by (a) describing the connectivity that the User would obtain if it purchased service that included access to the NMS Network, subject to any technical provisioning requirements and authorization from the provider of the data feed, and (b) specifying that the NMS network would provide connectivity to the NMS feeds only. The Exchange further believes it is reasonable to identify the specific NMS feeds that are available, which are the CTA, CQ, and OPRA feeds, as this proposed amendment to Note 4 and proposed Note 6 would promote clarity and transparency in Exchange rules.

The Proposed Rule Change Is Equitably Allocated

The Exchange believes that the proposed rule change is equitably allocated. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because the NMS network would be included as part of services that include access to a 10 Gb or 40 Gb connection to either local area network, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging different fees for such expanded services, all Users will be treated equally and charged no differently than how fees are currently charged for access to a 10 Gb or 40 Gb connection to a local area network service.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because access to the NMS network would be included as part of access to the 10 Gb and 40 Gb connection to either local area network, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed change in services available in co-location therefore would not impose any meaningful differences to different types of Users. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging any different fees for such expanded service, all Users will be treated equally and no differently than how fees are currently charged for a 10 Gb or 40 Gb connection to a local area network service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for these processor services. The proposed rule change would amend the services available in co-location to include the NMS network when a User purchases a 10 Gb or 40 Gb connection to access either local area network service. Accordingly, the proposed rule change would expand the services available in co-location without changing any fees for the existing services, or adding fees for the expanded services. All Users would have access to the NMS network and it would be their choice of whether and at what level to subscribe to such services, including whether to utilize the NMS network connection. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–34 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–NYSEAMER–2019–34. 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–NYSEAMER–2019–34 and should be submitted on or before February 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00484 Filed 1–14–20; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87930; File No. SR–NYSENAT–2019–19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change Amending the Exchange's Price List Related to Co-Location Services in the Mahwah, New Jersey Data Center

January 9, 2020.

On August 22, 2019, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its co-location fee schedule to offer co-location Users [3] access to the ''NMS Network''—an alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (''SIAC'') is engaged as the exclusive securities information processor (''SIP'')—and establish associated fees. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] On October 24, 2019, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to December 9, 2019.[5] The Commission received one comment letter on the proposal, a response from the Exchanges, and a subsequent letter from the original commenter.[6] On December

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 9 defining ''Users.''

[4] *See* Securities Exchange Act Release No. 86869 (September 4, 2019), 84 FR 47600.

[5] *See* Securities Exchange Act Release No. 87402, 84 FR 58187 (October 30, 2019).

[6] *See,* respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC (''Nasdaq''), to Vanessa Countryman, Secretary, Commission (''Nasdaq Letter''); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (''NYSE Response Letter''); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (''Second Nasdaq Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nysenat-2019-19/srnysenat201919.htm.*

9, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] On December 23, 2019, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to 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 services available to Users that use co-location services in the Mahwah, New Jersey data center to add the NMS network to connect to the NMS feeds. This Amendment No. 1, which supersedes the original filing in its entirety, is designed to address comments in the Commission's Order instituting proceedings to determine whether to approve or disapprove the original filing.[8] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

This Amendment No. 1 supersedes the original filing in its entirety. In the original filing, the Exchange proposed to amend its co-location services [9] to provide Users [10] with an alternate, dedicated network connection to access the NMS feeds (the ''NMS network'') for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'') and proposed fees for the NMS network.[11]

On December 9, 2019, the Commission issued an Order instituting proceedings to determine whether to approve or disapprove the original filing, and in that Order, raised questions about how the Exchange proposed to charge fees for the NMS network.[12] Because the purpose of the NMS network is to enhance performance of the SIP and not to generate revenue, to address the questions raised in the Order, the Exchange is amending the proposal to eliminate any fee changes associated with the introduction of the NMS network. As amended, this proposed rule change would solely add the NMS network as part of the services available if a User purchases a 10 Gigabit (''Gb'') or 40 Gb connection to one of the two local area networks in the Mahwah data center.

As described below, today Users can connect to Regulation NMS equities and options feeds [13] disseminated by the SIP using either of the co-location local area networks. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds.[14] Users do not pay an additional charge to connect to the NMS feeds: it comes with their connection to the local area network.

The Exchange has recently been authorized to build the NMS network in the Mahwah data center that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. Because a User currently needs to purchase a service that includes access to one of the two local area networks in the data center via either a 10 Gb or 40 Gb connection to connect to the NMS feeds, the Exchange proposes to expand that service to include the option to also connect to the NMS network via a same-sized connection at no additional charge. Accordingly, with this proposed rule change, Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds. The Exchange is not proposing any changes to its fees.

Because the NMS network has been built and tested and is ready to be implemented, subject to approval of this proposed rule change, the Exchange proposes to implement the NMS network as soon as practicable. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[15] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the data center.[16]

[7] *See infra* note 8.

[8] *See* Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 13, 2019) (SR–NYSENAT–2019–19) (''Order'').

[9] The Exchange initially filed rule changes relating to its co-location services with the Commission in May 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[10] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 9. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE Arca, Inc. (''NYSE Arca'' and together, the ''Affiliate SROs''). *See id.* at note 11.

[11] Specifically, as originally proposed, Users would be eligible for up to eight ''No Fee NMS Network Connections'' that would not be subject to any fees. Users not eligible for the No Fee NMS Network Connection or that needed additional NMS network connections would have been charged at the same rate as the same-sized IP network.

[12] *See* Order, *supra* note 7. The Order also discussed a comment letter submitted in connection with the original proposal.

[13] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds.

[14] Because of the volume of data, a 1 Gb connection is not sufficient to connect to an NMS feed.

[15] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

[16] *See* 83 FR 26314, note 8, *supra,* at 26315–26316.

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to a 10 Gb or 40 Gb LCN or IP network.[17] In connection with the services available over the local area networks, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4 of the Price List, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity.[18]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;
2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and
3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[19] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[20] and so using the LCN to connect to an NMS feed is slower than using the IP network.[21]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[22] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[23]

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Consistent with the current bandwidth needs to connect to the NMS feeds, connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Even though the NMS network will provide access only to the NMS feeds, the Exchange is funding the build of the NMS network and is not being reimbursed for such expenses by either CTA or OPRA. The Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

Proposed Amendment To Add the NMS Network

The proposed structure for the NMS network has been designed so that the services available in co-location would be expanded so that a User can opt to connect to the NMS network at no additional charge.

To effect the proposed change, the Exchange proposes to amend the services available in co-location to provide that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that access would include a connection to the NMS network of the same size. Although the Exchange is funding and expanding the types of local area network connections that would be available in the data center, the Exchange does not propose to change any of the fees related to purchasing a service that includes a connection to a local area network.

More specifically, the services available in co-location currently include LCN Access, IP Network Access, and Partial Cabinet Solution bundles. In order to implement the proposed change, the Exchange proposes the following amendments to Exchange Rules that describe the following services in co-location:

- In the column titled ''Type of Service,'' the Exchange proposes to amend the text describing the 10 Gb and 40 Gb LCN and IP Network Access options to include text referencing the NMS network.
- In the column titled ''Description,'' the Exchange proposes to amend the descriptions of the 10 Gb LX LCN Circuit, 40 Gb LCN Circuit, Partial Cabinet Solution bundle Option C and Option D, 10 Gb IP Network Circuit and 40 Gb IP Network Circuit to include text referencing the specific NMS Network connection that would be part of the service. In addition, because the descriptions of the LCN and IP network services do not currently reference either ''LCN'' or ''IP Network,''

[17] As set forth on the Price List, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

[18] *See* 83 FR 26314, note 8, *supra,* at 26315–26316, and Securities Exchange Release No. 85959 (May 29, 2019), 84 FR 25887 (June 4, 2019) (SR–NYSENat–2019–13). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4.

[19] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[20] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[21] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[22] The alternate network to access the NMS feeds will not be available outside of the data center.

[23] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

respectively, the Exchange proposes to add text references as applicable.

• Finally, the Exchange proposes to amend text in the column titled ''Amount of Charge'' to specify that the current initial and monthly recurring charges would not change and that for purposes of such charges, the existing local area network connection and NMS network connection would be together considered one connection. These text changes would make clear that Users would not be subject to two initial or two monthly charges. The Partial Cabinet Solution bundle description already indicates that the charges are ''per bundle'' and therefore no similar clarifying language is proposed.

The Exchange proposes to set forth these changes as follows (proposed new text italicized and proposed text for deletion in brackets):

Type of service	Description	Amount of charge
LCN *and NMS Network* Access	10 Gb LX *LCN* Circuit *and 10 Gb NMS Network Circuit*.	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.*
		For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.
LCN *and NMS Network* Access	40 Gb *LCN* Circuit and *40 Gb NMS Network Circuit*.	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.*
		For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.
Partial Cabinet Solution bundles	No change	No change.
Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	No change	No change.
	Option C:.	
	1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), *2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change.
	Option D:.	
	2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), *2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change.
IP Network *and NMS Network* Access	10 Gb *IP Network* Circuit *and 10 GB NMS Network Circuit.*	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $11,000 monthly *charge* per connection *to both the IP Network and NMS Network.*
		For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.
IP Network *and NMS Network* Access	40 Gb *IP Network* Circuit *and 40 Gb NMS Network Circuit.*	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $18,000 monthly *charge* per connection *to both the IP Network and NMS Network.*
		For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. Once the NMS Network is available, Users can continue to use either their existing LCN or IP Network connection or the new NMS network connection to connect to the NMS feeds.

The Exchange proposes to amend the current General Note 4 to describe what a User obtains when it purchases a service that includes access to the LCN, IP network, or NMS Network.

First, the Exchange proposes to split current Note 4 into three separate notes. The first paragraph of current Note 4 would continue to be numbered Note 4, and would specify which trading and execution services a User can access when it purchases a service that includes access to the LCN or IP network, which are not changing. Because the services that a User purchases may include access to the NMS network in addition to access to the LCN or IP network, the Exchange proposes a non-substantive amendment to the first sentence of this note to add the phrase ''a service that includes.''

Second, the Exchange proposes that the current second paragraph of Note 4 and following table would be renumbered as Note 5. As the paragraph does currently, Note 5 would specify the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Similar to the proposed amendment to the first sentence of Note 4, the Exchange proposes a non-substantive amendment to add the phrase ''a service that includes'' to the first sentence of new Note 5. In addition, the Exchange proposes a non-substantive amendment to the table to clarify that the NMS feeds are the CTA, CQ, and OPRA feeds.

Finally, the Exchange proposes new Note 6, which would describe in more detail the NMS network. As proposed, Note 6 would provide that when a User purchases a service that includes access to the NMS Network, upon its request it would receive connectivity to the NMS network and any of the NMS feeds that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Consistent with existing Note 4 (proposed Note 5), Note 6 would provide that market data fees for the NMS feeds would be charged by the provider of the NMS data feed. The proposed note would further state that the NMS Network would provide connectivity to the NMS feeds only.

Expected Application of the Proposed Change

The proposed NMS network would be available to all Users that purchase a service that includes a 10 Gb or 40 Gb connection to access either the LCN or IP network, which are the networks currently available to provide connections to the NMS feeds.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [24] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[25]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[27] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[28] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System.

The Exchange believes that the proposed change to include access to the NMS network as part of existing services available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

The Proposed Rule Change Is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. The implementation costs of approximately $3.8 million are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The

[24] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[25] *See* 83 FR 26314, *supra* note 8, at 26314. The NYSE, NYSE American, and NYSE Arca have submitted substantially the same proposed rule change to propose the changes described herein and will be amending their respective filings in substantially the same manner. *See* Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592 (September 10, 2019) (SR–NYSE–2019–46) (Notice); 86867 (September 4, 2019), 84 FR 47563 (September 10, 2019) (SR–NYSEAmer–2019–34) (Notice); and 86868 (September 4, 2019), 84 FR 47610 (September 10, 2019) (SR–NYSEArca–2019–61) (Notice).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(4).

Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that adding the NMS network as a service that would be included when a User purchases either a 10 Gb or 40 Gb connection to access a local area network is reasonable because the amended service is designed to make the NMS network available at no additional cost to Users. Specifically, as proposed, the NMS network would be included as part of specified existing LCN and IP network services that Users can already purchase, and are already used to connect to the NMS feeds.

Because the fees for LCN and IP network services relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By adding access to the NMS network to these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not changing the existing fees for such expanded service, Users would not incur any additional charges if they choose to use to the new low-latency, dedicated alternate network to connect to the NMS feeds instead of using a connection to one of the existing local area networks.

The Exchange further believes that expanding the existing services that include access to a 10 Gb and 40 Gb connection to either local area network to also include access to a same-size connection to the NMS network would be reasonable because there would be no differences in fees charged to either current or prospective Users that seek to use co-location services to connect to the NMS feeds. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds. As proposed, when such service is purchased, a User would continue to receive the same local area network service currently available, and would also have the option to connect to the NMS feeds via the NMS network.

The Exchange believes that the proposed changes to describe the NMS network are reasonable because they to promote clarity and transparency regarding which services would be available to Users and the charges for such services. As noted above, the Exchange proposes that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that service would include access to a same-size connection to the NMS network. The Exchange believes that the text changes to Exchange's rules for such services is reasonable because the amendments would provide specificity regarding which specific services would include access to the NMS network. The proposed amendments would also provide specificity that the existing initial and monthly charges would be charged only once, and that a connection to an existing local area network and an NMS network would be considered a single connection for purposes of such charges.

The Exchange also believes that the proposed non-substantive amendment to split Note 4 into three separate Notes is reasonable because it would promote clarity and transparency regarding how services that include a connection to an LCN or IP network could be used. As now, Note 4 would describe the trading and execution services that a User may access if it purchases a service that includes access to the LCN or IP network. Proposed Note 5 would describe the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Proposed Note 6 would be new and is designed to promote clarity and transparency by (a) describing the connectivity that the User would obtain if it purchased service that included access to the NMS Network, subject to any technical provisioning requirements and authorization from the provider of the data feed, and (b) specifying that the NMS network would provide connectivity to the NMS feeds only. The Exchange further believes it is reasonable to identify the specific NMS feeds that are available, which are the CTA, CQ, and OPRA feeds, as this proposed amendment to Note 4 and proposed Note 6 would promote clarity and transparency in Exchange rules.

The Proposed Rule Change Is Equitably Allocated

The Exchange believes that the proposed rule change is equitably allocated. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because the NMS network would be included as part of services that include access to a 10 Gb or 40 Gb connection to either local area network, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging different fees for such expanded services, all Users will be treated equally and charged no differently than how fees are currently charged for access to a 10 Gb or 40 Gb connection to a local area network service.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because access to the NMS network would be included as part of access to the 10 Gb and 40 Gb connection to either local area network, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed change in services available in co-location therefore would not impose any meaningful differences to different types of Users. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the

NMS feeds at no additional charge. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging any different fees for such expanded service, all Users will be treated equally and no differently than how fees are currently charged for a 10 Gb or 40 Gb connection to a local area network service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for these processor services. The proposed rule change would amend the services available in co-location to include the NMS network when a User purchases a 10 Gb or 40 Gb connection to access either local area network service. Accordingly, the proposed rule change would expand the services available in co-location without changing any fees for the existing services, or adding fees for the expanded services. All Users would have access to the NMS network and it would be their choice of whether and at what level to subscribe to such services, including whether to utilize the NMS network connection. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–19 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–NYSENAT–2019–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/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–NYSENAT–2019–19 and should be submitted on or before February 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00485 Filed 1–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33743; 812–15081]

Goldman Sachs Real Estate Diversified Income Fund, et al.

January 9, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based service and distribution fees, and early withdrawal charges (''EWCs'').

APPLICANTS: Goldman Sachs Real Estate Diversified Income Fund and Goldman Sachs Credit Income Fund (the ''Initial Funds''), Goldman Sachs Asset Management, LP (the ''Adviser''), and Goldman Sachs & Co. LLC (the ''Distributor'').

FILING DATES: The application was filed on December 11, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 3, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the

[29] 17 CFR 200.30–3(a)(12).

request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: 200 West Street, New York, NY 10282.

FOR FURTHER INFORMATION CONTACT: Edward J. Rubenstein, Senior Special Counsel, at (202) 551–6854, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Goldman Sachs Real Estate Diversified Income Fund (the ''GS Real Estate Fund'') is a Delaware statutory trust that is registered under the Act and will operate as a diversified, closed-end management investment company. The GS Real Estate Fund will operate as an ''interval fund'' pursuant to rule 23c–3 under the Act and intends to continuously offer its shares.

2. The Goldman Sachs Credit Income Fund (the ''GS Credit Fund'') is a Delaware statutory trust that is registered under the Act and will operate as a diversified closed-end management investment company. The GS Credit Fund will operate as an ''interval fund'' pursuant to rule 23c–3 under the Act and intends to continuously offer its shares.

3. The Adviser is a Delaware limited liability partnership registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser will serve as investment adviser to the Initial Funds.

4. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''), and will act as the distributor of the Initial Funds.

5. Applicants seek an order to permit the Initial Funds to issue multiple classes of shares, each having its own fee and expense structure, and to impose asset-based distribution and service fees, and EWCs.

6. Applicants request that the order also apply to any continuously offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or the Distributor or any entity controlling, controlled by, or under common control with the Adviser or the Distributor, or any successor in interest to any such entity,[1] acts as investment adviser or principal underwriter, respectively, and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act (each, a ''Future Fund'' and together with the Initial Fund, the ''Funds'').[2]

7. Each Initial Fund will make a continuous public offering of its shares. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

8. If the requested relief is granted, the GS Real Estate Fund expects to offer at least eight classes of shares and the GS Credit Fund expects to offer at least five classes of shares. The Initial Funds may also offer additional classes of shares in the future, with each class having its own fee and expense structure.

9. Applicants state that, from time to time, the Funds may create additional classes of shares, the terms of which may differ from the initial class pursuant to and in compliance with rule 18f–3 under the Act.

10. Applicants state that shares of a Fund may be subject to a repurchase fee at a rate of no greater than 2% of the shareholder's repurchase proceeds if the interval between the date of purchase of the shares and the valuation date with respect to the repurchase of those shares is less than one year. Any repurchase fee will apply equally to all classes of shares of a Fund, consistent with section 18 of the Act and rule 18f–3 thereunder. Further, applicants represent that to the extent a Fund determines to waive, impose scheduled variations of, or eliminate any repurchase fee, it will do so consistently with the requirements of rule 22d–1 under the Act as if the repurchase fee were a CDSL (defined below) and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, any such repurchase fee will apply uniformly to all shareholders of the Fund regardless of class.

11. Applicants state that the Initial Funds will adopt a fundamental policy to repurchase a specified percentage of its shares (no less than 5% and not more than 25%) at net asset value on a periodic basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act.[3] Each Future Fund will likewise adopt a fundamental investment policy in compliance with rule 23c–3 and make periodic repurchase offers to its shareholders, or provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act. Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

12. Applicants represent that any asset-based service and/or distribution fees for each class of shares will comply with the provisions of FINRA Rule 2341 (''Sales Charge Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses, and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

13. Each of the Funds will comply with any requirements that the

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in compliance with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to rule 415 under the Securities Act of 1933.

[4] Any reference to the Sales Charge Rule includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority (''FINRA'').

[5] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to each Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

14. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each of the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

15. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an EWC as if it were a contingent deferred sales load (''CDSL'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act makes it unlawful for a closed-end investment company to issue a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a registered closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of a Fund proposed herein may result in Shares of a class having ''priority over [another] class as to . . . payment of dividends,'' and being deemed a ''senior security,'' because shareholders of different classes may pay different distribution fees, different shareholder services fees, and any other expense. Accordingly, applicants state that the creation of multiple classes of Shares of a Fund with different fees and expenses may be prohibited by section 18(c).

3. Section 18(i) of the Act provides, in relevant part, that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits an interval fund to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC

imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs.

Asset-Based Service and Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Funds to impose asset-based service and distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based service and distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based service and distribution fees is consistent with the provisions, policies, and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00451 Filed 1–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87927; File No. SR–NYSE–2019–46)

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 to Proposed Rule Change Amending the Exchange's Price List Related to Co-Location Services in the Mahwah, New Jersey Data Center

January 9, 2020.

On August 22, 2019, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its co-location fee schedule to offer co-location Users [3] access to the ''NMS Network''—an alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (''SIAC'') is engaged as the exclusive securities information processor (''SIP'')—and establish associated fees. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] On October 24, 2019, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to December 9, 2019.[5] The Commission received one comment letter on the proposal, a response from the Exchanges, and a subsequent letter from the original commenter.[6] On December 9, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] On December 23, 2019, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to 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 services available to Users that use co-location services in the Mahwah, New Jersey data center to add the NMS network to connect to the NMS feeds. This Amendment No. 1, which supersedes the original filing in its entirety, is designed to address comments in the Commission's Order instituting proceedings to determine whether to approve or disapprove the original filing.[8] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 9 defining ''Users.''

[4] *See* Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592.

[5] *See* Securities Exchange Act Release Nos. 87399, 84 FR 58189 (October 30, 2019).

[6] *See,* respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC (''Nasdaq''), to Vanessa Countryman, Secretary, Commission (''Nasdaq Letter''); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (''NYSE Response Letter''); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (''Second Nasdaq Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946.htm.*

[7] *See infra* note 8.

[8] *See* Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 13, 2019) (SR–NYSE–2019–46) (''Order'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

This Amendment No. 1 supersedes the original filing in its entirety. In the original filing, the Exchange proposed to amend its co-location services [9] to provide Users [10] with an alternate, dedicated network connection to access the NMS feeds (the ''NMS network'') for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'') and proposed fees for the NMS network.[11]

On December 9, 2019, the Commission issued an Order instituting proceedings to determine whether to approve or disapprove the original filing, and in that Order, raised questions about how the Exchange proposed to charge fees for the NMS network.[12] Because the purpose of the NMS network is to enhance performance of the SIP and not to generate revenue, to address the questions raised in the Order, the Exchange is amending the proposal to eliminate any fee changes associated with the introduction of the NMS network. As amended, this proposed rule change would solely add the NMS network as part of the services available if a User purchases a 10 Gigabit (''Gb'') or 40 Gb connection to one of the two local area networks in the Mahwah data center.

As described below, today Users can connect to Regulation NMS equities and options feeds [13] disseminated by the SIP using either of the co-location local area networks. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds.[14] Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.[15]

The Exchange has recently been authorized to build the NMS network in the Mahwah data center that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. Because a User currently needs to purchase a service that includes access to one of the two local area networks in the data center via either a 10 Gb or 40 Gb connection to connect to the NMS feeds, the Exchange proposes to expand that service to include the option to also connect to the NMS network via a same-sized connection at no additional charge. Accordingly, with this proposed rule change, Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds. The Exchange is not proposing any changes to its fees.

Because the NMS network has been built and tested and is ready to be implemented, subject to approval of this proposed rule change, the Exchange proposes to implement the NMS network as soon as practicable. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[16] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the data center.[17]

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to a 10 Gb or 40 Gb LCN or IP network.[18] In connection with the services available over the local area networks, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4 of the Price List, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the

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[9] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[10] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[11] Specifically, as originally proposed, Users would be eligible for up to eight ''No Fee NMS Network Connections'' that would not be subject to any fees. Users not eligible for the No Fee NMS Network Connection or that needed additional NMS network connections would have been charged at the same rate as the same-sized IP network.

[12] *See* Order, *supra* note 7. The Order also discussed a comment letter submitted in connection with the original proposal.

[13] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds. *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92).

[14] Because of the volume of data, a 1 Gb connection is not sufficient to connect to an NMS feed. *See id.* at 3047.

[15] *See id.*

[16] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

[17] *See* 82 FR 3045, note 12, *supra.*

[18] As set forth on the Price List, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity.[19]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;
2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and
3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[20] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[21] and so using the LCN to connect to an NMS feed is slower than using the IP network.[22]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[23] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[24]

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Consistent with the current bandwidth needs to connect to the NMS feeds, connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Even though the NMS network will provide access only to the NMS feeds, the Exchange is funding the build of the NMS network and is not being reimbursed for such expenses by either CTA or OPRA. The Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

Proposed Amendment To Add the NMS Network

The proposed structure for the NMS network has been designed so that the services available in co-location would be expanded so that a User can opt to connect to the NMS network at no additional charge.

To effect the proposed change, the Exchange proposes to amend the services available in co-location to provide that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that access would include a connection to the NMS network of the same size. Although the Exchange is funding and expanding the types of local area network connections that would be available in the data center, the Exchange does not propose to change any of the fees related to purchasing a service that includes a connection to a local area network.

More specifically, the services available in co-location currently include LCN Access, IP Network Access, and Partial Cabinet Solution bundles. In order to implement the proposed change, the Exchange proposes the following amendments to Exchange Rules that describe the following services in co-location:

- In the column titled ''Type of Service,'' the Exchange proposes to amend the text describing the 10 Gb and 40 Gb LCN and IP Network Access options to include text referencing the NMS network.
- In the column titled ''Description,'' the Exchange proposes to amend the descriptions of the 10 Gb LX LCN Circuit, 40 Gb LCN Circuit, Partial Cabinet Solution bundle Option C and Option D, 10 Gb IP Network Circuit and 40 Gb IP Network Circuit to include text referencing the specific NMS Network connection that would be part of the service. In addition, because the descriptions of the LCN and IP network services do not currently reference either ''LCN'' or ''IP Network,'' respectively, the Exchange proposes to add text references as applicable.
- Finally, the Exchange proposes to amend text in the column titled ''Amount of Charge'' to specify that the current initial and monthly recurring charges would not change and that for purposes of such charges, the existing local area network connection and NMS network connection would be together considered one connection. These text changes would make clear that Users would not be subject to two initial or two monthly charges. The Partial Cabinet Solution bundle description already indicates that the charges are ''per bundle'' and therefore no similar clarifying language is proposed.

The Exchange proposes to set forth these changes as follows (proposed new text italicized and proposed text for deletion in brackets):

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[19] *See* 82 FR 3045, note 12, *supra,* and Securities Exchange Release No. 85952 (May 29, 2019), 84 FR 25884 (June 4, 2019) (SR–NYSE–2019–31). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4.

[20] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[21] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[22] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[23] The alternate network to access the NMS feeds will not be available outside of the data center.

[24] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

Type of service	Description	Amount of charge
LCN *and NMS Network* Access	10 Gb LX *LCN* Circuit *and 10 Gb NMS Network Circuit*.	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.* *For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
LCN *and NMS Network* Access	40 Gb *LCN* Circuit and *40 Gb NMS Network Circuit*.	$15,000 *initial charge* per connection [initial charge] *to both the LCN and NMS Network* plus $22,000 monthly *charge* per connection *to both the LCN and NMS Network.* *For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
Partial Cabinet Solution bundles. *Note:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under "General Notes".	No change	No change.
	No change	No change.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), *2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), *2 NMS Network connections (10 Gb each),* 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change.
IP Network *and NMS Network* Access	10 Gb *IP Network* Circuit *and 10 GB NMS Network Circuit*.	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $11,000 monthly *charge* per connection *to both the IP Network and NMS Network.* *For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*
IP Network *and NMS Network* Access	40 Gb *IP Network* Circuit *and 40 Gb NMS Network Circuit*.	$10,000 *initial charge* per connection [initial charge] *to both the IP Network and NMS Network* plus $18,000 monthly *charge* per connection *to both the IP Network and NMS Network.* *For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.*

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. Once the NMS Network is available, Users can continue to use either their existing LCN or IP Network connection or the new NMS network connection to connect to the NMS feeds.

The Exchange proposes to amend the current General Note 4 to describe what a User obtains when it purchases a service that includes access to the LCN, IP network, or NMS Network.

First, the Exchange proposes to split current Note 4 into three separate notes. The first paragraph of current Note 4 would continue to be numbered Note 4, and would specify which trading and execution services a User can access when it purchases a service that includes access to the LCN or IP network, which are not changing. Because the services that a User purchases may include access to the NMS network in addition to access to the LCN or IP network, the Exchange proposes a non-substantive amendment to the first sentence of this note to add the phrase "a service that includes."

Second, the Exchange proposes that the current second paragraph of Note 4 and following table would be renumbered as Note 5. As the paragraph does currently, Note 5 would specify the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Similar to the proposed amendment to the first sentence of Note 4, the Exchange proposes a non-substantive amendment to add the phrase "a service that includes" to the first sentence of new Note 5. In addition, the Exchange proposes a non-substantive amendment to the table to clarify that the NMS feeds are the CTA, CQ, and OPRA feeds.

Finally, the Exchange proposes new Note 6, which would describe in more detail the NMS network. As proposed, Note 6 would provide that when a User purchases a service that includes access to the NMS Network, upon its request it would receive connectivity to the NMS network and any of the NMS feeds that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Consistent with existing Note 4 (proposed Note 5), Note 6 would provide that market data fees for the NMS feeds would be charged by the provider of the NMS data feed. The proposed note would further state that the NMS Network would provide connectivity to the NMS feeds only.

Expected Application of the Proposed Change

The proposed NMS network would be available to all Users that purchase a service that includes a 10 Gb or 40 Gb connection to access either the LCN or IP network, which are the networks currently available to provide connections to the NMS feeds.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [25] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[29] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System

The Exchange believes that the proposed change to include access to the NMS network as part of existing services available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

The Proposed Rule Change Is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. The implementation costs of approximately $3.8 million are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that adding the NMS network as a service that would be included when a User purchases either a 10 Gb or 40 Gb connection to access a local area network is reasonable because the amended service is designed to make the NMS network available at no additional cost to Users. Specifically, as proposed, the NMS network would be included as part of specified existing LCN and IP network services that Users can already purchase, and are already used to connect to the NMS feeds.

Because the fees for LCN and IP network services relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By adding access to the NMS network to these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds.

[25] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[26] *See* 78 FR 51765, *supra* note 9, at 51766. NYSE American, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein and will be amending their respective filings in substantially the same manner. *See* Securities Exchange Act Release Nos. 86867 (September 4, 2019), 84 FR 47563 (September 10, 2019) (SR–NYSEAmer–2019–34) (Notice); 86868 (September 4, 2019), 84 FR 47610 (September 10, 2019) (SR–NYSEArca–2019–61) (Notice); and 86869 (September 4, 2019), 84 FR 47600 (September 10, 2019) (SR–NYSENAT–2019–19) (Notice).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(4).

By not changing the existing fees for such expanded service, Users would not incur any additional charges if they choose to use to the new low-latency, dedicated alternate network to connect to the NMS feeds instead of using a connection to one of the existing local area networks.

The Exchange further believes that expanding the existing services that include access to a 10 Gb and 40 Gb connection to either local area network to also include access to a same-size connection to the NMS network would be reasonable because there would be no differences in fees charged to either current or prospective Users that seek to use co-location services to connect to the NMS feeds. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds. As proposed, when such service is purchased, a User would continue to receive the same local area network service currently available, and would also have the option to connect to the NMS feeds via the NMS network.

The Exchange believes that the proposed changes to describe the NMS network are reasonable because they to promote clarity and transparency regarding which services would be available to Users and the charges for such services. As noted above, the Exchange proposes that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that service would include access to a same-size connection to the NMS network. The Exchange believes that the text changes to Exchange's rules for such services is reasonable because the amendments would provide specificity regarding which specific services would include access to the NMS network. The proposed amendments would also provide specificity that the existing initial and monthly charges would be charged only once, and that a connection to an existing local area network and an NMS network would be considered a single connection for purposes of such charges.

The Exchange also believes that the proposed non-substantive amendment to split Note 4 into three separate Notes is reasonable because it would promote clarity and transparency regarding how services that include a connection to an LCN or IP network could be used. As now, Note 4 would describe the trading and execution services that a User may access if it purchases a service that includes access to the LCN or IP network. Proposed Note 5 would describe the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Proposed Note 6 would be new and is designed to promote clarity and transparency by (a) describing the connectivity that the User would obtain if it purchased service that included access to the NMS Network, subject to any technical provisioning requirements and authorization from the provider of the data feed, and (b) specifying that the NMS network would provide connectivity to the NMS feeds only. The Exchange further believes it is reasonable to identify the specific NMS feeds that are available, which are the CTA, CQ, and OPRA feeds, as this proposed amendment to Note 4 and proposed Note 6 would promote clarity and transparency in Exchange rules.

The Proposed Rule Change Is Equitably Allocated

The Exchange believes that the proposed rule change is equitably allocated. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because the NMS network would be included as part of services that include access to a 10 Gb or 40 Gb connection to either local area network, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging different fees for such expanded services, all Users will be treated equally and charged no differently than how fees are currently charged for access to a 10 Gb or 40 Gb connection to a local area network service.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because access to the NMS network would be included as part of access to the 10 Gb and 40 Gb connection to either local area network, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed change in services available in co-location therefore would not impose any meaningful differences to different types of Users. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging any different fees for such expanded service, all Users will be treated equally and no differently than how fees are currently charged for a 10 Gb or 40 Gb connection to a local area network service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for these processor services. The proposed rule change would amend the services available in co-location to include the NMS network when a User purchases a 10 Gb or 40 Gb connection to access either local area network service. Accordingly, the proposed rule change would expand the services available in co-location without changing any fees for the existing services, or adding fees for the expanded services. All Users would have access to the NMS network and it would be their choice of whether and at what level to subscribe to such services, including whether to utilize the NMS network connection. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–46 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–NYSE–2019–46. 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–NYSE–2019–46 and should be submitted on or before February 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00482 Filed 1–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87917; File No. SR–NYSEArca–2019–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Charges To Modify the Annual Fees Applicable To Exchange Traded Products and Managed Fund Shares and Managed Trust Securities

January 9, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 31, 2019, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges to (1) modify the annual fees applicable to Exchange Traded Products ("ETPs") and Managed Fund Shares and Managed Trust Securities, (2) introduce annual fee discounts for ETPs and Structured Products, and (3) offer an alternate way for issuers of multiple series of securities listed under Rule 5.2–E(j)(6) to qualify for the current discount. The Exchange proposes to implement the fee changes effective January 1, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Charges to (1) modify the annual fee applicable to ETPs and Managed Fund Shares and Managed Trust Securities, (2) introduce annual fee discounts for ETPs and Structured Products, and (3) offer an alternate way for issuers of multiple series of securities listed under Rule 5.2–E(j)(6) to qualify for the current discount.

The proposed changes respond to the current extremely competitive environment for ETP listings in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange's current annual fees for ETPs are based on the

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[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. In response to the competitive environment for listings, the Exchange proposes a competitive pricing structure that combines higher minimum annual fees for ETPs and Managed Fund Shares and Managed Trust Securities with new discounts for issuers that list multiple ETPs and Structured Products.[4] The proposed changes are designed to incentivize issuers to list new products, transfer existing products to the Exchange, and maintain listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors.

The Exchange proposes to implement the fee changes effective January 1, 2020.

Proposed Rule Change

The Exchange proposes increased annual fees for ETPs and Managed Fund Shares and Managed Trust Securities. Annual fees are assessed each January in the first full calendar year following the year of listing. The aggregate total shares outstanding is calculated based on the total shares outstanding as reported by the Fund issuer or Fund ''family'' in its most recent periodic filing with the Commission or other publicly available information. Annual fees apply regardless of whether any of these Funds are listed elsewhere.

Annual ETP Fees

Currently, the Exchange charges the following annual fees for listed ETPs (with the exception of Managed Fund Shares and Managed Trust Securities) based on the number of shares outstanding for each issue listed by the same issuer, as follows:

Number of shares outstanding (each issue)	Annual fee
Less than 25 million	$5,000
25 million up to 49,999,999	7,500
50 million up to 99,999,999	10,000
100 million up to 249,999,999	15,000
250 million up to 499,999,999	20,000
500 million and over	25,000

The Exchange proposes to increase annual fees for such listed ETPs by $2,500 at the levels below 49,999,999 shares outstanding and by $5,000 for each level at 50 million shares outstanding and above. The Exchange proposes the following revised annual fees:

For issuers with less than 25 million shares outstanding for each issue, the proposed annual fee would be $7,500.

- For issuers with shares outstanding for each issue from 25 million up to 49,999,999, the proposed annual fee would be $10,000.
- For issuers with shares outstanding for each issue from 50 million up to 99,999,999, the proposed annual fee would be $15,000.
- For issuers with shares outstanding for each issue from 100 million up to 249,999,999, the proposed annual fee would be $20,000.
- For issuers with shares outstanding for each issue from 250 million up to 499,999,999, the proposed annual fee would be $25,000.
- For issuers with shares outstanding for each issue from 500 million and over, the proposed annual fee would be $30,000.

Annual Fees for Managed Fund Shares and Managed Trust Securities

Currently, the Exchange charges the following annual fees for listed Managed Fund Shares and Managed Trust Securities based on the number of shares outstanding for each issue:

Number of shares outstanding (each issue)	Annual fee
Less than 25 million	$7,500
25 million up to 49,999,999	10,000
50 million up to 99,999,999	12,500
100 million up to 249,999,999	20,000
250 million up to 499,999,999	30,000
500 million and over	40,000

The Exchange proposes to increase annual fees for listed Managed Fund Shares and Managed Trust Securities by $2,500 at the levels below 49,999,999 shares outstanding. For issuers with outstanding shares between 50 million up to 99,999,999, the proposed fee would increase by $7,500. For issuers with outstanding shares of 100 million up to 249,999,999 shares, the annual fee would increase by $5,000. Issuers with shares outstanding of 250 million shares and over would be charged $30,000, and the current rate of $40,000 for issuers with shares outstanding of 500 million and over would be eliminated. The Exchange proposes the following revised annual fees for listed Managed Fund Shares and Managed Trust Securities:

- For issuers with less than 25 million shares outstanding for each issue, the proposed fee would be $10,000.
- For issuers with shares outstanding for each issue from 25 million up to 49,999,999, the proposed fee would be $12,500.
- For issuers with shares outstanding for each issue from 50 million up to 99,999,999, the proposed fee would be $20,000.
- For issuers with shares outstanding for each issue from 100 million up to 249,999,999, the proposed fee would be $25,000.
- For issuers with shares outstanding for each issue from 250 million and over, the proposed fee would be $30,000.

The proposed annual fee increases are intended to support the ongoing costs of listing and trading ETPs and Managed Fund Shares and Managed Trust Securities on the Exchange, including costs related to issuer services, listing administration and product development. The Exchange's comprehensive listing and trading program, including utilization of Lead Market Makers (''LMM'') to foster liquidity provision and stability in the marketplace, seeks to provide superior market quality for securities listed on the Exchange. The Exchange notes that annual fees for ETPs and Managed Fund Shares and Managed Trust Securities have not increased since 2009.[5] The Exchange believes that the proposed fee increases are appropriate in that the Exchange generally expends significant resources supporting the listing and administration of ETPs and Managed Fund Shares and Managed Trust Securities. The Exchange expects to increase spending to support the listing and administration of these securities going forward.

The Exchange believes that the proposed fee increase of $2,500 for ETPs with less than 50 million shares outstanding and proposed increase of $5,000 for ETPs with 50 million shares or more outstanding could be mitigated at least in part for those issuers that would qualify for the proposed additional annual fee discounts the Exchange is proposing for ETP issuers, described in more detail below. The largest proposed annual fee increase of $7,500 would be for Managed Fund Shares and Managed Trust Securities with between 50 million and 99,999,999 shares outstanding. However, the current $40,000 fee for securities with 500 million shares outstanding or more would be eliminated, effectively lowering the rate for issuers with securities in that category by $10,000. Annual fees for Managed Fund Shares and Managed Trust Securities would not exceed $30,000 for such securities at 250 million shares outstanding and above.

[4] ''Exchange Traded Products'' are defined in footnote 3 of the current Schedule of Fees and Charges. ''Structured Products'' are defined in footnote 4 of the current Schedule of Fees and Charges.

[5] *See* Securities Exchange Act Release No. 61104 (December 3, 2009), 74 FR 65568 (December 10, 2009) (SR–NYSEArca–2009–106).

Finally, the proposed fees are comparable to the annual fees charged by competing exchanges on a per product basis. For example, a new ETP listed on the Exchange with 1 million shares outstanding would pay a $7,500 annual fee under the proposal. On The Nasdaq Stock Market LLC (''Nasdaq''), the issuer of a series of ETPs with up to 1 million shares outstanding currently pays an annual fee of $6,500.[6] On Cboe BZX Exchange, Inc. (''Cboe BZX''), when an ETP first lists or has been listed for fewer than three calendar months on the ETP's first trading day of the year, the ETP currently pays an annual listing fee of $4,500. Other newly listed ETPs on Cboe BZX are subject to a volume-based fee schedule, where annual fees range from $7,000 for consolidated average daily volume (''CADV'') of 0–10,000 shares to $5,000 for ETPs with a CADV greater than 1,000,000 shares.[7] Moreover, unlike these competing exchanges, the Exchange does not cap or waive annual fees for ETPs and Structured Products once certain levels are achieved. Nasdaq, for instance, caps the annual fee of an issuer of a series of ETPs at $14,500 once the total shares outstanding exceed 16 million shares.[8] On Cboe BZX, where the average daily auction volume combined between the opening and closing auctions on the Exchange across all of an issuer's ETPs listed on the Exchange exceeds 500,000 shares, there is no annual listing fee for any of the issuer's ETPs listed on the Exchange.[9]

Additional Annual Fee Discounts

In addition to the proposed increases to the annual fees described above, the Exchange proposes two new, non-mutually exclusive discounts for ETPs and Structured Products that would be set forth in new Section 9 of the Schedule of Fees and Charges titled ''Additional Annual Fee Discounts for ETPs and Structured Products (''Products'').'' Eligibility for the proposed discounts would be subject to certain limitations, described more fully below.

First, the Exchange proposes to move the current discount for multiple series listed under Rule 5.2–E(j)(6) to a new romanette (i) under the proposed heading. The current text would be transposed without change except for the addition of an alternate way for issuers of multiple series of securities listed under Rule 5.2–E(j)(6) to qualify for the current discount. Specifically, the Exchange would add a clause providing that multiple series of securities listed under Rule 5.2–E(j)(6) that are issued by the same issuer that issues five or more ETNs based on an identical reference asset would also be eligible to receive the current 30% discount off the aggregate calculated annual fee for such multiple series. The Exchange believes the proposed change would facilitate the issuance of additional ETN series, which may provide enhanced competition among ETN issuers while providing a reduction in fees to certain issuers listing additional ETN series.

Second, the proposed new discounts for ''families'' of Products would appear under new romanette (ii) titled ''Product Family Discounts.''

As proposed, an issuer that lists multiple Products would be eligible for the following discounts for those Products, which would be a discount on the aggregate calculated annual fee for each Product from such issuer.

- A family consisting of between 5 and 9 listed Products would be eligible for a 5% discount for each Product.
- A family consisting of between 10 and 19 listed Products would be eligible for a 7.5% discount for each Product.
- A family consisting of between 20 and 39 listed Products would be eligible for a 10% discount for each product.
- A family consisting of between 40 and 89 listed Products would be eligible for a 12.5% discount for each product.
- A family consisting of between 90 and 249 listed Products would be eligible for a 15% discount for each product.
- A family consisting of 250 or more listed Products would be eligible for a 17.5% discount for each product.

Third, the Exchange proposes new ''High Volume Products Discounts'' in romanette (iii). As proposed, an eligible Product would be considered a ''High Volume Product'' if it has (1) 1,000,000 shares CADV averaged over 12 months or, if the Product is listed less than 12 months, 1,000,000 shares CADV averaged since the date of listing, or (2) 50,000 CADV executed in opening and closing auctions averaged over 12 months or, if the Product is listed less than 12 months, 1,000,000 shares CADV averaged since the date of listing. A Product transferred to the Exchange after January 1, 2020, would automatically be considered a High Volume Product eligible for the next highest High Volume Products discount for the calendar year in which the transfer occurred plus the following calendar year.

As proposed, an issuer that lists multiple High Volume Products as defined above would be eligible for the following discounts, which will be a discount on the aggregate calculated annual fee for each Product from such issuer:

- An issuer listing between 1 and 2 High Volume Products would be eligible for a 7.5% discount for each Product.
- An issuer listing between 3 and 9 High Volume Products would be eligible for a 10% discount for each Product.
- An issuer listing between 10 and 14 High Volume Products would be eligible for a 12.5% discount for each Product.
- An issuer listing between 15 and 34 High Volume Products would be eligible for a 15% discount for each Product.
- An issuer listing 35 or more High Volume Products would be eligible for a 17.5% discount for each Product.

Finally, romanette (iv) would set forth the following proposed limitations on discounts offered by the Exchange:

- First, the Exchange proposes that the eligible discounts for Product Family and High Volume Products can be combined. For instance, an issuer with five listed Products, three of which qualify as High Volume Products, would be eligible for a 5% Product Family discount plus a 10% High Volume Products discount for a 15% total discount for all five listed products.
- Second, the Exchange proposes that an issuer that transfers a Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period beginning January 1, 2020 would become ineligible for either or both the Fund Family and the High Volume Products discount for the following calendar year.
- Finally, the Exchange proposes that issuers eligible for the 30% discount for issuing more than five securities based on an identical reference asset that also qualify for the Fund Family and/or the High Volume Products discounts for those products would receive either the Fund Family and/or the High Volume Products discount or the 30% discount, whichever is greater.

The purpose of the proposed changes is to provide an incentive for issuers to develop and list additional Products on the Exchange. The proposed discounts would encourage issuers to list additional Products on the Exchange and maintain their listings on the

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[6] *See* Nasdaq Rule 5940(b)(1). Nasdaq Rule 5940(b) applies to a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other securities listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable. Nasdaq's annual listing fees are also based on the total number of outstanding shares.

[7] *See* Cboe BZX Rule 14.13(b)(2)(C)(ii) & (v). On Cboe BZX, ETPs include all securities set forth in Cboe BZX Rule 14.11. *See, e.g.,* Cboe BZX Rule 14.13(b)(1)(C).

[8] *See* Nasdaq Rule 5940(b)(1).

[9] *See* Cboe BZX Rule 14.13(b)(2)(C)(iii).

Exchange. By proposing to combine eligible discounts for Product Family and High Volume Products, the proposal is designed to provide an incentive to issuers to list additional series of securities on the Exchange. Moreover, the proposal to automatically consider a High Volume Product eligible for the next highest High Volume Products discount for the calendar year in which the transfer occurred as well as the following calendar year would provide an incentive to issuers to transfer additional Products to the Exchange. In addition, proposing that an issuer that transfers a Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period beginning January 1, 2020, would become ineligible for either or both the Fund Family and the High Volume Products discount for the following calendar year, would provide an incentive to issuers to maintain those and other listings on the Exchange. Finally, proposing that issuers eligible for the 30% discount for issuing more than five securities based on an identical reference asset that also qualify for the Fund Family and/or the High Volume Products discounts for those products would receive the greater of the Fund Family and/or the High Volume Products discount or the 30% discount would ensure that qualifying issuers receive the maximum discount for which they are eligible.

Each of the proposed changes described above are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Reasonable

As discussed above, the Exchange operates in a highly competitive market for the listing of ETPs. Specifically, ETP issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange's current annual fees for ETPs are based on the number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

The Exchange believes that the ongoing competition among the exchanges with respect to new listings and the transfer of existing listings among competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the proposal represents a reasonable attempt to attract new issuers and retain listings on the Exchange. Specifically, the Exchange believes that the proposed annual fee increases for ETPs and Managed Fund Shares and Managed Trust Securities—the first proposed annual fee increase since 2009—are reasonable and necessary to support the ongoing Exchange costs associated with listing and trading ETPs and Managed Fund Shares and Managed Trust Securities on the Exchange, including costs related to issuer services, listing administration and product development. The Exchange's comprehensive listing and trading program, including utilization of LMMs to foster liquidity provision and stability in the marketplace, seeks to provide superior market quality for securities listed on the Exchange. Moreover, as previously noted, the Exchange believes that the proposed fee increases are reasonable because the Exchange generally expends significant resources to provide services in connection with the listing and administration of ETPs and Managed Fund Shares and Managed Trust Securities. The Exchange expects to increase spending to support the listing and administration of those securities going forward.

The Exchange also believes that the proposed fee increases, which range between $2,500 and $7,500, are modest and, that the proposed fee increase of $2,500 for ETPs with less than 50 million shares outstanding and proposed increase of $5,000 for ETPs with 50 million shares or more outstanding could be mitigated at least in part for those issuers that would qualify for the proposed additional annual fee discounts the Exchange is proposing for ETP issuers.

The Exchange further believes the proposed fee increases are reasonable because the current $40,000 fee for Managed Fund Shares and Managed Trust Securities with outstanding shares of 500 million or more would be eliminated, effectively lowering the rate for issuers in that group by $10,000 and fixing the annual fee for Managed Fund Shares and Managed Trust Securities with 250 million outstanding shares or above at $30,000.

The Exchange also believes that the proposed fees are reasonable because they are comparable to the annual fees charged by other competing exchanges on a per product basis. For instance, as noted above, a new ETP listed on the Exchange with 1 million shares outstanding would pay a $7,500 annual fee under the proposal. On Nasdaq, a new ETP with up to 1 million shares outstanding currently pays an annual fee of $6,500.[13] On Cboe BZX, an initially listed ETP (or one listed for fewer than three calendar months on the ETP's first trading day of the year) currently pays an annual listing fee of $4,500; other newly issued ETPs on Cboe BZX are subject to a volume-based fee schedule, where annual fees range from $7,000 to $5,000 from lowest to highest CADV range.[14] As noted above, the Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. For instance, unlike competing exchanges, the Exchange does not cap or waive annual fees for ETPs and Structured Products once certain levels are achieved. Nasdaq, for instance, caps the annual fee of an issuer of a series at $14,500 once the total shares outstanding exceed 16 million shares.[15] On Cboe BZX, where the average daily auction volume combined between the opening and closing auctions on the Exchange across

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) & (5).

[12] *See* Regulation NMS, 70 FR at 37499.

[13] *See* Nasdaq Rule 5940(b)(1). Nasdaq's annual listing fees are, like the Exchange's, also based on the number of outstanding shares.

[14] *See* Cboe BZX Rule 14.13(b)(2)(C)(ii) & (v).

[15] *See* Nasdaq Rule 5940(b)(1).

all of an issuer's ETPs listed on the Exchange exceeds 500,000 shares, there is no annual listing fee for any of the issuer's ETPs listed on the Exchange.[16] Moreover, a competing market has the ability to defer or waive all or any part of its annual fees for listings and that the Exchange lacks similar discretionary authority.[17] Given this competitive environment, the Exchange believes that the proposal represents a reasonable attempt to attract new issuers and retain listings on the Exchange.

The proposed discounts for Products are also reasonable because they are designed to encourage issuers to add additional Products to the Exchange. The proposed automatic application of the discounts to High Volume Products transferred to the Exchange for the year in which the transfer occurred as well as the following calendar year and the penalties for transferring products off the Exchange in a trailing 12-month period after January 1, 2020, are reasonable attempts to provide incentives to issuers to transfer additional Products to, and maintain listings on, the Exchange. The proposed penalty also constitutes a reasonable attempt to discourage transfers to and from the Exchange solely for the purpose of securing one or more of the proposed discounts.

Finally, the Exchange believes that the proposal to also permit issuers that issue five or more ETNs based on an identical reference asset to qualify for the current 30% annual fee discount for multiple series of securities listed under Rule 5.2–E(j)(6) is reasonable because it would reduce the annual fee for related ETNs and would facilitate the issuance of additional ETNs series, which may provide enhanced competition among ETN issuers. The Exchange further believes that the proposal is reasonable because the Exchange would incur cost savings in connection with the listing and administration of such additional related ETNs that are commensurate with the reduction in annual fees.[18]

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. In the prevailing competitive environment, issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable.

The proposed fee increases for ETPs and Managed Fund Shares and Managed Trust Securities are equitable because the proposed increased annual fees would apply uniformly to all issuers. Moreover, as proposed, the fee structure would retain the same categories of number of shares outstanding for ETPs and would retain all but the last of the current categories for Managed Fund Shares and Managed Trust Securities. The proposed fees would continue to be equitably allocated among issuers because issuers would continue to qualify for an annual fee based on the number of shares outstanding and under criteria applied uniformly to all such issuers. The proposed discounts for ETPs and Structured Products are also equitable because the propose discounts would apply uniformly to all issuers and to all ETPs and Structured Products that are listed on the Exchange either generically or pursuant to a rule filing with the Commission.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed annual fee increases would be applicable to all existing and potential issuers of ETPs and Managed Fund Shares and Managed Trust Securities uniformly. Moreover, all issuers would be eligible for the proposed discounts for ETPs and Structured Products, and all issuers would be subject to the proposed benefits and penalties of the proposed discounts in equal measure.

Finally, the Exchange believes that the proposed alternate way to qualify for the current 30% annual fee discount for multiple series of securities listed under Rule 5.2–E(j)(6) is an equitable allocation of fees because the current discount would apply equally to all issuers issuing five or more ETNs based on an identical reference asset. As noted, the Exchange believes that the proposal would reduce the annual fee for related ETNs and would facilitate the issuance of additional ETNs series, which may provide enhanced competition among ETN issuers. The Exchange further believes that the proposal is reasonable because the Exchange would incur cost savings in connection with the listing and administration of such additional related ETNs that are commensurate with the reduction in annual fees.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value.

The Exchange believes it is not unfairly discriminatory to provide higher annual fees for ETPs and Managed Fund Shares and Managed Trust Securities because the proposed fees would be provided on an equal basis to all issuers listing those products on the Exchange during a calendar year. Moreover, the proposed fee structure would retain the same six categories of number of shares outstanding for ETPs and would retain all but the last of the current six categories for Managed Fund Shares and Managed Trust Securities. As a result, the proposal would apply to issuers in the same manner as the current annual fees for ETPs and Managed Fund Shares and Managed Trust Securities.

For the same reason, the Exchange believes it is not unfairly discriminatory to offer combinable discounts for ETPs and Structured Products because the discounts are available equally to all issuers listing multiple products in those categories on the Exchange during a calendar year. As noted, the Exchange believes that the proposed discounts are designed to incentivize issuers to list new Products, transfer existing Products to the Exchange, and maintain their listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors.

The proposal does not unfairly discriminate between issuers by offering a discount to issuers that transfer a High Volume Product after January 1, 2020. Competing markets similarly offer incentives to issuers to either maintain a listing or transfer additional listings. For instance, Cboe BZX provides a more favorable annual fee to both legacy listings and transfers by capping the annual fee it charges ETPs listed prior to January 1, 2019 or that transferred from another national securities exchange at $4,000.[19] Moreover, the Exchange notes that a competing market has the ability to defer or waive all or any part of its annual fees for listings and that the Exchange lacks similar discretionary authority.[20]

The proposed Product Family Discounts are not unfairly discriminatory. The Exchange proposes a discount proportionate to the number of Products listed that increases by a uniform 2.5% in order to attract new listings of ETPs and Structured Products to the Exchange. Although the proposed

[16] *See* Cboe BZX Rule 14.13(b)(2)(C)(iii).

[17] *See* Cboe BZX Rule 14.13(b)(2)(D).

[18] For instance, the Exchange would benefit from efficiencies relating to, among other things, listing review and ongoing regulatory compliance in connection with the issuance of multiple ETNs.

[19] *See* Cboe BZX Rule 14.13(b)(2)(C)(i).

[20] *See* Cboe BZX Rule 14.13(b)(2)(D).

Product Family Discounts would not apply to issuers with less than 5 listed Products, it would provide an equal incentive for issuers to list at least 5 Products on the Exchange in order to qualify for a proposed discount.

Similarly, the proposed High Volume Products discounts are not unfairly discriminatory. The High Volume Products discounts would offer a discount proportionate to the number of Products listed that increases by a uniform 2.5% in order to attract new listings of ETPs and Structured Products to the Exchange. The proposed discounts incentivize all issuers to list or transfer additional Products to the Exchange in order to qualify for the proposed discounts. Any issuer can qualify for the minimum 7.5% discount by listing a Product that meets the proposed definition of a High Volume Product (which would apply to all eligible Products despite length of time listed) or transferring a Product to the Exchange after January 1, 2020.

The Exchange also believes that combining discounts for Product Family Discounts and High Volume Products is not unfairly discriminatory. As noted, both proposed discounts apply to all issuers equally, and the proposal to combine them would not be unfairly discriminatory since issuers of all sizes could qualify for, and combine, discounts in both proposed categories.

The Exchange further believes that the proposed alternate way to qualify for the current 30% annual fee discount for multiple series of securities listed under Rule 5.2–E(j)(6) is not unfairly discriminatory. As noted, the current discount would apply equally to all similarly situated issuers. Any ETN issuer could qualify for the current discount by issuing 5 or more ETNs. Although the current discount would not apply to ETN issuers that issue less than 5 ETNs based on the same reference asset, the proposal would provide an equal incentive for ETN issuers to list at least 5 ETNs on the Exchange in order to qualify for the current discount.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage competition because it will increase fees for ETPs and Managed Fund Shares and Managed Trust Securities and provide additional, cumulative discounts for ETPs and Structured Products, designed to encourage issuers to develop and list additional products on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors. The proposal also ensures that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed issuers. The market for listing services is extremely competitive. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing exchange. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition. The proposed changes are designed to attract additional listings to the Exchange. The Exchange believes that the proposed changes would continue to incentivize issuers to develop and new products, transfer existing products to the Exchange, and maintain listings on the Exchange. The proposed fees and discounts would be available to all issuers, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Although issuers that can list more Products would qualify for relatively higher Product Family discounts, such issuers would also pay substantially higher aggregate annual fees. Moreover, the proposed discounts are relatively modest, ranging from 5% to 17.5%. The relative benefit of higher Product Family discounts potentially accruing to larger issuers are thus not sufficiently disparate as to impose a burden on competition among Exchange issuers. Similarly, the current discount for multiple series listed under Rule 5.2–E(j)(6) would apply equally to all similarly situated issuers, and, as such, the proposed change would also not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. In such an environment, the Exchange must adjust its fees and discounts to remain competitive with other exchanges competing for the same listings. Because competitors are free to modify their own fees and discounts in response, and because issuers may readily adjust their listing decisions and practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. Moreover, the Exchange notes that a competing market has the ability to defer or waive all or any part of its annual fees for listings and that the Exchange lacks similar discretionary authority.[22] As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for listings that better reflects the revenue and expenses associated with listing on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[23] of the Act and subparagraph (f)(2) of Rule 19b–4[24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[21] 15 U.S.C. 78f(b)(8).

[22] *See* Cboe BZX Rule 14.13(b)(2)(D).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–93 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–93. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–93 and should be submitted on or before February 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00480 Filed 1–14–20; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16216 and #16217; MISSISSIPPI Disaster Number MS–00117]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4470–DR), dated 12/06/2019.

Incident: Severe Storm, Straight-line Winds, and Flooding.

Incident Period: 10/26/2019.

DATES: Issued on 01/08/2020.

Physical Loan Application Deadline Date: 02/04/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 09/08/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MISSISSIPPI, dated 12/06/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Chickasaw, Choctaw, Oktibbeha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2020–00519 Filed 1–14–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16204 and #16205; South Dakota Disaster Number SD–00099]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of South Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA—4469—DR), dated 11/18/2019.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 09/09/2019 through 09/26/2019.

DATES: Issued on 01/08/2020.

Physical Loan Application Deadline Date: 01/17/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 08/18/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Dakota, dated 11/18/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Clark, Codington, Day, Lincoln.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2020–00528 Filed 1–14–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16202 and #16203; SOUTH DAKOTA Disaster Number SD–00098]

Presidential Declaration Amendment of a Major Disaster for the State of South Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4469–DR), dated 11/18/2019.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 09/09/2019 through 09/26/2019.

DATES: Issued on 01/08/2020.

Physical Loan Application Deadline Date: 01/17/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 08/18/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of SOUTH DAKOTA, dated 11/18/2019, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Aurora

Contiguous Counties (Economic Injury Loans Only):

South Dakota: Jerauld.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2020–00520 Filed 1–14–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11000]

Culturally Significant Objects Imported for Exhibition—Determinations: "Signs and Wonders: The Photographs of John Beasley Greene" Exhibition

ACTION: Notice; Correction.

SUMMARY: On June 28, 2019, notice was published on page 31134 of the **Federal Register** (volume 84, number 125) of determinations pertaining to certain objects to be included in an exhibition entitled ''Signs and Wonders: The Photographs of John Beasley Greene.'' The referenced notice is hereby corrected as to the expected closing date of the exhibition or display of the exhibit objects at The Art Institute of Chicago, which is on or about May 31, 2020. I have ordered that Public Notice of the correction of the closing date at The Art Institute of Chicago be published in the **Federal Register**.

DATES: This notice was initially issued on June 28, 2019.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–00409 Filed 1–14–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0046]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew a previously approved information collection. The information collected is used by the FAA to register aircraft or record a security interest in a registered aircraft. The information required to register and prove ownership of an aircraft is required from any person wishing to register an aircraft.

DATES: Written comments should be submitted by March 16, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By Mail: Ken Thompson, Manager, Aircraft Registration Branch, AFB–710, P.O. Box 25504, Oklahoma City, OK 73125.

By Fax: 405–954–8068.

FOR FURTHER INFORMATION CONTACT: Bonnie Lefko by email at: *bonnie.lefko@faa.gov;* phone: 405–954–7461.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0042.

Title: Aircraft Registration.

Form Numbers: AC Forms 8050–1, 8050–1B, 8050–2, 8050–4, 8050–88, 8050–88A, 8050–98 and 8050–117.

Type of Review: Renewal of an information collection.

Background: Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is used by the FAA to register an aircraft and record a security interest in a registered aircraft. The information requested is required to register aircraft and prove ownership and security interests in an aircraft.

Respondents: Approximately 162,176 registrants/security holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 135,457 hours.

Issued in Oklahoma City, OK, on January 10, 2020.

Bonnie Lefko,

Program Analyst, Civil Aviation Registry, Aircraft Registration Branch, AFB–710.

[FR Doc. 2020–00531 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0277]

Request for Information Concerning Large Truck Crash Causal Factors Study

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice: Request for information.

SUMMARY: FMCSA seeks information on how best to design and conduct a study to identify factors contributing to all FMCSA reportable large truck crashes (towaway, injury and fatal). Methodologically, the Agency seeks information on how best to balance sample representativeness, comprehensive data sources, ranges of crash types, and cost efficiency. The methodology should also address the use of on-board electronic systems which can generate information about

speeding, lane departure, and hard braking. The study should be designed to yield information that will help FMCSA and the truck safety community to identify activities and other measures likely to lead to significant reductions in the frequency, severity, and crash rate involving commercial motor vehicles. As practicable, the study shall rank such activities and measures by the reductions each would likely achieve, if implemented. This RFI supports a two-part process to gather information for the development of a Large Truck Crash Causal Factors Study (LTCCFS) and to promote transparency and innovation by enabling the public, academics, experts, and industry to comment on how best to conduct this study. This study will help improve FMCSA and its State partners' ability to:

1. Evaluate crashes involving large trucks and identify emerging trends;
2. Monitor crash trends and identify causes and contributing factors; and
3. Develop effective safety improvement policies and programs.

DATES: Comments on this notice must be received on or before March 16, 2020.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2019–0277 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that FMCSA received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Jenny Guarino, Statistician, Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 by telephone at *202–366–4143 or by email, Jenny.Guarino@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0277), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2019–0277'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number, ''FMCSA–2019–0277'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Background

In response to a statutory directive, FMCSA conducted a comprehensive large truck crash causation study (LTCCS) in 2001–2003. The original LTCCS provided the Department, and safety research community, valuable insight into the factors which contribute to crashes involving at least one CMV. For example, a primary finding of the study was that in the vast majority of crashes where the critical reason for the crash was assigned to the large truck, it was attributed to a driver-related action or inaction. The original study can be found at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/810646,* and the report to Congress can be found at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/ltccs-2006.pdf.*

The original study collected data on crashes at 24 sites of NHTSA's National Automotive Sampling System Crashworthiness Data System (NASS/CDS) from 2001 through 2003 and used a nationally representative approach. In order to be included in this study, the crash must have involved at least one large truck with a gross vehicle weight rating of more than 10,000 pounds, and resulted in at least one fatality or at least one incapacitating or non-incapacitating but evident injury. Data were collected on up to 1,000 elements in each crash. To get the highest quality data possible, the onsite investigations began as soon as possible after the crash occurred. Data collection was performed at each crash site by a two-person team consisting of a trained NASS/CDS researcher and an inspector qualified to perform North American Standard

Inspections. The researchers collected data at crash scenes through driver, passenger, and witness interviews. The 28-page truck driver interview form, for example, covered areas such as:

• Crash scene description, including roadway and weather;

• vehicle rollover, fire, jackknife, cargo shift, and component problems with brakes, tires, steering, engine, and lights; driver credentials, history, method of wage payment, physical condition, fatigue (sleep pattern, work schedule, recreational activities, etc.), inattention/distraction, perception, and decisions; and

• trip information, including intended start time, purpose, intended length, and familiarity with the route.

After the crash, each truck and truck driver were subjected to a thorough inspection/evaluation. The inspection covered thirteen critical areas such as brakes, exhaust systems, frames, cargo securement, tires, wheels and rims, and fuel systems. It covered driver data on licenses, medical cards, duty status, and log books. After leaving the crash scene, researchers collected additional interview data by telephone from the motor carriers responsible for the trucks, and drivers of trucks and other vehicles when the actual drivers could not be interviewed due to a fatality or serious injury. Researchers also reviewed police crash reports, hospitals records, and coroners' reports. In addition, researchers often revisited the crash scene to make more accurate scene diagrams and search for additional data. Together the teams collected data on approximately 1,000 variables on each crash.'' (p.5 Report to Congress, March 2006.)

In the more than 15 years since the original study, many changes in technology, vehicle safety, driver behavior and roadway design have occurred that effect how a driver performs. Since the study ended in 2003, fatal crashes involving large trucks decreased until 2009 when they hit their lowest point in recent years (2,893 fatal crashes). Since 2009, fatal crashes involving large trucks have steadily increased to 4,415 fatal crashes in 2018, a 52.6 percent increase when compared to 2009. Over the last three years (2016–2018), fatal crashes involving large trucks increased 5.7 percent. This study will help FMCSA identify factors that are contributing to the growth in fatal large truck crashes, and in both injury and property damage only (PDO) crashes. These factors will drive new initiatives to reduce crashes on our nations roadways.

This includes factors such as the dramatic increase in distraction caused by cell phones and texting, the level of driver restraint use, the advent of in-cab navigation and fleet management systems, as well as equipment designed to enhance safety, such as automatic emergency braking (AEB) systems. Therefore, FMCSA is interested in conducting a revised crash study and is seeking information on the most effective methodology for best collecting a representative set of crash data for identifying the primary factors involved in large truck crashes. Findings from the study can be used to inform technology developers in the autonomous vehicle environment of the kinds of driver behaviors that need to be addressed.

This new study will develop a baseline of large truck crash factors to help guide mitigating crash avoidance strategies to prevent future crashes even in the SAE International driving automation level 4 and 5 vehicles.[1] Knowing more about driver behaviors will identify areas where new driving automation systems can be of help, and aid in formulating performance metrics and standards that may need to be considered if they are to reduce crashes involving large trucks. In addition, because some of the driver assistance systems are already deployed in many fleets, this study can provide data on their effectiveness in determining what crash avoidance capabilities may need to be incorporated in the Automated Driving Systems (ADS) that may be provided on the CMV platforms in the future.

In your proposal please include the answers to the following:

1. Should FMCSA pursue a nationally representative sampling approach or can convenience sampling serve the needs?

2. What type of study are you recommending (*e.g.,* nationally representative vs. convenience sampling), and what are the pros and cons of this approach?

3. How important is it for the new study results to be comparable with findings of the original LTCCS?

4. What other sources of data can enrich the new study? How can they be identified and included?

Issued on: January 9, 2020.

Jim Mullen,

Acting Administrator.

[FR Doc. 2020–00557 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–EX–P

[1] SAE Level 4 is High Autonomation, where the vehicle is capable of performing all driving functions under certain conditions. SAE Level 5 is Full Autonomation, where the vehicle is capable of performing all driving functions under all conditions. For more information on the SAE levels, and automated vehicles please refer to: *https://www.nhtsa.gov/technology-innovation/automated-vehicles-safety.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0112]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from eight individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 14, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0112 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0011.* Follow the online instructions for submitting comments.

• *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0112), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA–2019–0112.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0112* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The eight individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Matthew Armstrong

Mr. Armstrong, 63, holds a class CM license in Texas.

Michael Haessly

Mr. Haessly, 65, holds a class A CDL in Minnesota.

Jared Gunn

Mr. Gunn, 36, holds a class D license in Illinois.

Derek Kangas

Mr. Kangas, 39, holds a class DM license in Wisconsin.

Joshua McElroy

Mr. McElroy, 32, holds a class DM license in Illinois.

Walt Pindor

Mr. Pindor, 58, holds a class A CDL in Arizona.

Jonathan Turner

Mr. Turner, 33, holds a class E license in Florida.

Abel Talamante

Mr. Talamante, 41, holds a class D license in Washington.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: January 10, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–00555 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0332; FMCSA–2015–0329; FMCSA–2016–0003; FMCSA–2017–0058]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before February 14, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0332, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2016–0003, or Docket No. FMCSA–2017–0058 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0332, FMCSA–2015–0329, FMCSA–2016–0003, or FMCSA–2017–0058), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, Docket No. FMCSA–2012–0332, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2016–0003, or Docket No. FMCSA–2017–0058 in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2012–0332, FMCSA–2015–0329, FMCSA–2016–0003, or FMCSA–2017–0058, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 11 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 11 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 11 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below. As of January 6, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Steven P. Andrews (FL)
John Brown (MN)
Jerry Doose (MN)
Andrew Hippler (ID)
Donald Howton, Jr. (NC)
Jonathan Ramos (NE)

The drivers were included in docket number FMCSA–2015–0329, FMCSA–2015–0326, and FMCSA–2017–0058. Their exemptions are applicable as of January 6, 2020, and will expire on January 6, 2022.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below. As of January 6, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Matthew Burgoyne (ID)
Mark Cole (MD)
Joshua Gelona (OK)
Reginald Holmes (AZ)
Eduardo Pedregal (TX)

The drivers were included in docket number FMCSA–2012–0332 and FMCSA–2016–0003. Their exemptions are applicable as of January 8, 2020, and will expire on January 8, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: January 10, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–00554 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0159]

Parts and Accessories Necessary for Safe Operation; Vision Systems North America, Inc. Application for an Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Vision Systems North America, Inc.'s (VSNA) application for a limited 5-year exemption to allow motor carriers to operate commercial motor vehicles (CMVs) with the company's Smart-Vision high definition camera monitoring system (Smart-Vision) installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that granting the exemption to allow use of the Smart-Vision system in lieu of mirrors would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective January 15, 2020 and ending January 15, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–5541; *jose.cestero@dot.gov.*

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

VSNA Application for Exemption

VSNA applied for an exemption from 49 CFR 393.80(a) to allow its Smart-Vision system to be installed as an alternative to the two rear-vision mirrors required on CMVs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck-tractor be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references NTHSA's standards for mirrors on motor vehicles (49 CFR 571.111, Federal Motor Vehicle Safety Standard [FMVSS] No. 111). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more.

The Smart-Vision system consists of multiple digital cameras firmly mounted high on the exterior of the vehicle, enclosed in an aerodynamic package that provides both environmental protection for the cameras and a mounting location for optimal visibility. Each camera has proprietary video processing software that presents a clear, high-definition image to the driver by means of a monitor firmly mounted to each A-pillar of the CMV, *i.e.,* the structural member between the windshield and door of the cab. VSNA explains that attaching the monitors to the A-pillars avoids the creation of incremental blind spots while eliminating the blind spots associated with conventional mirrors. VSNA states that its Smart-Vision system meets or exceeds the visibility requirements provided in FMVSS No. 111 based on the following factors:

- *Increased field of view (FOV) when compared to conventional mirrors*—The Smart-Vision system enables the driver to see (1) vehicles and pedestrians in the ''No-Zone,'' (2) multiple lanes of traffic and overtaking vehicles that are entering the commercial vehicle ''No-Zone,'' (3) tire fires, and (4) loose straps, ropes, or chains when transporting open cargo.
- *Increased Image Quality*—The Smart-Vision system provides enhanced vision in inclement weather, higher visibility in low light conditions, and filters out dawn and dusk sunlight glare, improving driver visibility.
- *Fail-safe design*—The Smart-Vision system elements have a fail-safe design due to the independent video processing of multiple camera images, additionally supported by software diagnostics to ensure that ''real time images'' are displayed and that any unlikely partial failure is clearly identified.
- *Reduced Driver Fatigue*—The Smart-Vision system results in less lateral head and eye movement by the driver due to the monitor location on the A-pillar, and VSNA believes that this may result in lower levels of driver fatigue after extended driving times.

The exemption would apply to all CMV operators driving vehicles with the Smart-Vision system. VSNA believes that mounting the system as described would maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Request for Comments

FMCSA published a notice of the application in the **Federal Register** on September 26, 2019, and asked for public comment (84 FR 50878). The Agency received 5 comments from: The American Bus Association (ABA); the Commercial Vehicle Safety Alliance (CVSA); and 3 individuals.

ABA supports granting the application to allow use of the Smart-Vision system as an alternative to the two rear-view mirrors required by the FMCSRs. ABA stated:

> Camera-based visibility systems or CBVSs, like the Smart-Vision technology, are vehicle technology advancements ABA believes should be deployed to improve safety of CMV operations. Such systems are currently being installed and tested by equipment manufacturers in limited capacity; however, to ascertain real-world viability, equipment manufacturers need to deploy these systems for use in actual commercial operations. As with FMCSA's decision to grant an exemption to Stoneridge, Inc. for use of its MirrorEye Camera Monitor System (see Docket No. FMCSA–2018–0141, published February 21, 2019), we believe the deployment of VSNA's system in place of mirrors will achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

In addition, ABA stated that when compared to traditional mirrors, the Smart-Vision system provides additional visibility benefits including (1) anti-glare, (2) improved visibility at night and during adverse weather conditions, and (3) elimination of blind spots by providing a broader field of vision around the vehicle. ABA noted that the improvements in driver visibility can lead to enhanced maneuverability in backing up or turning a large vehicle. ABA also stated that eliminating the side mirrors may also provide fuel efficiency gains and carbon emission reductions, and may assist in reducing actions that lead to increased driver fatigue such as head and eye movements.

Further, ABA states that granting the exemption will be consistent with both (1) FMCSA's decision to grant an exemption to Stoneridge, Inc. for a similar system, and (2) recent activities by NHTSA relating to possible revisions to FMVSS No. 111. Specifically, NHTSA published a notice and request for public comment on August 28, 2019 (84 FR 45209), on a proposed collection of information relating to a multi-year research effort to learn about drivers' use of camera-based systems designed to replace traditional outside rearview mirrors. Initial research will focus on light vehicles and be followed by research examining camera-based visibility systems on heavy trucks. Additionally, NHTSA published an advance notice of proposed rulemaking on October 10, 2019 (84 FR 54533), seeking public comment on permitting camera-based rear visibility systems as an alternative to inside and outside rearview mirrors.

CVSA stated that while it recognizes there may be potential safety benefits of the proposed technology, it does not have data to support or refute the efficacy of camera monitor systems technology. However, CVSA noted that its associate member companies that have some experience with camera monitor systems reported that ''drivers responded favorably when testing the technology and preferred them in place of traditional side mirrors.'' CVSA noted that in 2018, roadside inspectors conducted 2.41 million vehicle inspections and issued only 2,497 violations of section 393.80 of the FMCSRs for failing to equip a vehicle with two rear vision mirrors—a violation rate of just 0.06 percent.

Additionally, CVSA noted that granting the exemption may have impacts on roadside enforcement personnel, as inspectors use the mirrors for purposes beyond the intent of the FMVSS and the FMCSRs. Specifically, CVSA states that roadside inspectors use the mirrors to see what is happening inside the cab, and to identify when CMV drivers are operating a vehicle in an unsafe manner, such as illegally using a handheld electronic device, or not wearing a safety belt. Additionally, roadside inspectors frequently use mirrors to visually communicate with drivers during roadside inspections, when at the side or rear of the inspection vehicle. CVSA stated that it is unclear whether the technology has a proven safety benefit, and noted concern that exemptions from safety regulations have the potential to undermine consistency and uniformity in compliance enforcement, and encouraged FMCSA to consider the roadside enforcement and inspection aspects of rear vision mirror usage in the evaluation of the application.

Three individuals commented in support of granting the temporary exemption, and noted various advantages of the Smart-Vision system as compared to the rear vision mirrors required by the FMCSRs including (1) improved field-of-view around a CMV, including reduction/elimination glare and blind spots (2) increased visibility when driving at night and during inclement weather, and (3) reduced driver fatigue.

FMCSA Decision

The FMCSA has evaluated the VSNA exemption application, and the comments received. For the reasons discussed below, FMCSA believes that granting the exemption to allow motor carriers to operate CMVs with the Smart-Vision system installed as an alternative to the two rear-vision mirrors required by the FMCSRs is likely to achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

Use of the Smart-Vision system provides CMV drivers with an enhanced field of view when compared to the required rear-vision mirrors because (1) it eliminates the blind spots on both sides of the vehicle created by the required rear-vision mirrors, (2) the multi-camera system expands the field of view compared to the required rear-vision mirrors by an estimated 25 percent, and (3) the system uses high definition cameras and monitors that include features such as color night vision, low light sensitivity, and light and glare reduction that together help provide drivers with improved vision in the field of view when compared to traditional rear-vision mirrors.

FMCSA notes that the Smart-Vision system is currently being used in a number of European countries as a legal alternative to the traditional rear-vision mirrors under the requirements of ISO (International Organization for Standardization) 16505:2019. That standard provides minimum safety, ergonomic, and performance requirements for camera monitor systems to replace mandatory inside and outside rearview mirrors for road vehicles. The ISO standard addresses camera monitor systems that will be used in road vehicles to present the required outside information of a specific field of view inside the vehicle. According to VSNA, there are approximately 300 vehicles certified with the Smart-Vision system to date.

FMCSA acknowledges CVSA's concerns regarding the inability of roadside inspectors and law enforcement officers to use rear-vision mirrors for the other uses described in its comments if the exemption is granted to permit use of the Smart-Vision system in lieu of the mirrors. However, use of the rear-vision mirrors for purposes other than driver visibility is beyond the scope of the FMCSR requirements. FMCSA notes that inspectors may still communicate with drivers by means of hand signals/gestures if the system is on, and the driver will continue to see everything that would have been in view with the mirrors.

In its application, VSNA notes that the Smart-Vision system is a fail-safe operating system due to its independent video processing of multiple camera images. VSNA states:

> In the unlikely event of an individual camera failure, the other camera images continue to be displayed. Proprietary software ensures that real-time images are continuously displayed without interruption. In addition to the Smart-Vision multi-camera redundant design, mounting the camera housing high on the vehicle and providing both a power-fold and breakaway feature further reduce the potential damage that is possible in normal operating environments.

The FMCSRs impose several operational controls that will help ensure that the Smart-Vision system is functioning properly at all times. Section 396.7 of the FMCSRs, ''Unsafe operations forbidden,'' prohibits any vehicle from being operated in such a condition as to likely cause an accident or breakdown of the vehicle. Section 392.7(a) requires each CMV driver to satisfy himself/herself that a vehicle is in safe condition before operating the vehicle, which would include ensuring that the rear-vision mirrors (or in this case, the Smart-Vision system)—are in good working order. Similarly, section 396.13(a) of the FMCSRs requires that, before driving a vehicle, a driver must be satisfied that the vehicle is in safe operating condition. If the Smart-Vision system (effectively functioning as the rear vision mirrors) fails during operation, the driver must complete a driver vehicle inspection report at the completion of the work day as required by section 396.11 of the FMCSRs, and the motor carrier must ensure that the defect is corrected.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning January 15, 2020 and ending January 15, 2025. During the temporary exemption period, motor carriers operating CMVs may utilize the VSNA Smart-Vision system installed in lieu of the two rear-vision mirrors required by section 393.80 of the FMCSRs. FMCSA emphasizes that this exemption is limited to the VSNA Smart-Vision system, and does not apply to any other camera-based mirror replacement system/technology. Section 396.7 of the FMCSRs, ''Unsafe operations forbidden,'' prohibits any vehicle from being operated in such a condition as to likely cause an accident or a breakdown of the vehicle. If the camera or monitor system fails during normal vehicle operation on the highway, continued operation of the vehicle shall be forbidden until (1) the Smart-Vision system can be repaired, or (2) conventional rear-vision mirrors that are compliant with section 393.80 are installed on the vehicle.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating commercial motor vehicles utilizing the VSNA Smart-Vision system installed as an alternative to the two rear-vision mirrors required by section 393.80 of the FMCSRs are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: January 6, 2020.

Jim Mullen,

Acting Administrator.

[FR Doc. 2020–00556 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0108]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this provides the public notice that on December 23, 2019, representatives of the Florida, Gulf & Atlantic Railroad LLC (FGA) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2019–0108.

Applicant: Florida, Gulf & Atlantic Railroad LLC, Mr. Thomas G. Healey, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

Specifically, FGA requests permission to discontinue its existing centralized traffic control system (TCS) on ''the Line'', which is the only portion of the FGA that has TCS installed. The Line (148.7 miles) originates at the connection with CSX Transportation (CSXT) milepost (MP) SP 653.3 at Baldwin, Florida, and terminates in connections with FGA's remaining rail system MP SP 802.0 at Tallahassee, Florida.

Upon discontinuance of the TCS, operations will be governed by track warrant control (TWC) which is currently the system of operations on the remainder of FGA's rail system.

The stated reason for the discontinuance is that TWC, in lieu of TCS, will substantially reduce operating costs, allow for investment in critical capital projects, and not reduce the overall safety of operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 2, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–00502 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0096]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this provides the public notice that on December 30, 2019, DPS Electronics, Inc. (DPS) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232. FRA assigned the petition Docket Number FRA–2012–0096.

DPS is a Montana-based corporation that specializes in designing and manufacturing train telemetry and test equipment. DPS seeks to extend its waiver of compliance from the requirements put forth in 49 CFR 232.409(d), *Inspection and Testing of End-of-Train Devices,* for several end-of train (EOT) and head-of-train (HOT) device models. DPS previously received a waiver for EOT device models DPS 2020 and DPS 2020-He on March 20, 2013. On July 10, 2015, DPS received a waiver for HOT device models DPS 3030 HTD–CM and DPS 3030 I–HTD. Subsequently, on January 10, 2017, DPS received a waiver for an additional EOT device model DPS 2020-He2. These previous waivers were tied to Ritron, Inc.'s waiver (Docket Number FRA–2009–0015) covering three models of their DTX radios.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
• *Fax:* 202–493–2251.
• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
• *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 2, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–00499 Filed 1–14–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2020–0001]

Notice of Establishment of Emergency Relief Docket for Calendar Year 2020

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: By this notice, the Federal Transit Administration (FTA) is establishing an Emergency Relief Docket for calendar year 2020, so that grantees and subgrantees affected by a national or regional emergency or disaster may request temporary relief from FTA administrative and statutory requirements.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Graves, Attorney-Advisor, Office of Chief Counsel, Federal Transit Administration, 90 Seventh Street, Ste. 15–300, San Francisco, CA 94103; phone: (202) 366–0944, fax: (415) 734–9489, or email, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 49 CFR 601.42, FTA is establishing the Emergency Relief Docket for calendar year 2020. In the case of a national or regional emergency or disaster, or in anticipation of such an event, when FTA requirements impede a grantee or subgrantee's ability to respond to the emergency or disaster, a grantee or subgrantee may submit a request for relief from specific FTA requirements.

If FTA determines that a national or regional emergency or disaster has occurred, or in anticipation of such an event, FTA will place a message on its web page (*http://www.transit.dot.gov*) indicating that the Emergency Relief Docket has been opened and including the docket number.

All petitions for relief from FTA administrative or statutory requirements must be posted in the docket in order to receive consideration by FTA. The docket is publicly available and can be accessed 24 hours a day, seven days a week, via the internet at *www.regulations.gov.* Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and docket number FTA–2020–0001.

Interested parties may consult 49 CFR 601, subpart D for information on FTA's emergency procedures for public transportation systems. FTA strongly encourages grantees and subgrantees to contact their FTA regional office and notify FTA of the intent to submit a petition to the docket.

A grantee or subgrantee seeking relief has three avenues for submitting a petition. First, a grantee or subgrantee may submit a petition for waiver of FTA requirements to *www.regulations.gov,* for posting in the docket (FTA–2020–0001). Alternatively, a grantee or subgrantee may submit a petition in duplicate (two copies) to the FTA Administrator, via U.S. mail or hand delivery to Federal Transit Administration, 1200 New Jersey Ave. SE, Washington, DC 20590; via fax to (202) 366–3472; or via email to *Bonnie.Graves@dot.gov;* or via U.S. mail or hand delivery to the DOT Docket Management Facility, 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590. Thirdly, in the event that a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on its behalf.

Federal public transportation law at 49 U.S.C. 5324(d) provides that a grant awarded under Section 5324, or under 49 U.S.C. 5307 or 49 U.S.C. 5311, that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. This language allows FTA to waive certain statutory, as well as administrative, requirements. An FTA grantee or subgrantee receiving financial assistance under 49 U.S.C. 5324, 5307, or 5311 that is affected by a national or regional emergency or disaster may request a waiver of provisions of Chapter 53 of Title 49 of the United States Code in connection with such financial assistance, when a grantee or subgrantee demonstrates that the requirement(s) will limit a grantee's or subgrantee's ability to respond to a national or regional emergency or disaster.

Pursuant to 49 CFR 601.42, a grantee or subgrantee must include certain information when requesting a waiver of statutory or administrative requirements. A petition for relief shall:

(a) Include the agency name (Federal Transit Administration) and docket number FTA–2020–0001;

(b) Identify the grantee or subgrantee and its geographic location;

(c) Identify the section of Chapter 53 of Title 49 of the United States Code, or the portion of an FTA policy statement, circular, guidance document or rule, from which the grantee or subgrantee seeks relief;

(d) Specifically address how a requirement in Chapter 53 of Title 49 of the United States Code, or an FTA requirement in a policy statement, circular, agency guidance or rule, will limit a grantee's or subgrantee's ability to respond to a national or regional emergency or disaster; and

(e) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

Pursuant to 49 CFR 601.46, a petition for relief from administrative requirements will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket. FTA will review the petition after the expiration of the three business days and review any comments submitted regarding the petition. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and any comments submitted regarding the petition. If FTA does not respond to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted for a period not to exceed three months until and unless FTA states otherwise.

A petition for relief from statutory requirements will not be conditionally granted and requires a written decision from the FTA Administrator.

An FTA decision letter, either granting or denying a petition, shall be posted in the Emergency Relief Docket and shall reference the document number of the petition to which it relates. FTA reserves the right to reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if FTA plans to reconsider a decision.

Pursuant to FTA's Charter Rule at 49 CFR 604.2(f), grantees and subgrantees may assist with evacuations or other movement of people that might otherwise be considered charter transportation when that transportation is in response to an emergency declared by the President, governor or mayor, or in an emergency requiring immediate action prior to a formal declaration, even if a formal declaration of an emergency is not eventually made by the President, governor or mayor. Therefore, a request for relief is not necessary in order to provide this service. However, if the emergency lasts more than 45 calendar days and the grantee will continue to provide service that would otherwise be considered charter service, the grantee or subgrantee shall follow the procedures set out in this notice.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Grantees and subgrantees should refer to FTA's regulations, including 49 CFR 601, for requirements for submitting a request for emergency relief.

Issued in Washington, DC.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2020–00539 Filed 1–14–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 218, 221, and 232

Miscellaneous Amendments to Brake System Safety Standards and Codification of Waivers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218, 221, and 232

[Docket No. FRA–2018–0093, Notice No. 1]

RIN 2130–AC67

Miscellaneous Amendments to Brake System Safety Standards and Codification of Waivers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to revise its regulations governing brake inspections, tests, and equipment. The proposed changes include the incorporation of relief from various provisions provided in long-standing waivers related to single car air brake tests, end-of train devices, helper service, and brake maintenance. FRA is also proposing to extend the time that freight rail equipment can be ''off-air'' before requiring a new brake inspection. In addition, FRA is proposing various modifications to the existing brake related regulations for clarity and to remove outdated or unnecessary provisions. The proposed revisions would benefit railroads and the public by reducing unnecessary costs, creating consistency between U.S. and Canadian regulations, and incorporating the use of newer technologies demonstrated to maintain or increase safety. The proposed rule would reduce the overall regulatory burden on railroads.

DATES: Written comments must be received by March 16, 2020. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: Comments: Comments related to Docket No. FRA–2018–0093 may be submitted by any of the following methods:

- *Website:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Zuiderveen, Senior Safety Specialist, Motive & Power Equipment Division, Office of Technical Oversight, Federal Railroad Administration, RRS–14, West Building 3rd Floor, Room W35–204, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6337); Jason Schlosberg, Senior Attorney, Office of Chief Counsel, RCC–10, West Building 3rd Floor, Room W31–207, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6032).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary

A. Purpose of the Regulatory Action

In December 2017, AAR filed a petition for waiver from the rule that requires a Class I brake test prior to operation if a train is off-air for a period of more than four hours, contending it is too restrictive. *See* Docket No. FRA–2017–0130. The Safety Board denied the waiver petition, finding that the relief requested was more appropriately addressed through the rulemaking process and that there was a lack of supporting data submitted with the waiver request. Subsequently, in a letter dated July 12, 2018—included in the public docket to this rulemaking proceeding—AAR submitted a revised petition for rulemaking including substantially more supporting data than the waiver request it submitted in December 2017.

This rulemaking responds to AAR's petition, proposes codification of existing waivers related to brake systems, and makes technical amendments to reduce regulatory burdens while maintaining or improving safety.[1] This rulemaking is a direct result of FRA's effort to periodically review its regulations and propose amendments to the regulations to streamline and update them to reflect technological advances and lessons learned through feedback from all stakeholders.

B. Summary of the Major Provisions of the Regulatory Action

When considering new and novel transportation technologies, industry stakeholders have often used FRA's waiver process, under subpart C to 49 CFR part 211, when existing rules do not adequately address or apply to the use of the technology. FRA has identified various waivers that warrant consideration for regulatory codification. In particular, FRA is proposing to incorporate into the regulations various long-standing waivers providing conditional exceptions to existing rules concerning air brake testing, end-of-train (EOT) devices, and helper service. FRA is also proposing to extend the time that freight rail equipment can be ''off-air'' before requiring a new brake inspection and is proposing various modifications to the existing brake related regulations for

[1] FRA notes that AAR submitted a separate rulemaking petition in March 2019. That petition proposes amendments to part 232 related to the industry's development of a rail car electronic air brake slip system. FRA will address the recommendations in that petition in a separate rulemaking proceeding.

clarity and to remove outdated or unnecessary provisions.

C. Costs and Benefits of the Proposed Regulatory Action

FRA analyzed the economic impacts of this NPRM over a 10-year period, and estimated its cost savings, costs, and benefits. The total cost savings are $502.2 million (using a 7% discount rate), and $593.7 million (using a 3% discount rate). The annualized cost savings are $71.5 million (using a 7% discount rate) and $69.6 million (using a 3% discount rate). The cost savings of this proposed rule are displayed in the table below.

COST SAVINGS OVER 10-YEAR PERIOD

[Values in millions]

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Helper Link	$3.9	$4.5	$0.6	$0.5
D–22 Brake Valve	0.5	0.6	0.07	0.07
26–C Brake Valve	0.2	0.3	0.04	0.03
24-Hour Off-air	325.6	386.2	46.4	45.3
90 CFM	1.8	2.1	0.3	0.2
Single Car Air Brake Tests (SCT) 24 month	150.7	176.1	21.5	20.6
SCT 48 month	19.5	23.8	2.8	2.8
Waiver Cost Savings	0.1	0.1	0.01	0.01
Total	502.2	593.7	71.5	69.6

FRA estimates this proposed rule would not impose any costs on the industry. This NPRM generally increases flexibility for the regulated entities by codifying waivers. It does not impose any new substantive requirements. This rule will not negatively impact safety in any aspect of railroad operations and FRA does not expect any increase in end-of-train device or brake failures as a result of this rule. As noted in the Regulatory Impact Analysis (RIA) accompanying this rule, overall safety may by improved due to railroad employees experiencing less risk of common injuries such as slips, trips, and falls by having to perform fewer physical inspections, which would produce positive safety benefits, though these have not been quantified.

The quantified net cost savings of this proposed rule are equal to the total cost savings. The present value of net cost savings are estimated to be $502.2 million (7% discount rate) and $593.7 million (3% discount rate). The annualized net cost savings are estimated to be $71.5 million (7% discount rate) and $69.6 million (3% discount rate).

II. Background

A. Existing Regulations

FRA regulations require the air brake systems of trains, and the air brakes of individual freight cars, to be inspected and tested in certain circumstances. The regulations provide for five primary types of brake system inspections: Class I (initial terminal inspection), Class IA (1,000-mile inspection), Class II (intermediate inspection), Class III (trainline continuity inspection), and an SCT.

A Class I air brake test, also referred to as an initial terminal inspection, is a comprehensive inspection of the brake equipment on each car in an assembled train and is required to be performed at the location where a train is originally assembled, when the consist is changed in certain ways (by adding or removing cars), and when a train is off-air for more than four hours. Class I brake tests are intended to ensure that a train is in proper working condition and capable of traveling to its destination with minimal problems en route. A Class I brake test requires the performance of a leakage test and in-depth inspection of the brake equipment (on both sides of the freight car) to ensure that each car's brake system is properly secure, does not bind or foul, and applies and releases in response to a specified brake pipe pressure signal. Piston travel must also be inspected and adjusted to a specified length if found not to be within a certain range of movement.

A Class IA brake test is required every 1,000 miles. Although it is less detailed than a Class I inspection, a Class IA brake test includes all the same elements of a Class I test, but with less stringent piston travel requirements. The most restrictive car or block of cars in a train determines the location where Class IA tests must be performed. For example, if a train travels 500 miles from its point of origination to a location where it picks up a block of cars that has travelled 800 miles since its last Class I brake test, and the crew does not perform a Class I brake test when adding the cars, then the entire train must receive a Class IA brake test within 200 miles even though that location is only 700 miles from the train's origination.

Class II brake tests, also referred to as intermediate inspections, are less detailed inspections used for cars that do not have a compliant Class I inspection record that are picked up by a train. The test includes a test for excessive brake pipe leakage, charging the air brakes to within 15 psi of working pressure, making a 20-psi reduction in the brake pipe to actuate the brake, restoration of pressure to working psi, and confirmation that all brakes release and full brake pipe pressure has been restored to the rear of the train. Cars that receive a Class II brake test are required to receive a full Class I brake test at the next forward location where it can be performed.

A Class III brake test, also known as a trainline continuity inspection, must be performed any time the brake pipe is opened on an operating train. The test includes charging the air brakes to working pressure (no less than 60 psi at rear of train), making a 20-psi reduction in the brake pipe to actuate the brake on the rear car of the train, releasing the brake, and ensuring that pressure at the rear of the train is restored.

In addition to the types of air brake tests noted above, the regulations require the brakes of individual cars to be periodically maintained and tested in certain circumstances. This test is known as an SCT and is used to validate individual air brake effectiveness. An SCT is required: At least every 8 years for new or rebuilt freight cars, at least every 5 years for all other freight cars, and any time a freight car is on a shop or repair track, if the car has not had a SCT in the previous 12 months.

For a substantial summary, history, and analysis of the regulations affecting Class I, Class IA, Class II, and Class III brake tests, single car air brake tests, and the operation and testing of end-of-train devices, please visit the following **Federal Register** publications: 66 FR 4104, Jan. 17, 2001; 66 FR 39683, Aug. 1, 2001; and 67 FR 17555, Apr. 10, 2002.

B. FRA Waiver Authority and Process

For years, FRA has in various instances exercised its delegated authority to waive compliance with its regulations. *See* 49 U.S.C. 20103 (''The Secretary [of Transportation] may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety.''); *see also* 49 CFR 1.89(a). FRA implemented this authority by issuing the rules under subpart C to 49 CFR part 211, providing a process and requirements for receiving and responding to waiver petitions. Each properly filed petition for a permanent or temporary waiver of a safety rule, regulation, or standard is referred to the FRA Railroad Safety Board (Safety Board) for decision. *See* 49 CFR 211.41(a). The Safety Board's decision is typically rendered after a notice is published in the **Federal Register** and an opportunity for public comment is provided. *See* 49 CFR 211.41(b). If a waiver petition is granted, the Safety Board may impose conditions on the grant of relief to ensure the decision is in the public interest and consistent with railroad safety.

Activity under a waiver of regulatory compliance may generate sufficient data and experience to support an expansion of its scope, applicability, and duration. For instance, in many cases, FRA has expanded the scope of certain waivers or issued the same or similar waivers to additional applicants. FRA has also extended various waivers' expiration dates. A waiver's success and its continued expansion warrant consideration of regulatory codification. FRA believes that codifying a waiver, and thereby making its exemptions and requirements universally applicable, results in industry cost-savings larger than from the waiver alone.

C. Current Review of Waivers

FRA is considering codifying waivers of compliance from rules affecting motive power and equipment (MP&E), including the aforementioned brake inspection requirements. More specifically, FRA is proposing changes to the regulations affecting: The use of EOT devices and Helper Link devices or similar technologies; higher air-flow on distributed powered (DP) trains; and the performance of Class I air brake tests and single car air brake tests (SCT). FRA is also proposing technical corrections to existing regulations.

The waiver subject matters considered for codification are more specifically identified below. FRA requests comment on all aspects of its proposals to incorporate the identified waivers into the regulations. FRA has attempted to capture and identify the dockets for all substantially similar waivers affected by this rulemaking. For purposes of defining the scope of this rulemaking, FRA has identified each of those waivers by docket number. However, FRA recognizes that there may be some substantially similar waivers not identified in this NPRM, but still affected by this rulemaking. All affected waivers, whether specifically referenced in this NPRM or not, remain in force for the time being, and FRA does not intend to terminate any waivers upon the effective date of a final rule even if FRA incorporates the requirements of a waiver into a final rule. It is possible that there are exceptions or conditions in some existing waivers that are not specifically codified in the final rule. FRA believes that terminating waivers immediately upon the effective date of a final rule may unnecessarily complicate matters, especially considering many of the waivers will simply expire soon thereafter. In the event a regulated entity wishes to continue a waiver's provision not captured by the final rule in this proceeding beyond the expiration date of that waiver, that entity could petition the Safety Board for an extension of that provision. FRA seeks comment on this approach.

D. Identified Waivers

For the public's convenience, below is a list of waiver petition dockets, organized by subject matter, which FRA is proposing to codify into its regulations. As noted, this list is not necessarily all-inclusive. The public docket for each listed waiver may be accessed at *www.regulations.gov.*

Air Flow Method

- Permit 90 cubic feet per minute (CFM) air flow and Railroad Operating Rules (49 CFR 232.205(c)(1)(ii))
  - BNSF Railway (BNSF), Canadian National Railway (CN), et. al., Docket No. FRA–2012–0130

End-of-Train (EOT) Device

- Power Source (49 CFR 232.403(g)(3))
  - Wabtec Corporation (Wabtec), Docket No. FRA–2001–9270
  - Quantum Engineering, Inc (Quantum) (n.k.a. Siemens Industry, Inc. (Siemens)), Docket No. FRA–2006–25794
- Calibration (49 CFR 232.409(d))
  - Wabtec, Docket No. FRA–2004–18895
  - Ritron, Inc. (Ritron), Docket No. FRA–2009–0015
  - DPS Electronics, Inc. (DPS), Docket No. FRA–2012–0096
  - Siemens, Docket No. FRA–2015–0044
- Helper Service (49 CFR 232.219(c))
  - BNSF, Docket No. FRA–2006–26435
  - Montana Rail Link (MRL), Docket No. FRA–2014–0013
- Marker Lamp Height (49 CFR 221.13(d))
  - DPS, Docket No. FRA–2015–0023
  - Siemens, Docket No. FRA–2017–0093
- Utility Person and Battery Changes (49 CFR 218.22(c)(5))
  - BNSF, Docket No. FRA–2001–10660
  - Canadian Pacific Railway (CP), Docket No. FRA–2004–17989

Single Car Test

- Update Incorporation by Reference to Association of American Railroads (AAR) Standard S–486–18 (49 CFR 232.305(a))
  - AAR, Docket No. FRA–2018–0011
- Add Incorporation by Reference for AAR Standard S–4027–18 (49 CFR 232.305(a))
  - BNSF and Union Pacific Railroad (UP), Docket No. FRA–2013–0030

Automated Single Car Test

- 24-Month Testing, Automated (AAR Standard S–4027) (49 CFR 232.305(b)(2))
  - BNSF and UP, Docket No. FRA–2013–0030
- 48-Month Testing, Four-Pressure Test (AAR Standard S–4027) (49 CFR 232.305(b)(2))
  - BNSF and UP, Docket No. FRA–2013–0030

Clarifying Appendix B (Potentially Recodifying as Subpart H)

- Change AAR Standard S–045 to AAR Standard S–4045–13 (appx B, II, § 232.17(b)(2))
  - AAR, Docket No. FRA–2013–0063

E. Incorporating by Reference New and Updated Standards Under 1 CFR 51.5

As required by 1 CFR 51.5, FRA has summarized the standards it is proposing to incorporate by reference in the section-by-section analysis in this preamble. The AAR standards summarized herein, and listed in the table directly below for convenience, are reasonably available to all interested parties for inspection. Copies can be obtained from the Association of American Railroads, 425 Third Street SW, Washington, DC 20024, telephone: (202) 639–2345, email: *publications@aar.com,* website: *https://aarpublications.com.* They are also available for inspection at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC 20590.

AAR STANDARDS INCORPORATED BY REFERENCE IN 49 CFR PART 232

Identification No.	Title	Year or edition	Section affected in 49 CFR
S–469–01	Performance Specification for Freight Brakes	2006	§ 232.103(l).
S–486–18	Code of Air Brake System Tests for Freight Equipment	2018	§ 232.305(a).
S–4027–18	Automated Single-Car Test Equipment, Conventional Brake Equipment-Design and Performance Requirements.	2018	§ 232.305(a).
S–4045–13	Passenger Equipment Maintenance Requirements	2013	§ 232.17(b)(2) in section I of Appendix B, part 232. (proposed § 232.717(b)(2)).
S–4200	Electronically Controlled Pneumatic (ECP) Cable-Based Brake Systems—Performance Requirements.	2014	§ 232.603.
S–4210	ECP Cable-Based Brake System Cable, Connectors, and Junction Boxes—Performance Specifications.	2014	§ 232.603.
S–4230	Intratrain Communication (ITC) Specification for Cable-Based Freight Train Control System.	2014	§ 232.603.
S–4250	Performance Requirements for ITC Controlled Cable-Based Distributed Power Systems.	2014	§ 232.603.
S–4260	ECP Brake and Wire Distributed Power Interoperability Test Procedures	2008	§ 232.603.
N/A	2020 Field Manual of the AAR Interchange Rules	2020	§ 232.717.

The rule text already incorporates by reference the latest versions of the following AAR standards, so no updates are currently proposed: S–4220, ECP Cable-Based Brake DC Power Supply—Performance Specification (2002); S–4240, ECP Brake Equipment—Approval Procedure (2007); and S–4270, ECP Brake System Configuration Management (2008).

F. Railroad Safety Advisory Committee (RSAC) Advice and Input

FRA received substantial advice and feedback from the RSAC on the contents of this rule. FRA first established the RSAC in March 1996 under Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) to provide a forum for stakeholder groups to provide advice and recommendations to the FRA on railroad safety matters. In April 1996, the RSAC formed the Tourist and Historic Railroads and Private Passenger Car Working Group (THRWG). Since that time, the THRWG has considered numerous issues affecting tourist and historic rail operations and in August 2013, the THRWG accepted Task No. 13–01 to consider the applicability of FRA's regulations to historical or antiquated equipment that is used only for excursion, educational, recreational, or private transportation purposes. The THRWG met in Washington, DC on April 9–10, 2014, and reviewed, among other things, the safety glazing standards (49 CFR part 223) regarding the treatment of certain equipment; regulatory treatment under the freight car safety standards (49 CFR part 215) of non-commercial freight cars over 50 years old; and the scope and application of appendix B of 49 CFR part 232 (freight power brake standards). The THRWG also identified other issues involving FRA's regulatory treatment of tourist, scenic, historic, excursion, educational or recreational rail operations or private passenger rail car operations and equipment in other chapters of title 49, which FRA anticipates will be addressed in subsequent rulemakings. On December 4, 2014, the full RSAC accepted the THRWG's report. *See* RSAC Meeting Minutes, p. 12, *https://rsac.fra.dot.gov/radcms.rsac/File/DownloadFile?id=44.* The updates to part 232, appendix B (proposed Subpart H—Tourist, Scenic, Historic, and Excursion Operations Braking Systems) of this NPRM are based on the THRWG's report.

III. Section-by-Section Analysis

Unless otherwise noted, all section references below refer to sections in title 49 of the Code of Federal Regulations (CFR). FRA seeks comments on all proposals in this NPRM.

Proposed Amendments to 49 CFR Part 218

Section 218.22 Utility Employee

As stated in the 1993 rule initialing adopting § 218.22, the intent of this section is to define the circumstances under which a utility employee may be permitted to function as a member of a train or yard crew without the need for establishing blue signal protection. *See* 58 FR 43293, 43290, Aug. 16, 1993. The Blue Signal regulations are found in Subpart B of part 218 (§§ 218.21–218.41). Despite this stated intent, existing paragraph (c) of § 218.22 provides that ''under certain conditions . . . a utility employee [may] be assigned to and serve as a member of a train or yard crew without the protection otherwise required by *subpart D* to 49 CFR part 218.'' (Emphasis added). Subpart D of part 218 (§§ 218.51–218.61) contains FRA's regulations prohibiting tampering with safety devices and, thus, the reference makes no sense. In addition, paragraphs (c)(5) and (h) of § 218.22 specify conditions under which certain provisions of subpart B (*e.g.,* §§ 218.23–218.30) must be complied with when a utility employee is performing certain functions normally executed by a train crew. Accordingly, FRA is proposing to amend the incorrect reference to ''Subpart D'' in paragraph (c) to ''Subpart B,'' as this reference is clearly a typographical error.

In addition, FRA proposes amending the list of functions provided in paragraph (c)(5) that do not require a utility employee to establish blue signal protection to include battery change-out on rear-end marking devices or end-of-train devices if the change-out is accomplished without the use of tools.

This relief has already been provided to BNSF and CP. *See* Docket No. FRA–2001–10660; Docket No. FRA–2004–

17989. In their waiver petitions, BNSF and CP stated that potential safety benefits would likely include an estimated 80% reduction in safety-sensitive task completion time and significantly lighter loads for service and utility employees to lift and handle. For instance, when changing a battery, employees would no longer have to unhook the air hose from the device, remove the device from the coupler, carry it to a safe location and set it on the ground to change the battery, then pick up the device, walk back to the end of the train and reinstall the device. Instead, the employee would simply open a latch, slide out and replace the battery, and refasten the latch.

FRA granted those waiver petitions over a decade ago and each railroad's record of operations under those waivers demonstrates that the relief provided is safe. Accordingly, FRA believes codifying these existing waivers would improve efficiency and is consistent with railroad safety. FRA seeks comments on this proposal.

FRA also seeks comment on the use of the term ''change out'' or ''change'' in paragraph (c). FRA understands that to ''change out'' batteries means to swap or replace them. This is certainly what FRA intended when it granted the associated waivers. However, when codifying this relief, FRA does not want to prohibit or otherwise suppress future innovation. For instance, FRA believes removable or non-removable rechargeable batteries or other similar technology could one day suit the purpose of this proposal. Accordingly, FRA proposes to use the broader term ''change'' (as opposed to change out) in the proposed revision to paragraph (c).

In proposing these changes to paragraph (c), FRA considered whether other similar tasks could be reasonably excluded from the Blue Signal requirements. FRA identified no such tasks. FRA also considered the feasibility of establishing a performance standard (*e.g.,* based on time, complexity of task, or some other measure). After consideration of these issues, FRA is not proposing any additional changes to paragraph (c), but FRA invites commenters to identify other tasks that may justify being added to the list of exceptions from the blue signal requirements in the paragraph. Further, FRA seeks comment on the utility and feasibility of establishing a performance-based requirement in paragraph (c), as an alternative to listing specific tasks excluded from the Blue Signal requirements.

Proposed Amendments to 49 CFR Part 221

Section 221.13 Marking Device Display

Section 221.13 includes EOT marking device display requirements. Paragraph (d) requires each marking device's centroid to be located at a minimum of 48 inches above the top of the rail. In 2015 and 2017, DPS, and Siemens Industry Inc. (''Siemens''), respectively, filed similar waiver petitions requesting that the marker height measurement be reduced to 41 and 42 inches, respectively. *See* Docket No. FRA–2015–0023; Docket No. FRA–2017–0093. In their petitions, both DPS and Siemens noted that newer designs of their marker lights weighed less than previous designs and were designed to be mounted lower than 48 inches from the top of the rail. DPS and Siemens asserted that the smaller dimensions and weight of the marker lights would reduce the risk of injury to personnel handling the devices. Moreover, for marker lights mounted at 36, 42, and 48 inches above the top of the rail, DPS and Siemens provided supporting field test video data showing no discernable visibility difference up to one mile away. In reviewing the petitions and data, the Safety Board agreed that changing the marker light height by several inches would not result in a significant difference in visibility, especially since EOT marker lights are typically viewed from distances of a half-mile or greater. FRA seeks comment on the height standards proposed in this section.

In addition to considering visibility over distances, FRA also seeks comment on marker device visibility from varying angles. Viewing angles may vary minutely due to natural variation in eye height from one human observer to another. In addition, when considering DPS's and Siemen's petitions, FRA performed a simplified trigonometric analysis and determined that only a minimal number of negative scenarios would result from cases in which a marker light would be mounted at 40 inches. *See* Docket No. FRA–2015–0023; Docket No. FRA–2017–0093.

FRA granted DPS's and Siemen's waiver petitions based on evidence showing that the difference in heights would not affect visibility of the marker lights. Since granting the petitions, no accidents attributed to a lowered marker lamp height permitted under these waivers have been reported through the FRA accident reporting system. Accordingly, FRA proposes codifying the waiver's exemptions and conditions. FRA seeks comments and any information gleaned from railroad experience relevant to this proposal.

FRA believes that this change would allow the use of lighter weight EOT devices, which will likely result in a lower risk of injury and improved safety. Since the coupler is usually 38″ from the ground, and the lamp height is currently required to be at least 48″ from the ground, to make up the space, manufacturers created a 10″ tall box, which doubles as heavy battery storage. With the introduction of air turbine electricity to replace the need for batteries and a consideration of reducing the 48″ height requirement, the size and weight of this equipment could permissibly be reduced, resulting in ergonomic benefits such as less awkward handling.

FRA also understands that there has been a recent shift in the industry from the use of incandescent to LED bulbs within marker lights. FRA seeks comment on the effect this change has had and will have on visibility. Further, to allow for flexibility over time as EOT device technology and design changes, FRA also seeks comments on the utility and feasibility of establishing a performance-based standard in lieu of the specific height requirements of this section.

Appendix A to Part 221 Procedures for Approval of Rear End Marking Devices

To correct typographical errors, FRA is modifying ''perscribed'' to ''prescribed'' in paragraph (a)(1)(2)(ii) and ''peformed'' to ''performed'' in paragraph (b)(3)(ii).

Proposed Amendments to 49 CFR Part 232

Section 232.1 Scope

Paragraph (b) of § 232.1 describes how the scope of part 232 would change in phases after the January 2001 publication of a final rule that created part 232. Paragraph (c) and the final phrase of paragraph (d) includes similarly antiquated instructions. Those dates, and their associated options, have since passed and the scope of part 232 has been fully realized under § 232.1. Since these dates and former options provide no guidance for current or future compliance, FRA proposes removing paragraph (b)'s historical schedule, paragraph (c) in its entirety, and the final phrase in paragraph (d) providing for earlier optional compliance. FRA also proposes moving paragraph (d) to paragraph (c). FRA seeks comment on these changes.

Section 232.5 Definitions

Section 232.5 defines certain terms as they are used in part 232. In this section, FRA is proposing to update the definition of the term ''Air Flow Indicator, AFM'' and add definitions for ''air repeater unit'' and ''APTA.'' All new air brake systems are equipped with digital AFM indicators, and many analog AFM indicators are being replaced by digital versions. FRA is clarifying the definition of the ''Air Flow Indicator, AFM'' to acknowledge the use of digital versions, and to specify that a digital version must have markings of equivalent or finer resolution to that specified by FRA for an analog device.

FRA proposes to add the term ''air repeater unit'' in § 232.205, and define that term as ''a car, container or similar device that provides an additional brake pipe air source by responding to air control instructions from a controlling locomotive using a communication system such as a distributed power system.'' FRA understands a specialized car, other rolling equipment, or containers in well cars can be used for this purpose. The communications must be akin to a distributed power system to ensure accurate and sufficient responses. These existing systems are identified here merely for illustration. Ultimately, it is the purpose and use of the technology, not its physical description, that determines whether the item is an air repeater unit. FRA purposefully recognizes this distinction to avoid limiting innovation and future options. FRA seeks comments on the accuracy and sufficiency of this definition.

FRA also proposes adding a definition for ''APTA'', the American Public Transportation Association, since the organization is referenced often as a source for standards and input.

Section 232.11 Penalties

This section contains provisions regarding penalties. Since the section was last amended, DOT has issued a final rule, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act),[2] that provides the 2018 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. *See* 83 FR 60732 (Nov. 27, 2018). To avoid the need to update this section every time the civil penalty amounts are adjusted for inflation, FRA has changed this section by replacing references to specific penalty amounts with general references to the minimum civil monetary penalty, ordinary maximum civil monetary penalty, and aggravated maximum civil monetary penalty. FRA has also added language to this section referring readers to 49 CFR part 209, appendix A, where FRA will continue to specify statutorily provided civil penalty amounts updated for inflation and to FRA's website at *www.fra.dot.gov* which contains a schedule of civil penalty amounts used in connection with this part.

Section 232.103 General Requirements for all Train Brake Systems

In a 2001 rulemaking, FRA incorporated by reference AAR Standard S–469–47 (''Performance Specification for Freight Brakes'') [3] into § 232.103(l). FRA subsequently also referenced S–469–47 in § 232.603. Later in 2001, however, AAR updated S–469–47 for style and format with no change in substance and reissued it as S–469–01. After briefly being out-of-print, in 2006 AAR permanently returned S–469–01 to its Manual of Standards and Recommended Practices.

S–469 is the AAR's identical publication of the Interstate Commerce Commission Order 13528, originally published in 1945. Between 1947 and 2000, S–469 and Order 13528 were simultaneously published in the AAR Manual of Standards and Recommended Practices and as appendix B in 49 CFR part 232. The 2001 revision of part 232 ceased to publish Order 13528 as appendix B, and refers the public to obtain this document from the AAR. The purpose of the document is to define and prescribe requirements for power brakes and appliances for operating power brake systems.

Accordingly, FRA proposes updating the citation to the presently available S–469–01. FRA also will correct AAR's address. FRA seeks comments on these updates.

Section 232.205 Class I Brake Test-Initial Terminal Inspection

Section 232.205 contains the requirements for conducting Class I brake tests-initial terminal inspections. Section 232.205 requires a train to receive a Class I brake test (as described in paragraph (c) of the section) at certain times. For example, § 232.205 requires a Class I brake test be performed when a train is initially assembled, when the consist is changed in certain ways (by adding or removing cars), and when a train is off-air for more than four hours.[4] FRA proposes to revise this section to extend the four-hour off-air limitation to 24 hours. FRA also proposes changes to brake pipe leakage requirements during certain Class I air brake tests, and requirements associated with AFM indicator calibration.

Under the existing regulation, if a train or equipment (*e.g.,* individual cars) is left unattached to any air source (*e.g.,* locomotive, yard air) for more than four hours, it must receive a Class I brake test prior to further operation of the train. *See* 49 CFR 232.205(a)(3). Moreover, to ensure that its air brake system did not degrade, and to allow a railroad to delay a full-train Class I test in many circumstances, equipment off-air for more than four hours may require a Class I or II test prior to being added to an en route train, and will require a Class III brake test prior to being operated in revenue service. *See* 49 CFR 232.209(a)(1) and 232.211(a)(3)–(a)(5). This requirement also affects yard air applications. *See* § 232.217(c)(1). For a more substantial history and analysis of the off-air requirement, *see* 66 FR 4103, 4122, Jan. 17, 2001.

In December 2017, AAR filed a petition for waiver from the 4-hour rule, contending it is too restrictive. *See* Docket No. FRA–2017–0130.[5] Subsequently, in a letter dated July 12, 2018—included in the public docket to this rulemaking proceeding—AAR submitted a petition for rulemaking mirroring the waiver request it submitted in December 2017. *See* Docket No. FRA–2018–0093, *available at https://www.regulations.gov/document?D=FRA-2018-0093-0002.* To support its filing, AAR supplied data provided by its member railroads and a Failure Modes and Effect Analysis

[2] The FCPIAA and the 2015 Act require federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. *See* 83 FR 60732, Nov. 27, 2018.

[3] In 1945, FRA's predecessor agency, the Interstate Commerce Commission (ICC), and AAR agreed on certain power brake and draw bar standards, which ICC partially memorialized in Interstate Commerce Commission Order No. 13528, Investigation of Power Brakes and Appliances for Operating Power-Brake Systems, 10 FR 6787, June 6, 1945 (''ICC Order 13528''). ICC Order 13528 referenced an appendix that was not published until months later in a Supplement to the Code of Federal Regulations. *See* 49 CFR part 132 (Power Brakes and Draw Bars (Railroad)), Appendix (Specifications and Requirements for Power Brakes and Appliances for Operating Power Brake Systems for Freight Service) (Supp. 1945). While this late-published appendix to ICC Order 13528 was the regulation requiring compliance, in 1947 AAR published an identical AAR Standard S–469–47. Eventually, the ICC Order 13528 appendix was moved into appendix B of 49 CFR part 232.

[4] Earlier rules required the performance of Class I air brake test on equipment left off air for only two hours or more. The four hours referenced in the existing rule reflects a compromise subsequently recommended by industry stakeholders.

[5] The Safety Board denied the waiver petition finding that the relief requested was more appropriately addressed through the rulemaking process and that there was a lack of supporting data submitted with the waiver request.

(FMEA). According to AAR, the data provided in its petition for rulemaking supports the conclusion that time off-air does not correlate with higher failure rates. Page one of Appendix 7 of AAR's petition includes data submitted by seven (7) Class 1 railroads from the period between March 1, 2017, and March 1, 2018. According to AAR, the data shows that line of road failures (expressed as emergency brake applications), for which a specific mechanical cause is not found, occurred 0.20 times per million car miles in Canada, where a valid air brake inspection may remain off-air for 24 hours or longer; while the equivalent line of road failure rate on US railroads is 0.27 times per million car miles, where a valid air brake inspection may only remain off-air for four hours. AAR contends safety improvements in air brake technology should further mitigate safety concerns and support allowing cars to be kept off-air for extended periods of time, well beyond 24 hours, without requiring a Class I brake test. For example, AAR states that leakage on standing trains has been greatly reduced by welded brake piping and fittings and ferrule-clamped air hoses (the rail industry no longer uses grip type fittings, in accordance with interchange rules). In addition, AAR cites continuous improvements in car control valves since the last regulatory change as well as industry adoption of federal requirements to perform biannual inspections on yard air systems and oil and contaminant separators to keep the compressed air clean. AAR also contends that providing a 24-hour off-air period would help harmonize US and Canadian regulations, as Canadian regulations currently permit cars to be off-air for up to 24 hours without the equivalent of a Class I brake test.

In this NPRM, FRA is responding to AAR's petition for rulemaking by proposing to change the off-air requirements. As noted above, AAR's petition, and its included data sets, have been placed in the docket to this proceeding. FRA finds that the supporting information provided by AAR demonstrates that a reasonable extension of time permitted under the off-air requirement could improve railroad efficiency and would not impact the safety of railroad operations. FRA agrees that the technological improvements cited by AAR have been beneficial in improving the overall health of brake systems. In addition, when considering an extension of permissible off-air time, FRA finds the data provided by AAR in Appendix 7 of its petition, comparing Canadian and U.S. operations, supportive of AAR's request. The data provided by AAR shows a lower, yet statistically insignificant, rate of line-of-road failures (*i.e.,* failures found en route on an operating train, not by inspectors or otherwise while standing still) attributed to air brakes in Canada (allowing 24 hours off-air) than in the United States (allowing only 4 hours off-air). The data also includes same-railroad results (based on CN and CP data) showing fewer undesired and unintended emergency brake applications occurring in Canada than in the United States. *See* AAR Petition for Rulemaking, July 12, 2018, Appendix 7, Slide 4. FRA seeks comments and information as to what reasons there may be for Canada's lower rates of air-brake-related failures that would better inform FRA of the off-air requirement's impact.

Furthermore, by extending the time that equipment is permitted to remain off-air without requiring additional brake testing, the AAR predicts a significant reduction in tests performed for this reason, decreasing wait times, and increasing network velocity. AAR states an extension of the off-air requirement will also reduce locomotive idling times spent providing a source of compressed air and will allow railroads to eliminate older sources of yard air, but will also ensure that brakes are inspected often enough to ensure they are in proper working condition. Accordingly, in this NPRM, FRA proposes to extend the off-air limitation from 4 hours to 24 hours in §§ 232.205, 232.209, 232.211, and 232.217. FRA seeks comments on this proposal. FRA also seeks comments on the accuracy and sufficiency of the data supplied by AAR to support this relief.

In the 2001 final rule revising the regulations governing power brake systems, FRA extended the time from two hours to four hours during which equipment may remain off-air without additional inspection. In its conclusion to limit the amount of time that equipment may be off-air to four hours, FRA noted its concern that in certain circumstances, the length of time that equipment is off air can impact the equipment's air brake system particularly in cold weather or in areas where the potential for vandalism is high due to the equipment left standing. Further, FRA stated:

> [I]f equipment were allowed to be off-air for an excessive amount of time, it would be virtually impossible for FRA to ensure that equipment is being properly retested as it would be extremely difficult for FRA to determine how long a particular piece of equipment was disconnected from a source of compressed air. In order to make such a determination, FRA would have to maintain observation of the equipment for days at a time.

66 FR 4103, 4122, Jan. 17, 2001. FRA recognizes that it may verify off-air duration through train and car movement records, the presence of any ground air sources, and witness interviews. However, FRA remains concerned about how to easily and accurately determine the length of time equipment may have been disconnected from an air source, particularly given the proposal to increase the permissible off-air duration. FRA believes that since 2001, there have been numerous technological and operational advances that provide railroads with the ability to track the amount of time equipment is left off a source of compressed air and that railroads should be able to track the 24-hour off-air period in some manner so that FRA can exercise appropriate oversight where necessary. Rather than propose a specific requirement regarding such tracking, FRA seeks comment on whether such tracking is necessary or whether there are other means by which FRA can determine the amount of time equipment is left off a source of compressed air. In addition, FRA seeks comment on what types of tracking systems or methods might be available to the industry related to this issue and how tracking data should be maintained. FRA requests that commenters also include quantified information on how such a tracking system may burden or benefit each railroad. FRA also seeks comment on how to codify any such requirements.

FRA also recognizes that Canada has permitted equipment to remain off-air without a brake inspection for as long as 48 hours upon notification to Transport Canada (TC). *See* Railway Freight and Passenger Train Brake Inspection and Safety Rule section 11.2(b), Transport Canada, Oct. 27, 2014, available at *https://www.tc.gc.ca/eng/railsafety/rules-tco0184-139.htm#section11* (''A No.1 brake test is not required on: A block swap of cars that have been off-air for no more than 24 hours or 48 hours after notifying the department.''). In practice, FRA understands TC receives only a small number of such notifications per year, almost exclusively during the holidays or special situations such as a labor strike. At most, TC states that two locations provide such notifications up to 1–2 times per month.

While not specifically proposing a similar provision, FRA requests comments on whether to extend the off-air limitation to 48 hours under certain circumstances and conditions, including appropriate, sufficient, and timely notification to FRA. FRA seeks comment on how often this provision is utilized in Canada and under what circumstances it is used and, if FRA were to adopt a similar provision, under what circumstances it should be available, how often it would be utilized, and whether a provision requiring FRA notification of a railroad's use of the provision would be justified. More specifically, FRA seeks proposals concerning the documentation, contents, timing, delivery, acknowledgment, and memorialization of any potential notification requirement. FRA recognizes that §§ 232.207(c)(2) and 232.213(a)(1) already include notification procedures and seeks comments on those provisions' potential applicability in this instance.

FRA also requests comment on potential regulatory alternatives to a time-off-air limit that would address the same safety risks and ensure that, despite equipment being off air for any length of time, that equipment's air brakes are in proper working condition. FRA recognizes that time off-air may not be directly linked to brake failures, but given the multitude of variables that can affect brake system integrity (*e.g.,* environmental factors such as temperature and humidity, operational factors (*e.g.,* use of power braking, time taken to inspect equipment, quality of compressed air from locomotives or yard air plants), age, and overall condition of the equipment), FRA has not identified a feasible alternative to the off-air requirement. Despite the many technical advancements in air brake technology, with the exception of certain specialized air brake systems such as electronically-controlled pneumatic brakes, the structure of air brake systems on rail equipment involves many connections, which by nature cause the systems to experience gradual leaks once removed from an air source. For example, in its investigation of the 2013 Lac-Mégantic, Quebec accident, the Transportation Safety Board of Canada (TSB), cited two instances of air brake failures where brake systems of rail equipment failed after being left off-air for approximately one hour. In the first instance, TSB cited weather conditions as the cause of the failure and in the second instance, TSB cited the condition of the equipment itself. *See* TSB Railway Investigation Report R13D0054 (*available at tsb.gc.ca*). Accordingly, FRA recognizes that a time-off-air requirement does not directly protect against all air brake failures, but FRA has not yet identified an effective alternative. FRA requests comments on whether any potential alternatives to the off-air requirement exist that are potentially less burdensome and more efficient, while ensuring the same level of safety. FRA also invites comment on what, if any, additional changes to the off-air requirement could be made to make the requirement even less burdensome than proposed in this rule, including, but not limited to, extending the proposed 24-hour window to longer windows (*e.g.,* 36 or 48 hours and under what conditions such extensions would be warranted). FRA asks that commenters specifically explain how any alternatives identified would meet the statutory requirement of 49 U.S.C. 20302(d)(2) requiring any changes to the regulations governing the ''installing, inspection, maintaining, and repair'' of train air brakes be made ''only for the purpose of achieving safety.''

Existing § 232.205 provides two methods for conducting Class I brake tests on pressure-maintaining brake valves such as the standard 26–L brake valve: (1) A leakage test; or (2) an air flow method test. *See* § 232.205(c)(1)(i), (ii). It is physically impossible to prevent all leakage from a train's brake pipe given the mechanical connections between cars' air hoses (*i.e.,* a certain amount of air will always leak through the mechanical connections) and each method of testing measures the pressure drop in a train's brake pipe in different ways. The leakage test measures the amount of compressed air leaking from the brake pipe, while the air flow test method measures the amount of compressed air the pressure maintaining valve is putting back into the brake pipe in order to maintain the line's pressure. Regardless of the test method employed, existing § 232.205 requires the pressure at the rear of the train to be within 15 psi of the pressure that the train will be operated at (known as the ''pressure taper'').

When conducting a Class I test using the air flow method, existing paragraph (c)(1)(ii)(B) prohibits brake pipe leakage from exceeding 60 cubic feet per minute (CFM). FRA proposes increasing the limit to 90 CFM when distributed power (DP) or an air repeater unit is utilized.

The traditional air flow test is measured from a single point of air flow, at the controlling locomotive of the train. In other words, the traditional air flow test method is measuring the amount of air the controlling locomotive's brake system is putting back into the train's brake pipe. Because the air originates at a single source (the controlling locomotive) and travels sequentially through each car's air brake system, each connected via a mechanical air hose, gradually the pressure in the train's airline tapers off. DP trains have locomotives located at two or more locations in the train, providing a uniform distribution of power to reduce unwanted in-train forces, and providing for multiple supplies of air brake pressure and control. Similarly, air brake repeater boxcars or containers mounted in well cars have been used to provide multiple sources of air brake pressure and control. When DP locomotives or air repeater units are used to conduct Class I brake tests, air in the train line is controlled from each of those sources, resulting in the pressure through the brake pipe being better maintained.

Canadian railroads have operated with the higher air flow limit of 90 CFM on DP trains since 2011. In 2013, BNSF demonstrated on a train of 110 grain cars that, when air pressure is provided at each end of the train consist through DP, a maximum 90 CFM air flow would only reduce the brake pipe pressure by 8 psi, well within the 15 psi pressure taper limit of § 232.205(c)(1)(i)(A). Brake propagation rates were found to be comparable to 60 CFM levels. After consideration of BNSF's data and test findings, the Safety Board permitted a test waiver to test the concept and develop data on the use of 90 CFM airflow on DP trains. *See* Docket No. FRA–2012–0091.

Under this waiver, BNSF, CN, CP, and UP operated test trains with oversight by a test committee comprised of railroad representatives, AAR brake committee members, affected labor representatives, air brake and DP equipment manufacturers, an FRA test monitor, and others involved with the operation of DP trains at higher CFM air flows (over 60 CFM, but less than 90 CFM). All testing procedures and parameters were subject to a consensus of the entire test committee, and the approval of the FRA test monitor. Between December 5, 2013, and January 13, 2017, the test committee supervised operation of 68 trains. All 68 trains operated safely and without incident. One unintentional brake release occurred that the test committee concluded was an anomaly and not related to the test. FRA subsequently granted these railroads a standard waiver without the need for test committee supervision under Docket No. FRA–2012–0091.

In light of the proven safety and efficacy of the waiver, FRA proposes the use of a 90 CFM air flow limit on distributed power and air brake repeater equipped trains. *See* proposed

§ 232.205(c)(ii)(B). The waivers permitted this flexibility subject to various conditions to ensure safety. FRA recognizes that the conditions in those waivers may be railroad- or territory-specific. To ensure the same level of safety intended by FRA when establishing the conditions applicable to each railroad's waiver operations, but to allow for continued flexibility, FRA proposes requiring that each railroad implement operating rules to ensure compliant operation of a train if air flow exceeds these parameters after the Class I brake test is completed. *See* proposed § 232.205(c)(1)(ii)(B). In other words, an operating plan amended in accordance with this proposal would replace many of the restrictions and conditions of an associated waiver. A railroad may consider using the applicable waiver's conditions as a template or starting point when drafting their operating rules on this subject. FRA seeks comments on this proposal.

Current § 232.205(c)(1)(iii) requires air flow indicator calibration at least every 92 days and prohibits the calibration of air flow test orifices at temperatures below 20 degrees Fahrenheit. These standards were developed during a 1998 rulemaking incorporating into regulation the conditions from a previous waiver. *See* 63 FR 48294, 48305, Sept. 9, 1998. However, in that rulemaking, FRA noted one railroad's report that it had problems calibrating the devices in extremely cold weather until it calibrated both components of the devices used (the AFM indicator and the test orifice) at temperatures of 20 degrees Fahrenheit and above. *See* 63 FR 48294, 48305, Sep. 9, 1998. In other words, to accurately calibrate the devices, the entire AFM system—not just the test orifices—must be calibrated at not less than 20 degrees Fahrenheit.

However, in the 1998 rule, FRA failed to specify that both the AFM indicator and the test orifice must be calibrated at temperatures of 20 degrees Fahrenheit or above. Currently, BNSF is conducting a test waiver to study the safety and efficacy of extending the AFM calibration period to 184 days. During that proceeding, the AFM Test Waiver Committee determined that an air flow indicator (not calibration test orifice) calibrated at below 20 degrees F will not be able to maintain the required ±3 CFM accuracy at high (*i.e.,* > 90 degrees F) ambient temperatures. *See* Docket No. FRA–2016–0086. The Committee brought this to FRA's attention when it was effectively reminded of this original 1998 comment by the poor results of calibrating the AFM at lower temperatures.

Under the law of volumes (also known as Charles's Law), when the pressure on a sample of dry gas (ideally dry and without condensation or other contaminants) is held constant, the Kelvin temperature and the volume will be in direct proportion. This also means that as the temperature rises and the volume expands, the flow through the calibration orifice will change. Because of Charles's Law, when train brake air pressure is calibrated at very low temperatures, the temperature-volume relationship will cause air flow at high ambient temperatures to be outside the permitted accuracy of ±3 CFM. Therefore, FRA proposes clarifying that the temperature of the AFM indicator and the test orifices, must be considered during calibration to insure accuracy.

FRA proposes new paragraph (c)(1)(v) to codify long-standing FRA guidance regarding the compliant handling of an inoperative or out-of-calibration AFM indicator. As noted above, because § 232.205 allows railroads to choose between two methods of performing Class 1 brake tests: (1) The traditional leakage test; or (2) the air flow method using an AFM indicator, the installation and use of an AFM indicator is optional and the primary method of the leakage test (a test that does not require an AFM indicator) is always available.

Under the Locomotive Inspection Act (the ''Act''; 49 U.S.C. 20701), a locomotive and its ''appurtenances'' must be ''in proper condition and safe to operate'' before it can be placed in service. FRA's Locomotive Safety Standards (49 CFR part 229) implement the Act. Under the Act, if a locomotive or appurtenance of a locomotive does not meet the ''in proper condition and safe to operate'' standard, it may not be placed in service. *See* 49 CFR 229.7. Because the use of an AFM indicator is optional and is not necessary for a locomotive to be ''in proper condition and safe to operate'', an AFM indicator is not an appurtenance to the locomotive under the Act. Accordingly, the daily inspection requirements of part 229 do not apply to an AFM indicator.

To clarify the rules applicable to noncompliant or out of calibration air flow indicators, FRA proposes to add a new paragraph (c)(1)(v) addressing AFM indicators. This proposed new paragraph would prohibit the use of an AFM indicator not in compliance with part 232, require a noncompliant AFM indicator to be tagged under § 232.15(b), with the tag to be placed in a conspicuous location of the controlling locomotive cab. Furthermore, FRA recognizes that part 229 (at § 229.29(g)) currently requires the date of a locomotive's AFM indicator's calibration to be recorded on the locomotive's blue card (*i.e.,* the Locomotive and Inspection Repair Record (FRA Form F 6180.49A)). FRA believes this requirement has merit and will complement the proposal in this rule to tag noncompliant AFM indicators under § 232.15(b). To consolidate the rules related to AFM indicators, FRA may consider removing this requirement from part 229 and moving it to part 232 in this or a future rulemaking to consolidate the rules related to AFM indicators. FRA seeks comments on this proposal.

Section 232.209 Class II Brake Tests—Intermediate Inspection

FRA proposes amending the off-air requirements of this section. Please refer to the off-air requirements analysis provided for § 232.205.

Section 232.211 Class III Brake Tests-Trainline Continuity Inspection

FRA proposes amending the off-air requirements of this section. Please refer to the off-air requirements analysis provided for § 232.205.

Section 232.213 Extended Haul Trains

Under existing § 232.213, a railroad may be permitted to move a train up to, but not exceeding, 1,500 miles between brake tests and inspections if the railroad designates a train as an extended haul train and the train meets certain requirements. On March 1, 2019, AAR submitted a petition for rulemaking that, if granted, would allow rail cars with a valid electronic air brake slip system (''eABS'') record to travel up to 2,500 miles between brake tests and inspections. In this NPRM, FRA is addressing only foundational requirements, such as the 24-hour off-air proposal, that could support the full implementation of eABS. However, FRA intends to address eABS in a future proceeding.

For a train to qualify as an extended haul train, paragraph (a)(1) requires the railroad to, in writing, designate the train as an extended haul train and provide certain information to FRA, including ''[t]he type or types of equipment the train will haul.'' *See* 49 CFR 232.213(a)(1)(iii). This provision requiring a train description was issued in lieu of requiring specific identification of every train and is necessary to facilitate FRA's ability to independently monitor a railroad's operation of these extended haul trains. The applicable NPRM, to which the final rule stated it was not making changes, indicated that the requirement was to also help ensure ''that a train is in safe and proper condition to travel a prescribed distance without further inspection.'' 59 FR 47676, 47693, Sept. 16, 1994.

Since the final rule was published, railroads have periodically supplied FRA with spreadsheets identifying their extended haul trains and providing the required information. Over time, some railroads have changed the format of their spreadsheet submissions and FRA has generally accepted an abbreviated identification of each train type as long as it is sufficiently descriptive. However, recently railroads have included very generic equipment type references on their submissions (*e.g.,* ''general merchandise,'' ''manifest,'' ''any''). These very generic descriptions are not adequate to inform FRA what the type of equipment a train is hauling and FRA is taking this opportunity to remind railroads of the need to identify with sufficient clarity the type of equipment being hauled in extended haul trains. FRA seeks comments and information on how to achieve such clarity on what level of description FRA should expect. Given that this provision is intended to ensure FRA can differentiate extended haul trains from non-extended haul trains for oversight purposes, FRA also seeks comments on whether there is a better way to differentiate such trains. FRA considered alternatives to the requirement for railroads to designate trains to FRA in advance as extended haul trains, but short of developing recordkeeping and retention requirements which would necessarily include more detailed information than currently required so that FRA could distinguish between extended haul and non-extended haul trains and determine whether brake tests and other inspections were performed as required, FRA did not identify any less burdensome method. FRA requests comments, however, on any potential alternatives that would achieve the same result as the designation currently required.

When designating the train in writing to FRA, paragraph (a)(1)(iv) also requires the railroad to identify ''the locations where all train brake and mechanical inspections and tests will be performed.'' In other words, the submission must include the location of *every* expected brake and mechanical inspection, not only the Class I inspections performed by a qualified mechanical inspector, on the designated train. A failure to notify FRA of the locations the required initial or intermediate brake tests are performed could result in a violation for non-compliance. FRA has previously exercised enforcement discretion and has not objected to railroads changing the designated locations of brake tests and mechanical inspections of extended haul trains provided the railroad utilizes the notification procedures applicable to Class IA inspections (§ 232.207(c)(2)), or if the railroad provides an updated electronic spreadsheet identifying the locations. FRA believes that this notification procedure is appropriate for extended haul trains in the event of an emergency that alters normal train operations such as a derailment. Accordingly, FRA proposes to add a new paragraph (a)(8) mirroring the notification procedure of § 232.207(c)(2) that would allow railroads the flexibility to designate different inspection and test locations for extended haul trains under certain circumstances. FRA believes that codification of this practice would provide the railroads a flexible reporting procedure, and ultimately regulatory certainty, to address emergency circumstances involving extended haul operations. FRA seeks comment on this proposal.

Section 232.213 previously provided for an inbound inspection of all extended haul trains. Certain related requirements sunset on April 1, 2007, without further FRA action, and FRA formally removed those requirements in 2008. *See* 73 FR 61511, 61523, 61553, Dec. 15, 2008. Nevertheless, several other references to the inbound inspection remain. FRA proposes to edit paragraphs (a)(5) and (a)(6) and modify numbering, where necessary, to provide clarity and to remove language that is no longer applicable. FRA seeks comments on this proposal.

FRA also requests comments on potential regulatory alternatives to the existing extended haul provisions of § 232.213, potential improvements that could be made to the section to clarify or expand the provision, or whether this provision could be eliminated by the adoption of certain alternative standards or requirements. For example, the section currently distinguishes between inspections conducted by ''qualified mechanical inspectors'' and ''qualified persons'' (both of which are defined in § 232.5). FRA requests comments and data on whether this distinction is still justified and necessary. FRA also requests comments on the utility and feasibility of extending the mileage limits between brake inspections the section contains and what, if any, safety data would support extensions of those limits. As noted above, FRA intends to address issues such as mileage limitations between brake tests in a separate rule addressing eABS as requested by AAR.

Section 232.217 Train Brake Tests Conducted Using Yard Air

FRA proposes amending the off-air requirements of this section. Please refer to the off-air requirements analysis provided for § 232.205.

Section 232.219 Double Heading and Helper Service

Section 232.219 provides regulations for the operation of double headed and helper locomotives in a train including when Helper Link or a similar technology is used to control the emergency brake function on helper locomotive consists. The rule, as written, is appropriate for a train with an EOT device; however, the rule is not compatible with trains that are not equipped with traditional EOT devices, including ECP-brake operated trains and trains with DP units in lieu of an EOT device. To address this issue, BNSF and MRL both sought regulatory relief from the requirements in 49 CFR 232.219. *See* Docket Nos. FRA–2014–0013 and FRA–2006–26435. BNSF originally sought relief for ECP brake-configured train consists, and MRL sought relief for DP consists with one or more DP (non-helper) locomotives on the rear. FRA conditionally granted both waiver requests. Since granting this relief, there has been no known negative impact on safety involving these operations.

FRA believes that codifying BNSF's and MRL's respective waiver requests would improve efficiency and is consistent with railroad safety. As such, FRA proposes new paragraph (d) permitting use of a properly installed and tested EOT device on the helper locomotive that is cut-in to the train line air supply. However, each railroad would ensure its safe operation by developing and implementing an associated operating rule consistent with parts 221 (concerning marker light display) and 232 (concerning EOT device installation and testing) and the conditions established in the waivers discussed above. FRA seeks comments on this proposal.

Section 232.305 Single Car Air Brake Tests

For conducting the single car air brake tests prescribed by § 232.305(b), FRA has incorporated by reference AAR Standard S–486–04. AAR Standard S–486–04 was issued by AAR in 2004 and incorporated by reference into § 232.305(a) by FRA in 2008. *See* 73 FR 61553, 61522, 61553, Oct. 16, 2008. Under the processes outlined in § 232.307—which allows the industry to request FRA approval of modifications to a currently acceptable single car air brake test procedure—FRA approved the use of AAR Standard S–486–18 in May 2018. *See* Docket No. FRA–2018–0011.

The purpose of S–486 is to provide a means of making a general check on the condition of the brake equipment on cars as called for in the Filed Manual of the AAR Interchange Rules. Only Sections 4 and 5 are codified as these are the tests that ensure safe operation of individual freight car brakes to comply with the Safety Appliance Act. Other sections of the Standard contain supplemental information that are not codified to provide flexibility to be updated without meeting Federal requirements. These include troubleshooting guidance and information on the maintenance and construction of the physical testing devices.

AAR Standard S–486–18 is the industry's current, most updated standard for conducting single car air brake tests, and includes provisions for testing valves equipped with brake cylinder maintaining features that the 2004 version does not. In this rulemaking, FRA proposes to update the rule text to reflect these approved changes. More specifically, FRA proposes that paragraph (a) incorporate by reference AAR Standard S–486–18.

In addition to updating the referenced version of AAR Standard S–486, FRA also proposes incorporating by reference AAR Standard S–4027, which provides for a more automated version of the single car air brake test. For example, while the manual test is dependent upon the visual acuity of the carmen performing the inspection to read an analog gage to within 1 psi, an automated test can digitally measure and record a pressure to within the more exact 0.1 psi and does not require the same visual acuity on the part of the carmen performing the inspection. The testing device also provides electronic prompts and feedback to the carmen, ensuring that the test is performed in a consistent manner.

BNSF and UP jointly petitioned FRA to allow use of AAR Standard S–4027, ''Automated Single-Car Test Procedure, Conventional Brake Equipment,'' in lieu of AAR Standard S–487. *See* Docket No. FRA–2013–0030. AAR Standard S–4027, while based on the requirements of AAR Standard S–486, includes automated processes to perform a single car air brake test with an automated single car test device (ASCTD). More specifically, the standard produces performance uniformity between each ASCTD regardless of manufacturer and describes the SCT procedure and the minimum performance that must be demonstrated to achieve AAR approval. Sections 3 and 4 are codified as they pertain to an automated tester connected to the end of a freight car, while section 13 pertains to an automated test performed from the side of a car using the four-pressure manifold. These sections include the tests that ensure safe operation of individual freight car brakes to comply with the Safety Appliance Act. AAR most recently updated AAR Standard S–4027 in 2018.

To be clear, FRA proposes to formally update the incorporated by reference AAR Standard S–486–04 to S–486–18, which has already gone through the § 232.307 approval process. That standard concerns traditional single car air brake tests. In the alternative, if a railroad wishes to perform an automated single car air brake test, FRA proposes to incorporate by reference AAR Standard S–4027–18.

In 2013, FRA granted a conditional test waiver permitting a two-year period between automated single car testing procedures and establishing a test committee comprised of representatives from the air brake manufacturers, affected labor representatives, FRA, railroad representatives, AAR brake committee members, and others involved in ASCTD manufacture and operations. *See* Docket No. FRA–2013–0030. Under the consensus procedures established by the test committee and an FRA test monitor, BNSF, CN, CSX, and UP tested more than 800,000 freight cars over 4.5 years. The results appear to support the railroads' original test thesis that ASCTD testing would provide an average 11.5 percentage point reduction in repeat failures (measured as failure occurring within one year of a single car test). The actual testing showed small differences between manual and automated tests initially but increasing differences over time. After one year, the rate of repeat failures for ASCTD-tested cars was 5 percentage points lower than manually-tested cars, and 12 percentage points lower after 4.5 years. Moreover, while a traditional SCT device has a single hose connecting to the brake system to measure all functions, an ASCTD may utilize separate hoses to independently measure test pressures at their original sources on cars equipped with a four-pressure manifold for a more precise test (*i.e.,* a four-pressure automated test). Freight cars tested with a four-pressure automated test provided a repeat failure rate of only about 5%, representing a 12-percentage point improvement over a traditional single car test after one year. After 4.5 years, four-pressure tested cars widened their margin over manually-tested cars by 42 percentage points, or about a 58% reduction in the rate of repeat failures. The test committee also found that ASCTDs generally identify more relevant air brake system defects in the categories of air components, control valves and pipe brackets, valves and subsystems, and other tests. Lastly, the test waiver data has shown that a car tested with an ASCTD is 26% less likely to have an AAR-condemnable wheel impact load detector (WILD) indication, with four-pressure showing an even better 70% improvement. Docket No. FRA–2013–0030 contains a summary of the test committee's findings. FRA seeks comments on the above assessments and the applicability and sufficiency of those findings.

With the knowledge gained under the test waiver, FRA believes AAR Standard S–4027 improves efficiencies and overall brake system health and is consistent with railroad safety. Therefore, FRA believes the standard is sufficiently mature and ripe for regulatory consideration as a standalone-standard under paragraph (a). FRA seeks comments on this proposal.

Paragraph (b) identifies the events triggering a required single car air brake test. For instance, under paragraph (b)(2), ''a railroad shall perform a single car air brake test on a car when a car is on a shop or repair track . . . for any reason and has not received a single car air brake test within the previous 12-month period.'' Based on the results performed by the tests under Docket No. FRA–2013–0030, and the ability of the subject technology to provide a more comprehensive testing of the braking system, FRA feels it is warranted to propose an extension of time between single car air brake tests using this technology. Accordingly, FRA proposes relaxing the requirements under paragraph (b)(2) by only requiring a single car air brake test on ASCTD tested cars appearing on a shop or repair track within the past 24 months; and extend the period for cars tested with the four-pressure ASCTD test to 48 months. FRA believes the data found under the test waiver supports this change. FRA seeks comments on this proposal.

FRA also requests comments on the need to maintain the dual timeframes for conducting single car air brake tests in paragraphs (b)(2) and (c). Recognizing this framework was originally established based on an industry request to replace mandatory system overhaul with more frequent qualification testing, and that there are certain efficiencies gained by performing the single car air brake tests when they are already on a repair track, FRA specifically requests comments on whether the repair yard provision of paragraph (b)(2) should be eliminated so that a single car air brake test would be required only every five years or when the brake system is impacted as contemplated under paragraph (b)(4). FRA understands that, on a daily basis, thousands of individual freight cars (out of the approximately 1.2 million freight cars in the North American fleet) are overdue for their single car air brake test. FRA requests comment on the effect the potentially eliminating the repair track provision of paragraph (b)(2) may have on this statistic and any policies to mitigate this potential issue.

Section 232.403 Design Standards for One-Way End-of-Train Devices

Section 232.403 includes design standards for one-way EOT devices. More specifically paragraphs (d)(6) and (f)(4) include shock requirements for the rear unit and front unit, respectively, referring to a 0.1 second window.

FRA technical staff believes a time window of 0.1 seconds is too large for maintaining a peak shock threshold and is likely a typographical or other error from a previous rulemaking. FRA proposes harmonizing the shock requirements in paragraphs (d)(6) and (f)(4) with the 0.01 second peak shock threshold in AAR Standards S–9152 and S–9401. FRA seeks comments on this proposal.

Since traditional EOT devices rely on batteries as a power source, paragraph (g)(2) requires a minimum EOT device battery life of 36 hours at 0 °C. Manufacturers have developed EOT devices that rely less on batteries and more on an internal air-powered generator. The air-powered generator converts mechanical energy—created by the brake pipe air pressure—into electricity used to power the EOT device.

FRA has provided conditional waivers providing relief from this requirement for EOT devices using an air-powered generator as a power source. *See* Docket Nos. FRA–2006–25794 and FRA–2001–9270. In the interest of railroad safety, FRA required each subject EOT device to include a back-up battery—with a minimum operating life of 12 hours at 0 °C—in the event the air-powered generator stops functioning. FRA further required each subject railroad to submit annual reports providing the number of units provided to the railroad, identifying any device modifications, and summarizing air-powered generator-powered EOT device performance.

To date, FRA has not received any reports of accidents due to EOT device operations under these waivers. The railroads initially provided annual reports with EOT device data supplied by their manufacturers. However, after the safety of air turbines was well-established, the reports were reduced to a summary provided every five years along with the waiver renewal request. *See* Docket No. FRA–2001–9270. Upon review, FRA believes that the conditions originally applied to the waiver are no longer necessary to ensure railroad safety due to the railroad industry's continued safe operation with air-driven, alternator-equipped EOT devices. Accordingly, FRA proposes codifying the waivers in proposed new paragraph (g)(3) to provide for use of an air-powered generator as a primary power source as long as it operates with a backup battery with a minimum of 12 hours of continuous power at 0 °C. FRA believes this change would improve efficiency and is consistent with railroad safety. FRA seeks comments on this proposal. Specifically, FRA seeks comments on (1) what factors should be used to determine which source should be considered the primary power supplier and how FRA and the industry should quantify measuring those sources to determine primacy; (2) whether the proposal to require any backup battery to have a minimum of 12 hours of continuous power at 0 °C is sufficient; (3) whether the reference temperature of 0 °C is appropriate or if another reference temperature would be more appropriate; and (4) the best methods for FRA and the industry to accurately measure each battery's initial charge at installation.

Section 232.407 Operations Requiring Use of Two-Way End-of-Train Devices; Prohibition on Purchase of Nonconforming Devices

Section 232.407(f)(2) deals with battery charging requirements for two-way EOT devices. This requirement applies to a main battery storing the energy necessary to power the EOT device. However, with an air-powered generator, the energy created is used to either directly power the EOT device, charge the back-up battery, or both. FRA proposes adding language to the end of paragraph (f)(2) requiring the testing of air-powered generator-equipped devices to determine the residual charge of the back-up battery before initiating operation. This requirement is meant to ensure that the generator back-up battery has a minimal residual charge, which will ensure that it is working properly and is capable of temporarily powering the EOT device should the air-powered generator fail.

Section 232.409 Inspection and Testing of End-of-Train Devices

Section 232.409 includes requirements for EOT device inspection and testing. More specifically, existing paragraph (d) requires each EOT device's telemetry equipment be tested at least every 368 days for accuracy and calibrated, if necessary, in accordance with the manufacturer's specifications and procedures.

The need for periodic telemetric equipment calibration has been reduced by technological advances that include continuous feedback such as phase-lock loop (PLL). FRA has granted multiple waiver requests, providing conditional relief from the 368-day calibration requirement when using PLL or a similar feedback loop technology. In the interest of railroad safety, FRA required vendors to apply a weather-resistant label on each EOT device covered under the applicable dockets and the waiver recipients—*e.g.,* DPS, Ritron, Siemens, and Wabtec—to file annual reports indicating the number of covered EOT devices purchased and the number that failed to operate as intended. *See, e.g.,* Docket Nos. FRA–2015–0044; FRA–2012–0096; FRA–2009–0015; and FRA–2004–18895.

FRA has received no reports of PLL-equipped radios not failing in a fail-safe manner. When a PLL-equipped radio is turned on and does not complete its ''sum check'' function—the initializing software routine to check system health—because frequency cannot be verified, it simply will not operate. Based on data garnered from the required annual reporting on these waivers, summarized in the renewal applications contained in the applicable dockets, FRA believes incorporating the waivers into the regulations is consistent with railroad safety and will provide railroads added flexibility to improve the efficiency of their operations. Accordingly, FRA proposes revising paragraph (d) to require telemetry equipment to be ''tested for accuracy and calibrated if necessary according to the manufacturer's specifications and procedures,'' effectively codifying the existing waivers from paragraph (d)'s calibration requirement. FRA seeks comments on this proposal.

While § 232.409 includes EOT device inspection and testing requirements, including testing of ''radio frequencies and modulation of the device,'' it does not include calibration requirements for EOT device air pressure sensors (*i.e.,* air gauges or transducers in lieu of gauges).

FRA proposes new paragraph (e) to address this apparent omission.

FRA's locomotive safety standards (49 CFR part 229) currently require annual calibration of those electronic gauges that are part of the locomotive equipment or otherwise used to perform single car tests or train brake tests conducted using yard air. *See* 49 CFR 229.27(b), 232.217(d), and 232.309(c). Specifically, paragraphs (a) and (b) of § 229.27 require each device that: (1) Engineers use to aid in the control or braking of a train or locomotive; and (2) provides an indication of air pressure electronically, to be tested by comparison at least every 368 days with a test gauge or self-test designed for this purpose. While FRA believes that, as written, § 229.27 applies to the air pressure sensor in an EOT device since the air pressure reading at the EOT device is used to control the train, FRA believes this requirement should be more explicit. Accordingly, in proposed new paragraph (e), FRA proposes to cross-reference § 229.27. FRA seeks comments on this proposal.

FRA is concerned with the safety risks associated with loss of communications events between the controlling locomotive and the EOT device, including both those exceeding 16 minutes and 30 seconds (''en route failure''), thereby prompting a notification to the locomotive engineer, and those not exceeding the en route failure threshold but go unreported to the engineer. Under § 232.405(b), the front unit must listen for acknowledgment of a signal from the rear unit and must repeat the brake application command if the acknowledgment is not correctly received. However, recent reports indicate various controlling locomotives have failed to send an emergency application signal to the EOT device after 2-minutes of not receiving a signal from the rear end unit. Initial field reports indicate that some railroads remain unaware of the level of communication loss experienced. Accordingly, FRA seeks comments on the frequency and duration of communications losses; what operational and technological solutions for communication loss the industry has considered and implemented; what should be done to ensure an emergency signal is sent and received by the system when needed even in the event of a temporary communications loss; and what has and should be done to alert the locomotive engineer that a loss of communication has occurred. FRA encourages the use of modern event, fault, and data logging technology now contained in many onboard systems and, accordingly, FRA is particularly interested in comments on the feasibility and availability of these types of technology to address the issue of temporary communications loss.

Section 232.603 Design, Interoperability, and Configuration Management Requirements

FRA is revising paragraph (a) and adding paragraph (g) to meet the formatting and structure requirements for incorporation by reference under 1 CFR part 51. FRA proposes to update the standards in paragraphs (a)(1), (a)(2), (a)(4), (a)(6), and (a)(7). The purposes of the standards are as follows: S–4200 ensures uniform and consistent functionality and performance of ECP freight brake systems from different manufacturers; S–4210 provides the qualification test procedure to verify that the designed components have high reliability, will withstand harsh environmental conditions, and have a minimum 8-year operating life; S–4230 facilitates freight car and locomotive interoperability without limiting the proprietary design approaches used by individual suppliers and defines the requirements for an intratrain communications (ITC) system for freight equipment in revenue interchange service; S–4250 ensures uniform, consistent, and interoperable functionality and performance between devices developed by different manufacturers, by defining the high-level performance requirements to operate multiple locomotives via an ITC network; and S–4260 identifies the test procedure that individual suppliers would complete to establish the interoperability baseline among ECP/WDP (wire distributed power) systems that comply with the AAR S–4200 series of standards.

The standard referenced in paragraphs (a)(3), (a)(5), and (a)(8) are the most updated versions, so FRA does not propose to revise those paragraphs.

FRA seeks comments on these updates.

Subpart H—Tourist, Scenic, Historic, and Excursion Operations Braking Systems

FRA proposes to create a new subpart H and move appendix B, with some revisions, to that new subpart. Appendix B was created to preserve part 232 as it existed prior to the 2001 final rule and was intended to apply to tourist, scenic, historic, and excursion operations.[6] To retain the historic integrity of the text, FRA made subsequent changes in a separate appendix narrative titled ''Clarifications.'' FRA recognizes that such a regulatory solution may be confusing and eventually, unwieldy and, therefore, is proposing to move the requirements of appendix B into a new subpart H. FRA seeks comments on this proposal.

For the most part, proposed subpart H reflects the exact text of appendix B. However, when converting § 232.17 in appendix B to proposed § 232.717, FRA proposes to add paragraph (b)(2) to reference AAR Standard S–4045–13, which establishes for passenger equipment cars operating in the U.S. and Canada standard maintenance practices and operating requirements, including the periodic inspection requirements for air brake cleaning, repairing, lubricating, and testing (known in the industry as ''clean, oil, test, and stencil'' or ''COT&S'').

This proposed addition would change the brake inspection requirements from AAR Standard S–045 to S–4045–13 which would extend the timeline related to periodic brake valve inspections, based upon the safety experience of the waiver at Docket No. FRA–2013–0063 and experience with the extended period for inspections at 49 CFR 238.309(d)(2) and (3) for conventional passenger equipment.[7] Railroads using 26–C type valves would now be required to test those valves every 60 months (instead of 48 months). Similarly, railroads using D–22 type valves would now be required to test those valves every 48 months (instead of 36 months). FRA seeks comments on codifying this AAR standard.

FRA also proposes to amend paragraph (b)(3) to provide AAR and APTA's updated addresses.

[6] On May 31, 2001, FRA issued an update to part 232. Some of the prior rule text was preserved in section I of appendix B to part 232, which remains applicable to tourist, scenic, historic, or excursion railroads on the general system of transportation, who have not been required to operate under present parts 232 or 238. *See* §§ 232.1(d) and 232.3(c)(5); 66 FR 4104, 4145–46, 4214, Jan. 17, 2001.

[7] AAR Standard S–045 contains the periodic COT&S inspection requirements for air brakes. However, AAR Standard S–045 has been out-of-print since 1985 and is no longer supported by AAR. FRA discovered that many railroads not governed by part 238 (Passenger Equipment Safety Standards) were utilizing the periodic attention requirements of section 238.309 instead of the correct requirements under part 232, appendix B. FRA suspects the confusion of applicability and compliance may be partly due to AAR Standard S–045 cited in appendix B being out of print. In 2013, upon notification of this situation, AAR updated and reissued the standard as AAR Standard S–4045–13. In December 2013, FRA issued a waiver to permit the use of AAR Standard S–4045–13 in lieu of the specified and out-of-print AAR Standard S–045 as incorporated by reference in section 232.17(b)(2) to appendix B. *See* Docket No. FRA–2013–0063.

FRA proposes to add paragraph (c) to allow tourist, scenic, historic, and excursion railroads to develop a compliant plan for servicing obsolete brake equipment. Under this proposal, these railroads—when utilizing equipment not covered by an applicable, available, and incorporated AAR standard—would only have to maintain the equipment in a safe and suitable condition for service according to a railroad's written maintenance plan. A compliant maintenance plan, including its COT&S component and a periodic attention schedule, must be based upon a standard appropriate to the equipment. For example, a compliant plan might utilize a recognized industry standard or a former AAR interchange standard to the extent it is modified to account for the unique operating conditions of the particular tourist railroad operation. The railroad must make its written maintenance plan available to FRA upon request.

While FRA expects some individual railroads may develop their own written maintenance plans, FRA understands that HeritageRail Alliance, or a similar industry organization, may develop a consensus industry standard for the periodic maintenance of this brake equipment. FRA does not anticipate developing a formal special approval procedure for these written maintenance plans in order to allow flexibility in their development. However, when informally evaluating maintenance plans, FRA will consider the appropriate AAR-published standard in the last year a valve appeared in the Code of Rules or the Field Manual, the usage of the equipment, scheduled interim single car tests, and the railroad's past history of compliance.

FRA recognizes that there may not be a sufficient regulatory understanding of what it means to be a tourist, scenic, historic, or excursion railroad. FRA seeks comments on the applicability of this section and potential definition to capture the intended regulatory entities.

FRA proposes paragraph (d) to provide a means by which parties may seek approval of updated, revised, or alternative standards currently incorporated into appendix B and to be recodified under subpart H. FRA further proposes to include in paragraph (d) a streamlined public notice process for future modifications to those incorporated references. FRA proposes that this text mirror the standard air brake document modification language found in current §§ 232.307 and 232.603(f). FRA believes these proposed additions would: (1) Implement appropriate safety measures better tailored to small operations; (2) make permanent presently granted relief in Docket No. FRA–2013–0063; and (3) significantly decrease the burden of hours spent on waiver documentation and uncertainty of continued use, while maintaining appropriate safety. FRA seeks comments on this proposal.

Based on the proposed amendments, FRA believes that the text in § 232.3, proposed subpart H, and elsewhere may require additional amendments other than those proposed in this rule for clarity and cross-referencing purposes. FRA seeks suggestions and comments on such changes.

FRA recognizes that some of the requirements in current appendix B also exist elsewhere in part 232. For instance, the requirements of paragraphs (c) through (e) to § 232.0 in appendix B, proposed to be recodified as § 232.700(c) through (e), may already be covered under §§ 232.5, 232.9, and 232.11, and that the requirements of § 232.3 in appendix B, proposed to be recodified as § 232.703, may already be covered by § 232.103(l). FRA seeks comments on whether these or similar requirements are duplicative and should not be included in subpart H. FRA also seeks comments on how to otherwise streamline and clarify appendix B as it is recodified as subpart H.

Appendix B makes various references to AAR Code of Rules and AAR Code of Tests.[8] FRA understands that the titles of documents have since been changed to the Field Manual of the AAR Interchange Rules and the Manual of Standards and Recommended Practices, respectively. While FRA addresses this change in proposed § 232.717(c), FRA seeks comments on how to better revise proposed subpart H to account for this change. FRA also seeks comments on how manage future changes to such AAR documents while ensuring future compliance with 1 CFR part 51.

IV. Regulatory Impact and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This NPRM is a significant regulatory action in accordance with existing policies and procedures under E.O. 12866. The scope of this analysis is limited to the revisions that FRA is proposing to make to the parts 218, 221, and 232. FRA concluded that because this NPRM generally includes only voluntary actions or alternative action by designated entities that would be voluntary, this NPRM does not impart additional burdens on regulated entities.

In accordance with these Executive Orders, FRA identified various waivers that warrant consideration for regulatory codification. In particular, FRA is proposing to incorporate into regulations several motive power and equipment waivers providing conditional exceptions to existing rules concerning air brake testing, EOT devices, brake valves, and helper service. More specifically, FRA is proposing changes to the regulations affecting the use of EOT devices, Helper Link devices or similar technologies, and the performance of Class I air brake tests and single car air brake tests (SCT). FRA is also proposing to extend the time freight rail equipment can be ''off-air'' before requiring a new brake inspection. Furthermore, FRA is also proposing technical corrections to existing regulations.

FRA estimated the cost savings of this proposed rule. The cost savings of this proposed rule are provided in the table below.

COST SAVINGS OVER 10-YEAR PERIOD

[Values in millions]

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Helper Link	$3.9	$4.5	$0.6	$0.5

[8] FRA notes that the introductory text of section II, along with other places in sections I and II of appendix B to part 232, references AAR's ''Code of Tests,'' ''Code of Rules,'' and ''Manual of Standards and Recommended Practices.'' The Power or Train Brakes Safety Appliance Act of 1958 required that FRA's predecessor, the Interstate Commerce Commission, adopt as its own certain AAR rules, standards, and instructions. *See* Public Law 85–375, 72 Stat. 86 (Apr. 11, 1958), *available at https://www.gpo.gov/fdsys/pkg/STATUTE-72/pdf/STATUTE-72-Pg86.pdf,* and codified at 23 FR 3150, May 13, 1958. Some of those AAR standards were commonly referred to as AAR's ''Code of Tests'' or ''Code of Rules.'' AAR subsequently changed the Code of Rules to the ''Field Manual of the AAR Interchange Rules,'' and incorporated the Code of Tests into the ''AAR Manual of Standards and Recommended Practices.''

COST SAVINGS OVER 10-YEAR PERIOD—Continued

[Values in millions]

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
D–22 Brake Valve	0.5	0.6	0.07	0.07
26–C Brake Valve	0.2	0.3	0.04	0.03
24-Hour Off-air	325.6	386.2	46.4	45.3
90 CFM	1.8	2.1	0.3	0.2
SCT 24 month	150.7	176.1	21.5	20.6
SCT 48 month	19.5	23.8	2.8	2.8
Waiver Cost Savings	0.1	0.1	0.01	0.01
Total	502.2	593.7	71.5	69.6

Over a 10-year period of analysis, the total cost savings are $502.2 million (using a 7% discount rate), and $593.7 million (using a 3% discount rate). The annualized cost savings are $71.5 million (using a 7% discount rate) and $69.6 million (using a 3% discount rate).

By way of explaining the above table, among the EOT device waivers incorporated into the NPRM, the waiver allowing a Helper Link (or similar technology) equipped train to use an alternative air brake test procedure will result in cost savings. The Helper Link technology reduces the employees' time in uncoupling the helper locomotive from the train so that it may be turned around to help other trains ascend steep grades. FRA bases its estimate of cost savings on this reduced labor time. For the 26–C and D–22 type brake valves, FRA is extending the time before these types of valves need to be inspected and cleaned, resulting in fewer tests and labor savings. FRA is also extending the time before a Class I brake test must be conducted on rail equipment that is not connected to a source of compressed air prior to being operated in a train again, from 4 hours to 24 hours. FRA estimates railroads will accrue savings from performing fewer brake tests, less locomotive idling time to keep rail cars on compressed air (including reduced fuel consumption), and less use of yard air sources. This provision will result in annualized cost savings of $46 million (using a 7% discount rate), the largest category of cost savings.

Similar to the flexibility provided by other waivers, permitting an increase in brake pipe leakage to 90 CFM under certain conditions will allow railroads to conduct air brake tests without having to wait for additional crews (to test in higher daytime temperatures), or run shorter trains. The efficiencies gained through codifying the 90 CFM waiver are monetized in the table above. Finally, FRA expects large cost savings by increasing the time between single car air brake tests from 12 to 24 months for automated tests, and to 48 months for automated tests using a four-pressure receiver. FRA estimates the longer interval between tests for rail cars using automated tests (about 1.1 million freight cars out of 1.6 million freight cars in service) will result in the monetized time savings shown in the table.

Separately, FRA expects the regulated community to submit fewer waiver requests, and requests for waiver extensions to FRA for the regulatory parts subject to this NPRM. FRA generally approves waivers for five years and may extend them upon request. Given the NPRM codifies these waivers, railroads and suppliers will save the cost of applying and re-applying for these waivers. These collective savings are represented in the Waiver Cost Savings category in the table.

FRA estimates this proposed rule would not impose any costs on the industry. This NPRM generally increases flexibility for the regulated entities by codifying waivers. It does not impose any new substantive requirements. Railroads and suppliers may choose voluntarily to take advantage of the flexibilities under this NPRM. However, under proposed § 232.409(e), FRA is clarifying the EOT device air pressure sensor needs to be tested annually. As this section clarifies an existing regulatory requirement, FRA is not accounting for these costs in the overall analysis for this rulemaking, but acknowledges railroads may incur a burden to calibrate the air pressure sensor on the EOT device. The burdens are further described in the regulatory evaluation accompanying this NPRM.

Therefore, the net cost savings of this proposed rule are equal to the cost savings. The table below shows the total net cost savings (values in millions).

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Net Cost Savings	$502.2	$593.7	$71.5	$69.6

The net cost savings are $502.2 million (7% discount rate) and $593.7 million (3% discount rate). The annualized net cost savings are $71.5 million (7% discount rate) and $69.6 million (3% discount rate).

As is discussed in the NPRM above, FRA does not believe that these provisions would have a negative impact on the safety of railroad operations. In fact, codifying several of the waivers may result in positive safety benefits for railroad employees. In general, the EOT device waivers, appendix B updates, 24-hour off-air, and automated single car tests will all reduce the frequency of air brake tests and inspections. Fewer brake tests and inspections will reduce the time employees are walking on potentially uneven ground such as track ballast (typically crushed stone), and reduce their chances of slipping, tripping, or falling. Also, railroad employees may reduce their chances of injury because they would spend less time moving in and around rail cars while connecting and disconnecting equipment for the brake test and checking equipment such as the brake pipe. For air brake tests conducted in yards, less frequent brake tests would likely result in employees reducing their exposure to adjacent train traffic. FRA has not quantified these safety benefits because it does not have injury data specifically from conducting brake tests. FRA invites comment on the potential safety benefits from codifying these waivers.

B. Regulatory Flexibility Act and E.O. 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FRA seeks comment on the potential small business impacts of the requirements in this NPRM. FRA prepared an IRFA, which is included as an appendix to the accompanying Regulatory Impact Analysis and available in the docket for the rulemaking (FRA 2018–0093), to aid the public in commenting on the potential small business impacts of the requirements in this NPRM.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement is as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar equivalent cost
229.27—Annual tests	30,000 locomotives	120,000 forms/filling	15 minutes	30,000 hours	$2,160,000
232.3—Applicability—Export, industrial, & other cars not owned by railroads-identification.	741 railroads	8 cards	10 minutes	1 hour	72
232.7—Waivers	741 railroads	2 petitions	160 hours	320 hours	23,360
232.15—Movement of Defective Equipment—Tags/Records.	1,620,000 cars	128,400 tags/records	2.5 minutes	5,350 hours	385,200
—Written Notification	1,620,000 cars	25,000 notices	3 minutes	1,250 hours	92,500
232.17—Special Approval Procedure					
—Petitions for special approval of safety-critical revision.	741 railroads	1 petition	100 hours	100 hours	7,300
—Petitions for special approval of pre-revenue service acceptance plan.	741 railroads	1 petition	100 hours	100 hours	7,300
—Service of petitions	741 railroads	1 petition	20 hours	20 hours	1,460
—Statement of interest	Public/railroads	4 statements	8 hours	32 hours	2,336
—Comment	Public/railroads	13 comments	4 hours	52 hours	3,796
232.103—Gen'l requirements—all train brake systems—stickers.	114,000 cars	70,000 stickers	10 minutes	11,667 hours	840,024
(n)(7)—RR Plan identifying specific locations or circumstances where equipment may be left unattended.	741 railroads	1 revised plans	10 hours	10 hours	730
—Notification to FRA when RR develops and has plan in place or modifies existing plan.	741 railroads	1 notice	30 minutes	1 hour	73
—Inspection of Equipment by Qualified Employee after Responder Visit.	741 railroads	12 inspections/records	4 hours	48 hours	3,456
232.107—Air source requirements and cold weather operations—Monitoring Plan (Subsequent Years).	10 new railroads	1 plan	40 hours	40 hours	2,920
—Amendments/Revisions to Plan	50 railroads/plans	10 revisions	20 hours	200 hours	14,600
—Recordkeeping	50 railroads/plans	1,150 records	20 hours	23,000 hours	1,679,000
232.109—Dynamic brake requirements—status/record.	741 railroads	1,656,000 records	4 minutes	110,400 hours	8,059,200
—Inoperative dynamic brakes: Repair record	30,000 locomotives	6,358 records	4 minutes	424 hours	30,528
—Tag bearing words "inoperative dynamic brakes".	30,000 locomotives	6,358 tags	30 seconds	53 hours	3,816
—Deactivated dynamic brakes (Sub. Yrs.)	8,000 locomotives	10 markings	5 minutes	1 hour	72
—Operating rules (Subsequent Years)	5 new railroads	5 rules	4 hours	20 hours	1,460
—Amendments/Revisions	741 railroads	15 revisions	1 hour	15 hours	1,095
—Requests to increase 5 mph overspeed restriction.	741 railroads	5 requests	30 min. + 20 hours	103 hours	7,519
—Knowledge criteria—locomotive engineers—Subsequent Years.	5 new railroads	5 amendments	16 hours	80 hours	5,840
232.111—Train handling information	5 new railroads	5 procedures	40 hours	200 hours	14,600
Sub. Yrs.—Amendments/Revisions	100 railroads	100 revisions	20 hours	2,000 hours	146,000
—Report requirements to train crew	741 railroads	2,112,000 reports	10 minutes	352,000 hours	25,696,000
232.203—Training requirements—Tr. Prog.—Sub Yr.	15 railroads	5 programs	100 hours	500 hours	36,500
—Amendments to written program	741 railroads	695 revisions	8 hours	5,560 hours	405,880
—Training records	741 railroads	67,000 records	8 minutes	8,933 hours	652,109
—Training notifications	741 railroads	67,000 notices	3 minutes	3,350 hours	244,550
—Audit program	741 railroads	1 plan + 695 copies	40 hours/1 min	52 hours	3,796
—Amendments to validation/assessment program.	741 railroads	50 revisions	20 hours	1,000 hours	73,000
232.205—Initial terminal inspection: Class I brake tests and notifications/records.	741 railroads	383,840 notices/records.	45 seconds	4,798 hours	355,052
(c)(1)(ii)(B)—RR Development/implementation of operating rules to ensure compliant operation of train if air flow exceeds stipulated section parameters after Class I brake test is completed (New Requirement).	741 railroads	10 revised operating rules.	8 hours	80 hours	5,840

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar equivalent cost
(c)(1)(iii)—Form 49A notation/certification of last date of Air Flow Method (AFM) indicator calibration (Formally under 229.29b).	741 railroads	88,000 notations	2 minutes	2,933 hours	214,109
232.207—Class 1A brake tests—Designation Lists Where Performed.	741 railroads	1 list	1 hour	1 hour	73
Subsequent Years: Notice of Change to	741 railroads	250 notices	10 minutes	42 hours	3,066
232.209—Class II brake tests-intermediate "Roll-by inspection—Results to train driver.	741 railroads	159,740 comments	3 seconds	133 hours	9,709
232.213—Written Designation to FRA of Extended haul trains.	83,000 long dist. Movements.	250 letters	15 minutes	63 hours	4,599
—Notification to FRA Associate Administrator for Safety/FRA Regional Administrator of a change in the location where an extended haul brake test is performed (New Requirement).	10 railroads	250 notices	10 minutes	42 hours	3,066
232.219—Double heading and helper service: Testing/calibration/records of Helper Link devices used by locomotives (New Requirement).	2 railroads	50 recording of calibrations.	2 minutes	2 hours	148
232.303—General requirements—single car test: Tagging of Moved Equipment.	1,600,000 frgt. cars	5,600 tags	5 minutes	467 hours	33,624
—Last repair track brake test/single car test—Stenciled on Side of Equipment.	1,600,000 frgt. cars	240,000 markings	2 minutes	8,000 hours	576,000
232.307—Modification of single car air brake test procedures: Requests.	AAR	1 request + 3 copies	20 hours + 5 minutes	20 hours	1,460
—Affirmation Statement on Mod. Req. To Employee Representatives.	AAR	1 statement + 4 copies	30 minutes + 5 minutes.	1 hour	73
—Comments on Modification Request	Railroad/Public	2 comments	8 hours	16 hours	1,168
232.309—Repair track brake test	640 shops	5,000 tests	2 minutes	167 hours	12,024
232.403—Unique Code	245 railroads	12 requests	5 minutes	1 hour	73
232.409—Inspection/Tests/Records EOTs	245 railroads	447,500 notices/record	30 seconds	3,729 hours	268,488
—Telemetry Equipment—Testing/Calibration/Rcds (Revised Requirement).	245 railroads	17,000 recording of calibrations.	2 minutes	567 hours	40,824
232.503—Process to introduce new brake technology.	741 railroads	1 letter	1 hour	1 hour	73
—Special approval	741 railroads	1 request	3 hours	3 hours	219
232.505—Pre-revenue svc accept test plan—Submission of maintenance procedure.	741 railroads	1 procedure	160 hours	160 hours	11,680
—Amendments to maintenance procedure	741 railroads	1 revision	40 hours	40 hours	2,920
—Design description	741 railroads	1 petition	67 hours	67 hours	4,891
—Report to FRA Assoc. Admin. for Safety	741 railroads	1 report	13 hours	13 hours	949
—Brake system technology testing	741 railroads	1 description	40 hours	40 hours	2,920
Totals	741 railroads	5,608,433	N/A	578,268	42,159,140

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Clearance Officer, at 202–493–0440, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE, 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Ms. Hodan Wells or Ms. Toone at the following addresses: *Hodan.Wells@dot.gov* and *Kimberly.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated this proposed rule in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); FRA's regulations implementing NEPA; and other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule does not require the the preparation of an environmental impact statement or environmental assessment because it is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), covering, in part, the promulgation of rules.

In addition, in accordance with 23 CFR 771.116(b), the agency has further concluded that no unusual circumstances exist with respect to this proposed rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

E. Federalism Implications

E.O. 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under E.O. 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132. This proposed rule generally codifies existing waivers or makes technical amendments to existing FRA regulations. FRA has determined that this final rule has no federalism implications, other than the possible preemption of state laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of E.O. 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

F. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

G. Energy Impact

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. FRA evaluated this proposed rule in accordance with E.O. 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of the E.O.

E.O. 13783, ''Promoting Energy Independence and Economic Growth,'' requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. *See* 82 FR 16093, March 31, 2017. FRA determined this proposed rule would not burden the development or use of domestically produced energy resources.

H. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, and Reporting and recordkeeping requirements.

49 CFR Part 221

Railroad safety.

49 CFR Part 232

Incorporation by reference, Power brakes, Railroad safety, Securement, Two-way end of train devices.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend parts 218, 221, and 232 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 218—RAILROAD OPERATING PRACTICES

■ 1. The authority citation for part 218 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131, 20138, 20144, 20168, 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Amend § 218.22 by revising paragraph (c) introductory text and paragraph (c)(5) to read as follows:

§ 218.22 Utility employee.

* * * * *

(c) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart B of part 218 of this chapter only under the following conditions:

* * * * *

(5) The utility employee is performing one or more of the following functions: Set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail cars for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and position retaining valves; inspect, test, install, remove or replace a rear end marking device or end of train device; or change batteries on the rear-end marking device or the end-of-train device if the change may be accomplished without the use of tools. Under all other circumstances, a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

* * * * *

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

■ 3. The authority citation for part 221 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 4. Amend § 221.13 by revising paragraph (d) to read as follows:

§ 221.13 Marking device display.

* * * * *

(d) The centroid of the marking device must be located at a minimum of 40 inches above the top of the rail.

■ 5. Amend appendix A to part 221 by revising paragraphs (a)(2)(ii) and (b)(3)(ii) to read as follows:

Appendix A Procedures for Approval of Rear End Marking Devices

* * * * *

(a) * * *

(2) * * *

(ii) The results of the tests performed under paragraph (i) of this subsection demonstrate marking device performance in compliance with the standard prescribed in 49 CFR 221.15;

* * * * *

(b) * * *

(3) * * *

(ii) The results of the tests performed under paragraph (i) of this subsection demonstrate marking device performance in compliance with the standard prescribed in 49 CFR 221.15;

* * * * *

PART 232—BRAKE SYSTEM SAFETY STANDARDS FOR FREIGHT AND OTHER NON-PASSENGER TRAINS AND EQUIPMENT; END-OF-TRAIN DEVICES

■ 6. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–20302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 7. Amend § 232.1 by revising paragraphs (b) and (c) and removing paragraph (d).

The revisions read as follows:

§ 232.1 Scope.

* * * * *

(b) Except as otherwise specifically provided in this paragraph or in this part, railroads to which this part applies must comply with all the requirements contained in this part.

(c) Except for operations identified in § 232.3(c)(1), (4), and (6) through (8), all railroads part of the general railroad system of transportation must operate pursuant to the requirements in subpart H of this part (which contains the requirements in this part 232 as they existed on May 31, 2001), until they are either required to operate pursuant to the requirements contained in this part or the requirements contained in part 238 of this chapter.

■ 8. Amend § 232.3 by revising paragraph (c) introductory text as follows:

§ 232.3 Applicability.

* * * * *

(c) Except as provided in § 232.1(c) and paragraph (b) of this section, this part does *not* apply to:

* * * * *

■ 9. Amend § 232.5 by revising the definition of Air Flow Indictor, AFM and adding definitions for Air repeater unit and APTA in alphabetical order to read as follows:

§ 232.5 Definitions.

* * * * *

Air Flow Method Indicator, AFM means a calibrated air flow measuring device used as required by the air flow method (AFM) of qualifying train air brakes and with information clearly and legibly displayed in analog or digital format and visible in daylight and darkness from the engineer's normal operating position. Each AFM indicator includes:

(1) Markings from 10 to 80 cubic feet per minute (CFM), in increments of 10 CFM or less; and

(2) Numerals indicating 20, 40, 60, and 80 CFM for continuous monitoring of air flow.

Air repeater unit means a car, container, or similar device that provides an additional brake pipe air source by responding to air control instructions from a controlling locomotive using a communication system such as a distributed power system.

APTA means the American Public Transportation Association.

* * * * *

■ 10. Amend § 232.11 by revising paragraph (a) to read as follows:

§ 232.11 Penalties.

(a) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to individuals, or has caused death or injury, a penalty not to exceed the aggravated maximum civil monetary penalty per violation may be assessed. See 49 CFR part 209, appendix A. Each day a violation continues shall constitute a separate offense. FRA's website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part.

* * * * *

§ 232.103 General requirements for all train brake systems.

■ 11. Amend § 232.103 by revising paragraph (l) to read as follows:

* * * * *

(l) Except as otherwise provided in this part, all equipment used in freight or other non-passenger trains must, at a minimum, meet the Association of American Railroads (AAR) Standard S–469–01, ''Performance Specification for Freight Brakes,'' contained in the AAR Manual of Standards and Recommended Practices, Section E (January 1, 2006). The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Association of American Railroads, 425 Third Street SW, Washington, DC 20024, telephone: (202) 639–2345, email: *publications@aar.com,* website: *https://aarpublications.com.* You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (855) 368–4200) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 12. Amend § 232.205 by revising paragraphs (a)(3), (b)(1), (b)(2), (c)(1)(ii)(B), (c)(1)(iii) through (v), and (e) to read as follows:

§ 232.205 Class I brake test-initial terminal inspection.

(a) * * *

(3) A location where the train is off-air for a period of more than 24 hours.

(b) * * *

(1) The solid block of cars is comprised of cars from a single previous train, the cars of which have previously

received a Class I brake test and have remained continuously and consecutively coupled together with the train line remaining connected, other than for removing defective equipment, since being removed from its previous train and have not been off-air for more than 24 hours; or

(2) The solid block of cars is comprised of cars from a single previous train, the cars of which were required to be separated into multiple solid blocks of cars due to space or trackage constraints at a particular location when removed from the previous train, provided the cars have previously received a Class I brake test, have not been off-air more than 24 hours, and the cars in each of the multiple blocks of cars have remained continuously and consecutively coupled together with the train line remaining connected, except for the removal of defective equipment. Furthermore, these multiple solid blocks of cars shall be added to a train in the same relative order (no reclassification) as when removed from the previous train, except for the removal of defective equipment.

(c) * * *

(1) * * *

(ii) * * *

(B) Use a calibrated AFM indicator to measure air flow. A train equipped with at least one distributed power unit or an air repeater unit providing a source of brake pipe control air from two or more locations must not exceed a combined flow of 90 cubic feet per minute (CFM). Otherwise, the air flow must not exceed 60 CFM. Railroads must develop and implement operating rules to ensure compliant operation of a train if air flow exceeds these parameters after the Class I brake test is completed.

(iii) The AFM indicator must be calibrated for accuracy at periodic intervals not to exceed 92 days. The AFM indicator and all test orifices must be calibrated at temperatures of not less than 20 degrees Fahrenheit. AFM indicators must be accurate to within ±3 standard cubic feet per minute (CFM) at 60 CFM air flow.

(iv) For each AFM indicator, its last date of calibration must be recorded and certified on Form F6180–49A.

(v) An AFM indicator not incompliance with this part must:

(A) Not be used, including in the performance of a leakage test or to aid in the control or braking of the train;

(B) Be tagged in accordance with § 232.15(b) and include text that it is ''inoperative'' or ''overdue''; and

(C) Be placed with its tag in a conspicuous location of the controlling locomotive cab.

* * * * *

(e) A railroad must notify the locomotive engineer that the Class I brake test was satisfactorily performed, whether the equipment to be hauled in his train has been off-air for a period of more than 24 hours, and provide the information required in this paragraph to the locomotive engineer or place the information in the cab of the controlling locomotive following the test. The information required by this paragraph may be provided to the locomotive engineer by any means determined appropriate by the railroad; however, a written or electronic record of the information must be retained in the cab of the controlling locomotive until the train reaches its destination. The written or electronic record must contain the date, time, number of freight cars inspected, and identify the qualified person(s) performing the test and the location where the Class I brake test was performed.

* * * * *

■ 13. Amend § 232.209 by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 232.209 Class II brake tests—intermediate inspection.

(a) At a location other than the initial terminal of a train, a Class II brake test must be performed by a qualified person, as defined in § 232.5, on the following equipment when added to a train:

(1) Each car or solid block of cars, as defined in § 232.5, that has not previously received a Class I brake test or that has been off-air for more than 24 hours;

* * * * *

■ 14. Amend § 232.211 by revising paragraphs (a)(3) through (5) to read as follows:

§ 232.211 Class III brake tests-trainline continuity inspection.

(a) * * *

(3) At a point, other than the initial terminal for the train, where a car or a solid block of cars that is comprised of cars from only one previous train the cars of which: (i) Have remained continuously and consecutively coupled together with the trainline remaining connected, other than for removing defective equipment, since being removed from its previous train that has previously received a Class I brake test; and (ii) that has not been off-air for more than 24 hours is added to a train;

(4) At a point, other than the initial terminal for the train, where a solid block of cars that is comprised of cars from a single previous train is added to a train, provided: (i) The solid block of cars was required to be separated into multiple solid blocks of cars due to space or trackage constraints at a particular location when removed from the previous train; (ii) the cars have previously received a Class I brake test; (iii), have not been off-air more than 24 hours; and (iv) the cars in each of the multiple blocks of cars have remained continuously and consecutively coupled together with the train line remaining connected, except for the removal of defective equipment. Furthermore, these multiple solid blocks of cars must be added to the train in the same relative order (no reclassification) as when removed from the previous train, except for the removal of defective equipment; or

(5) At a point, other than the initial terminal for the train, where a car or a solid block of cars that has received a Class I or Class II brake test at that location, prior to being added to the train, and that has not been off-air for more than 24 hours, is added to a train.

* * * * *

■ 15. Amend § 232.213 by:

■ a. Revising paragraph (a)(5);

■ b. Revising paragraphs (a)(6)(i) and (ii); and

■ c. Adding paragraph (a)(8).

The revisions, removals, and addition read as follows:

§ 232.213 Extended haul trains.

(a) * * *

(5) The train must have no more than one pick-up and one set-out en route, except for the set-out of defective equipment pursuant to the requirements of this chapter. Cars added to the train en route must be inspected pursuant to the requirements contained in paragraphs (a)(2) through (5) of this section at the location where they are added to the train.

(6) * * *

(i) If the train will move 1,000 miles or less from that location before receiving a Class IA brake test or reaching destination, a Class I brake test must be conducted pursuant to § 232.205 to ensure 100 percent effective and operative brakes.

(ii) If the train will move greater than 1,000 miles from that location without another brake inspection, the train must be identified as an extended haul train for that movement and must meet all the requirements contained in paragraphs (a)(1) through (5) of this section. Such trains must receive a Class I brake test pursuant to § 232.205 by a qualified mechanical inspector to ensure 100 percent effective and operative brakes, a freight car inspection pursuant to part 215 of this chapter by an inspector designated under § 215.11 of this chapter, and all cars containing noncomplying conditions under part 215 of this chapter must either be repaired or removed from the train.

* * * * *

(8) In the event of an emergency that alters normal train operations, such as a derailment or other unusual circumstance that adversely affects the safe operation of the train, the railroad is not required to provide prior written notification of a change in the location where an extended haul brake test is performed to a location not on the railroad's list of designated locations for performing extended haul brake tests, provided that the railroad notifies FRA's Associate Administrator for Safety and the pertinent FRA Regional Administrator within 24 hours after the designation has been changed and the reason for that change.

* * * * *

■ 16. Amend § 232.217 by revising paragraph (c)(1) to read as follows:

§ 232.217 Train brake tests conducted using yard air.

* * * * *

(c) * * *

(1) If the cars are off-air for more than 24 hours, the cars must be retested in accordance with § 232.205(c) through (f).

* * * * *

■ 17. Amend § 232.219 by adding paragraph (d) to read as follows:

§ 232.219 Double heading and helper service.

* * * * *

(d) As an alternative to paragraph (c), when helping trains equipped with distributed power or ECP brakes on the rear of the train, and utilizing a Helper Link device or a similar technology, a properly installed and tested end-of-train device may be utilized on the helper locomotive. Railroads must adopt and comply with an operating rule consistent with this section to ensure the safe use of this alternative procedure.

■ 18. Amend § 232.305 by revising paragraphs (a) and (b)(2) and adding paragraph (f) to read as follows:

§ 232.305 Single car air brake tests.

(a) Single car air brake tests must be performed by a qualified person in accordance with either Section 3.0, ''Tests-Standard Freight Brake Equipment,'' and Section 4.0, ''Special Tests,'' AAR Standard S–486–18; Section 3.0, ''Single-Car Test Requirements,'' Section 4.0, ''Special Tests,'' and Section 13.0 ''4-Pressure Single-Car Test Requirements,'' AAR Standard S–4027–18; an alternative procedure approved by FRA pursuant to § 232.17; or a modified procedure approved in accordance with the provisions contained in § 232.307.

(b) * * *

(2) A car is on a shop or repair track, as defined in § 232.303(a), for any reason and has not received either: A manual single car air brake test (AAR Standard S–486) within the previous 12-month period; an automated single car air brake test (AAR Standard S–4027 §§ 3.0 and 4.0) within the previous 24-month period; or a 4-pressure single car air brake test (AAR Standard S–4027 § 13.0) within the previous 48-month period;

* * * * *

(f) The Director of the Federal Register approves the incorporation by reference of the standards required in this section into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of the material at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 855–368–4200). You may also inspect the material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* You may obtain the material from the following source(s):

(1) Association of American Railroads (AAR), 425 Third Street SW, Washington, DC 20024, telephone: (202) 639–2345, email: *publications@aar.com,* website: *https://aarpublications.com.*

(i) AAR Standard S–486–18, ''Code of Air Brake System Tests for Freight Equipment,'' 2018.

(ii) AAR Standard S–4027–18, ''Automated Single-Car Test Equipment, Conventional Brake Equipment—Design and Performance Requirements,'' 2018.

(2) [Reserved]

■ 19. Amend § 232.403 by:

■ a. Revising paragraph (d)(6);

■ b. Removing paragraph (f)(4)(iii),

■ c, Revising paragraphs (f)(4)(ii), and (g)(2); and

■ d. Adding paragraph (g)(3).

The revisions and additions read as follows:

§ 232.403 Design standards for one-way end-of-train devices.

* * * * *

(d) * * *

(6) During a shock of 10 g. peak for 0.01 seconds in any axis.

* * * * *

(f) * * *

(4) * * *

(ii) During a shock of 10 g. peak for 0.01 seconds in any axis.

(g) * * *

(2) If power is supplied by one or more batteries only, the operating life must be a minimum of 36 hours at 0 °C.

(3) If power is supplied primarily by an air-powered generator, a backup battery is required with a minimum of 12 hours continuous power at 0 °C in the event the air-powered generator stops functioning as intended.

■ 20. Amend § 232.407 by revising paragraph (f)(2) to read as follows:

§ 232.407 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

* * * * *

(f) * * *

(2) The rear unit batteries must be sufficiently charged at the initial terminal or other point where the device is installed and throughout the train's trip to ensure that the end-of-train device will remain operative until the train reaches its destination. Air-powered generator equipped devices must be tested for residual charge at installation before initiating generator operation.

* * * * *

■ 21. Amend § 232.409 by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 232.409 Inspection and testing of end-of-train devices.

* * * * *

(d) The telemetry equipment must be tested for accuracy and calibrated if necessary according to the manufacturer's specifications and procedures. If the manufacturer's specifications requires periodic calibration of the telemetry equipment, the date and location of the last calibration or test and the name or unique employee identifier of the person performing the calibration or test must be legibly displayed on a weather-resistant sticker affixed to the outside of both the front unit and the rear unit; however, if the front unit is an integral part of the locomotive or is inaccessible, then the information may be recorded on Form FRA F6180–49A instead, provided that the serial number of the unit is recorded.

(e) The air pressure sensor contained in the end-of-train device must be tested at an interval not to exceed 368 calendar days, as specified in § 229.27(b). The date and location of the test and the name or unique employee identifier of the person performing the test must be legibly displayed on a weather-resistant marking device affixed to the outside of the unit.

■ 22. Amend § 232.603 by revising paragraphs (a), (d)(1), and (f) and adding paragraph (g) to read as follows:

§ 232.603 Design, interoperability, and configuration management requirements.

(a) *General.* A freight car or freight train equipped with an ECP brake system must, at a minimum, meet the Association of American Railroads (AAR) standards contained in the AAR Manual of Standards and Recommended Practices related to ECP brake systems listed in paragraph (g) of this section; an alternate standard approved by FRA pursuant to § 232.17; or a modified standard approved in accordance with the provisions contained in paragraph (f) of this section.

* * * * *

(d) * * *. (1) A freight car or freight train equipped with a standalone ECP brake system is excepted from the requirement in § 232.103(l) referencing AAR Standard S–469–01, ''Performance Specification for Freight Brakes.''

* * *

(f) *Incorporation by reference.* The Director of the Federal Register approves the incorporation by reference of the standards required in this section into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC, 202–493–6300 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* You may obtain the material from the following source(s):

(1) Association of American Railroads, 425 Third Street SW, Washington, DC 20024, telephone: (202) 639–2345, email: *publications@aar.com,* website: *https://aarpublications.com.*

(i) AAR S–4200, ''Electronically Controlled Pneumatic (ECP) Cable-Based Brake Systems—Performance Requirements,'' (Revised 2014).

(ii) AAR S–4210, ''ECP Cable-Based Brake System Cable, Connectors, and Junction Boxes—Performance Specifications,'' (Revised 2014).

(iii) AAR S–4220, ''ECP Cable-Based Brake DC Power Supply—Performance Specification,'' Version 2.0 (Revised 2002).

(iv) AAR S–4230, ''Intratrain Communication (ITC) Specification for Cable-Based Freight Train Control System,'' Version 3.0 (Revised 2014).

(v) AAR S–4240, ''ECP Brake Equipment—Approval Procedure'' (Adopted 2007).

(vi) AAR S–4250, ''Performance Requirements for ITC Controlled Cable-Based Distributed Power Systems,'' Version 2.0 (Revised 2014).

(vii) AAR S–4260, ''ECP Brake and Wire Distributed Power Interoperability Test Procedures'' (Revised 2008).

(viii) AAR S–4270, ''ECP Brake System Configuration Management'' (Adopted: 2008).

(2) [Reserved]

(g) *Modification of standards.* The AAR or other authorized representative of the railroad industry may seek modification of the industry standards identified in or approved pursuant to paragraph (f) of this section. The request for modification will be handled and shall be submitted in accordance with the modification procedures contained in § 232.307.

■ 23. Add subpart H to read as follows:

Subpart H—Tourist, Scenic, Historic, and Excursion Operations Braking Systems

Sec.

§ 232.700 Applicability.

(a) Except as provided in paragraph (b), this subpart applies to standard gage railroads.

(b) This subpart does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) As used in this subpart, carrier means ''railroad,'' as that term is defined by 49 CFR 232.5

§ 232.701 Power brakes; minimum percentage.

On and after September 1, 1910, on all railroads used in interstate commerce, whenever, as required by the Safety Appliance Act as amended March 2, 1903, any train is operated with power or train brakes, not less than 85 percent of the cars of such train shall have their brakes used and operated by the engineer of the locomotive drawing such train, and all power-brake cars in every such train which are associated together with the 85 percent shall have their brakes so used and operated.

§ 232.702 Drawbars; standard height.

Not included in this subpart. Moved to 49 CFR part 231.

§ 232.703 Power brakes and appliances for operating power-brake systems.

Requirements are contained in 49 CFR 232.103(l).

Rules for Inspection, Testing and Maintenance of Air Brake Equipment

§ 232.710 General rules; locomotives.

(a) Air brake and hand brake equipment on locomotives including tender must be inspected and maintained in accordance with the requirements of the Locomotive Inspection and United States Safety Appliance Acts and related orders and regulations of the Federal Railroad Administrator (FRA).

(b) It must be known that air brake equipment on locomotives is in a safe and suitable condition for service.

(c) Compressor or compressors must be tested for capacity by orifice test as often as conditions require but not less frequently than required by law and orders of the FRA.

(d) Main reservoirs shall be subjected to tests periodically as required by law and orders of the FRA.

(e) Air gauges must be tested periodically as required by law and orders of the FRA, and whenever any irregularity is reported. They shall be compared with an accurate deadweight tester, or test gauge. Gauges found inaccurate or defective must be repaired or replaced.

(f)(1) All operating portions of air brake equipment together with dirt collectors and filters must be cleaned, repaired and tested as often as conditions require to maintain them in a safe and suitable condition for service, and not less frequently than required by law and orders of the FRA.

(2) On locomotives so equipped, hand brakes, parts, and connections must be inspected, and necessary repairs made as often as the service requires, with date being suitably stenciled or tagged.

(g) The date of testing or cleaning of air brake equipment and the initials of the shop or station at which the work was done shall be placed on a card displayed under transparent covering in the cab of each locomotive unit.

(h)(1) Minimum brake cylinder piston travel must be sufficient to provide proper brake shoe clearance when brakes are released.

(2) Maximum brake cylinder piston travel when locomotive is standing must not exceed the following:

TABLE 1 TO PARAGRAPH (h)

	Inches
Steam locomotives:	
Cam type of driving wheel brake	3½
Other types of driving wheel brakes	6
Engine truck brake	8
Engine trailer truck brake	8
Tender brake (truck mounted and tender bed mounted)	8
Tender brake (body mounted)	9
Locomotives other than steam:	
Driving wheel brake	6
Swivel type truck brake with brakes on more than one truck operated by one brake cylinder	7
Swivel type truck brake equipped with one brake cylinder	8
Swivel type truck brake equipped with two or more brake cylinders	6

(i)(1) Foundation brake rigging, and safety supports, where used, must be maintained in a safe and suitable condition for service. Levers, rods, brake beams, hangars and pins must be of ample strength and must not bind or foul in any way that will affect proper operation of brakes. All pins must be properly applied and secured in place with suitable locking devices. Brake shoes must be properly applied and kept approximately in line with treads of wheels or other braking surfaces.

(2) No part of the foundation brake rigging and safety supports shall be closer to the rails than specified by law and orders of the FRA.

(j)(1) Main reservoir leakage: Leakage from main air reservoir and related piping shall not exceed an average of 3 pounds per minute in a test of three minutes' duration, made after the pressure has been reduced 40 percent below maximum pressure.

(2) Brake pipe leakage: Brake pipe leakage must not exceed 5 pounds per minute after a reduction of 10 pounds has been made from brake pipe air pressure of not less than 70 pounds.

(3) Brake cylinder leakage: With a full service application of brakes, and with communication to the brake cylinders closed, brakes must remain applied not less than five minutes.

(4) The main reservoir system of each unit shall be equipped with at least one safety valve, the capacity of which shall be sufficient to prevent an accumulation of pressure of more than 10 pounds per square inch above the maximum setting of the compressor governor fixed by the chief mechanical officer of the carrier operating the locomotive.

(5) A suitable governor shall be provided that will stop and start the air compressor within 5 pounds above or below the pressures fixed.

(6) Compressor governor when used in connection with the automatic air brake system shall be so adjusted that the compressor will start when the main reservoir pressure is not less than 15 pounds above the maximum brake-pipe pressure fixed by the rules of the carrier and will not stop the compressor until the reservoir pressure has increased not less than 10 pounds.

(k) The communicating signal system on locomotives when used in passenger service must be tested and known to be in a safe and suitable condition for service before each trip.

(l) Enginemen when taking charge of locomotives must know that the brakes are in operative condition.

(m) In freezing weather drain cocks on air compressors of steam locomotives must be left open while compressors are shut off.

(n) Air pressure regulating devices must be adjusted for the following pressures:

TABLE 1 TO PARAGRAPH (n)

	Pounds
Locomotives:	
(1) Minimum brake pipe air pressure:	
Road Service	70
Switch Service	60
(2) Minimum differential between brake pipe and main reservoir air pressures, with brake valve in running position	15
(3) Safety valve for straight air brake	30–55
(4) Safety valve for LT, ET, No. 8–EL, No. 14 El, No. 6–DS, No. 6–BL and No. 6–SL equipment	30–68
(5) Safety valve for HSC and No. 24–RL equipment	30–75
(6) Reducing valve for independent or straight air brake	30–50
(7) Self-lapping portion for electro-pneumatic brake (minimum full application pressure)	50
(8) Self-lapping portion for independent air brake (full application pressure)	30–50
(9) Reducing valve for air signal	40–60
(10) Reducing valve for high-speed brake (minimum)	50
Cars:	
(11) Reducing valve for high-speed brake	58–62
(12) Safety valve for PS, LN, UC, AML, AMU and AB–1–B air brakes	58–62
(13) Safety valve for HSC air brake	58–77
(14) Governor valve for water raising system	60
(15) Reducing valve for water raising system	20–30

§ 232.711 Train air brake system tests.

(a) Supervisors are jointly responsible with inspectors, enginemen and trainmen for condition of train air brake and air signal equipment on motive power and cars to the extent that it is possible to detect defective equipment by required air tests.

(b) Communicating signal system on passenger equipment trains must be tested and known to be in a suitable condition for service before leaving terminal.

(c) Each train must have the air brakes in effective operating condition, and at no time shall the number and location of operative air brakes be less than permitted by Federal requirements. When piston travel is in excess of 10 ½ inches, the air brakes cannot be considered in effective operating condition.

(d) Condensation must be blown from the pipe from which air is taken before connecting yard line or motive power to train.

§ 232.712 Initial terminal road train airbrake tests.

(a)(1) Each train must be inspected and tested as specified in this section by a qualified person at points -

(i) Where the train is originally made up (initial terminal);

(ii) Where train consist is changed, other than by adding or removing a solid block of cars, and the train brake system remains charged; and

(iii) Where the train is received in interchange if the train consist is changed other than by:

(A) Removing a solid block of cars from the head end or rear end of train;

(B) Changing motive power;

(C) Removing or changing the caboose; or

(D) Any combination of the changes listed in paragraphs (a)(1)(iii)(A), (B), and (C).

(2) A qualified person participating in the test and inspection or who has knowledge that it was made shall notify the engineer that the initial terminal road train air brake test has been satisfactorily performed. The qualified person shall provide the notification in writing if the road crew will report for duty after the qualified person goes off duty. The qualified person also shall provide the notification in writing if the train that has been inspected is to be moved in excess of 500 miles without being subjected to another test pursuant to either this section or § 232.713 of this part.

(3) Where a carman is to perform the inspection and test under existing or future collective bargaining agreement, in those circumstances a carman alone will be considered a qualified person.

(b) Each carrier shall designate additional inspection points not more than 1,000 miles apart where intermediate inspection will be made to determine that:

(1) Brake pipe pressure leakage does not exceed five pounds per minute;

(2) Brakes apply on each car in response to a 20-pound service brake pipe pressure reduction; and

(3) Brake rigging is properly secured and does not bind or foul.

(c) Train airbrake system must be charged to required air pressure, angle cocks and cutout cocks must be properly positioned, air hose must be properly coupled and must be in condition for service. An examination must be made for leaks and necessary repairs made to reduce leakage to a minimum. Retaining valves and retaining valve pipes must be inspected and known to be in condition for service. If train is to be operated in electro-pneumatic brake operation, brake circuit cables must be properly connected.

(d)(1) After the airbrake system on a freight train is charged to within 15 pounds of the setting of the feed valve on the locomotive, but to not less than 60 pounds, as indicated by an accurate gauge at rear end of train, and on a passenger train when charged to not less than 70 pounds, and upon receiving the signal to apply brakes for test, a 15-pound brake pipe service reduction must be made in automatic brake operations, the brake valve lapped, and the number of pounds of brake pipe leakage per minute noted as indicated by brake pipe gauge, after which brake pipe reduction must be increased to full service. Inspection of the train brakes must be made to determine that angle cocks are properly positioned, that the brakes are applied on each car, that piston travel is correct, that brake rigging does not bind or foul, and that all parts of the brake equipment are properly secured. When this inspection has been completed, the release signal must be given and brakes released and each brake inspected to see that all have released.

(2) When a passenger train is to be operated in electro-pneumatic brake operation and after completion of test of brakes as prescribed by paragraph (d)(1) of this section the brake system must be recharged to not less than 90 pounds air pressure, and upon receiving the signal to apply brakes for test, a minimum 20 pounds electro-pneumatic brake application must be made as indicated by the brake cylinder gage. Inspection of the train brakes must then be made to determine if brakes are applied on each car. When this inspection has been completed, the release signal must be given and brakes released and each brake inspected to see that all have released.

(3) When the locomotive used to haul the train is provided with means for maintaining brake pipe pressure at a constant level during service application of the train brakes, this feature must be cut out during train airbrake tests.

(e) Brake pipe leakage must not exceed 5 pounds per minute.

(f)(1) At initial terminal piston travel of body-mounted brake cylinders which is less than 7 inches or more than 9 inches must be adjusted to nominally 7 inches.

(2) Minimum brake cylinder piston travel of truck-mounted brake cylinders must be sufficient to provide proper brake shoe clearance when brakes are released. Maximum piston travel must not exceed 6 inches.

(3) Piston travel of brake cylinders on freight cars equipped with other than standard single capacity brake, must be adjusted as indicated on badge plate or stenciling on car located in a conspicuous place near the brake cylinder.

(g) When test of airbrakes has been completed the engineman and conductor must be advised that train is in proper condition to proceed.

(h) During standing test, brakes must not be applied or released until proper signal is given.

(i)(1) When train airbrake system is tested from a yard test plant, an engineer's brake valve or an appropriate test device shall be used to provide increase and reduction of brake pipe air pressure or electro-pneumatic brake application and release at the same or a slower rate as with engineer's brake valve and yard test plant must be connected to the end which will be nearest to the hauling road locomotive.

(2) When yard test plant is used, the train airbrakes system must be charged and tested as prescribed by paragraphs (c) to (g) of this section inclusive, and when practicable should be kept charged until road motive power is coupled to train, after which, an automatic brake application and release test of airbrakes on rear car must be made. If train is to be operated in electro-pneumatic brake operation, this test must also be made in electro-pneumatic brake operation before proceeding.

(3) If after testing the brakes as prescribed in paragraph (i)(2) of this section the train is not kept charged until road motive power is attached, the brakes must be tested as prescribed by paragraph (d)(1) of this section and if

train is to be operated in electro-pneumatic brake operation as prescribed by paragraph (d)(2) of this section.

(j) Before adjusting piston travel or working on brake rigging, cutout cock in brake pipe branch must be closed and air reservoirs must be drained. When cutout cocks are provided in brake cylinder pipes, these cutout cocks only may be closed and air reservoirs need not be drained.

§ 232.713 Road train and intermediate terminal train air brake tests.

(a) Before motive power is detached or angle cocks are closed on a passenger train operated in either automatic or electro-pneumatic brake operation, except when closing angle cocks for cutting off one or more cars from the rear end of train, automatic air brake must be applied. After recouping, brake system must be recharged to required air pressure and before proceeding and upon receipt of proper request or signal, application and release tests of brakes on rear car must be made from locomotive in automatic brake operation. If train is to be operated in electro-pneumatic brake operation, this test must also be made in electro-pneumatic brake operation before proceeding. Inspector or trainman must determine if brakes on rear car of train properly apply and release.

(b) Before motive power is detached or angle cocks are closed on a freight train, brakes must be applied with not less than a 20-pound brake pipe reduction. After recoupling, and after angle cocks are opened, it must be known that brake pipe air pressure is being restored as indicated by a rear car gauge or device. In the absence of a rear car gauge or device, an air brake test must be made to determine that the brakes on the rear car apply and release.

(c)(1) At a point other than an initial terminal where a locomotive or caboose is changed, or where one or more consecutive cars are cut off from the rear end or head end of a train with the consist otherwise remaining intact, after the train brake system is charged to within 15 pounds of the feed valve setting on the locomotive, but not less than 60 pounds as indicated at the rear of a freight train and 70 pounds on a passenger train, a 20-pound brake pipe reduction must be made and it must be determined that the brakes on the rear car apply and release. As an alternative to the rear car brake application and release test, it shall be determined that brake pipe pressure of the train is being reduced as indicated by a rear car gauge or device and then that brake pipe pressure of the train is being restored as indicated by a rear car gauge or device.

(2) Before proceeding it must be known that brake pipe pressure as indicated at rear of freight train is being restored.

(3) On trains operating with electro-pneumatic brakes, with brake system charged to not less than 70 pounds, test must be made to determine that rear brakes apply and release properly from a minimum 20 pounds electro-pneumatic brake application as indicated by brake cylinder gauge.

(d)(1) At a point other than a terminal where one or more cars are added to a train, after the train brake system is charged to not less than 60 pounds as indicated by a gauge or device at the rear of a freight train and 70 pounds on a passenger train. A brake test must be made by a designated person as described in § 232.712(a)(1) to determine that brake pipe leakage does not exceed five (5) pounds per minute as indicated by the brake pipe gauge after a 20-pound brake pipe reduction has been made. After the test is completed, it must be determined that piston travel is correct, and the train airbrakes of these cars and on the rear car of the train apply and remain applied, until the release signal is given. As an alternative to the rear car brake application and release portion of the test, it shall be determined that brake pipe pressure of the train is being reduced as indicated by a rear car gauge or device and then that brake pipe pressure of the train is being restored as indicated by a rear car gauge or device. Cars added to a train that have not been inspected in accordance with § 232.712 (c) through (j) must be so inspected and tested at the next terminal where facilities are available for such attention.

(2)(i) At a terminal where a solid block of cars, which has been previously charged and tested as prescribed by § 232.712 (c) through (j), is added to a train, it must be determined that the brakes on the rear car of the train apply and release. As an alternative to the rear car application and release test, it shall be determined that brake pipe pressure of the train is being reduced as indicated by a rear car gauge or device and then that brake pipe pressure of the train is being restored as indicated by a rear car gauge or device.

(ii) When cars which have not been previously charged and tested as prescribed by § 232.712 (c) through (j) are added to a train, such cars may either be given inspection and tests in accordance with § 232.712 (c) through (j), or tested as prescribed by paragraph (d)(1) of this section prior to departure in which case these cars must be inspected and tested in accordance with § 232.712 (c) through (j) at next terminal.

(3) Before proceeding it must be known that the brake pipe pressure at the rear of freight train is being restored.

(e)(1) Transfer train and yard train movements not exceeding 20 miles, must have the air brake hose coupled between all cars, and after the brake system is charged to not less than 60 pounds, a 15-pound service brake pipe reduction must be made to determine that the brakes are applied on each car before releasing and proceeding.

(2) Transfer train and yard train movements exceeding 20 miles must have brake inspection in accordance with § 232.712 (c)–(j).

(f) The automatic air brake must not be depended upon to hold a locomotive, cars or train, when standing on a grade, whether locomotive is attached or detached from cars or train. When required, a sufficient number of hand brakes must be applied to hold train, before air brakes are released. When ready to start, hand brakes must not be released until it is known that the air brake system is properly charged.

(g) As used in this section, device means a system of components designed and inspected in accordance with § 232.719.

(h) When a device is used to comply with any test requirement in this section, the phrase brake pipe pressure of the train is being reduced means a pressure reduction of at least five pounds and the phrase brake pipe pressure of the train is being restored means a pressure increase of at least five (5) pounds.

§ 232.714 Inbound brake equipment inspection.

(a) At points where inspectors are employed to make a general inspection of trains upon arrival at terminals, visual inspection must be made of retaining valves and retaining valve pipes, release valves and rods, brake rigging, safety supports, hand brakes, hose and position of angle cocks and make necessary repairs or mark for repair tracks any cars to which yard repairs cannot be promptly made.

(b) Freight trains arriving at terminals where facilities are available and at which special instructions provide for immediate brake inspection and repairs, trains shall be left with air brakes applied by a service brake pipe reduction of 20 pounds so that inspectors can obtain a proper check of the piston travel. Trainmen will not close any angle cock or cut the locomotive off until the 20-pound service reduction has been made. Inspection of the brakes and needed repairs should be made as soon thereafter as practicable.

§ 232.715 Double heading and helper service.

(a) When more than one locomotive is attached to a train, the engineman of the leading locomotive shall operate the brakes. On all other motive power units in the train the brake pipe cutout cock to the brake valve must be closed, the maximum main reservoir pressure maintained and brake valve handles kept in the prescribed position. In case it becomes necessary for the leading locomotive to give up control of the train short of the destination of the train, a test of the brakes must be made to see that the brakes are operative from the automatic brake valve of the locomotive taking control of the train.

(b) The electro-pneumatic brake valve on all motive power units other than that which is handling the train must be cut out, handle of brake valve kept in the prescribed position, and air compressors kept running if practicable.

§ 232.716 Running tests.

When motive power, engine crew or train crew has been changed, angle cocks have been closed except for cutting off one or more cars from the rear end of train or electro-pneumatic brake circuit cables between power units and/or cars have been disconnected, running test of train air brakes on passenger train must be made, as soon as speed of train permits, by use of automatic brake if operating in automatic brake operation or by use of electro-pneumatic brake if operating in electro-pneumatic brake operation. Steam or power must not be shut off unless required and running test must be made by applying train air brakes with sufficient force to ascertain whether or not brakes are operating properly. If air brakes do not properly operate, train must be stopped, cause of failure ascertained and corrected and running test repeated.

§ 232.717 Freight and passenger train car brakes.

(a)(1) When a freight car having brake equipment due for periodic attention is on shop or repair tracks where facilities are available for making air brake repairs, brake equipment must be given attention in accordance with the requirements of Rule 4 of the 2020 Field Manual of the AAR Interchange Rules (AAR Field Manual); or an alternative procedure approved by FRA under paragraph (d) of this section. Brake equipment shall then be tested by use of a single car testing device as prescribed by§ 232.305.

(2)(i) When a freight car having an air brake defect is on a shop or repair track, brake equipment must be tested by use of a single car testing device as prescribed by § 232.305.

(ii) All freight cars on shop or repair tracks shall be tested to determine that the air brakes apply and release. Piston travel on a standard body mounted brake cylinder which is less than 7 inches or more than 9 inches must be adjusted to nominally 7 inches. Piston travel of brake cylinders on all freight cars equipped with other than standard single capacity brake, must be adjusted as indicated on badge plate or stenciling on car located in a conspicuous place near brake cylinder. After piston travel has been adjusted and with brakes released, sufficient brake shoe clearance must be provided.

(iii) When a car equipped for use in passenger train service not due for periodical air brake repairs, as indicated by stenciled or recorded cleaning dates, is on shop or repair tracks, brake equipment must be tested by use of single car testing device as prescribed by the applicable standards referenced in § 232.305 or by the American Public Transportation Association (APTA) standard referenced in § 238.311(a) of this chapter. Piston travel of brake cylinders must be adjusted if required, to the standard travel for that type of brake cylinder. After piston travel has been adjusted and with brakes released, sufficient brake shoe clearance must be provided.

(iv) Before a car is released from a shop or repair track, it must be known that brake pipe is securely clamped, angle cocks in proper position with suitable clearance, valves, reservoirs and cylinders tight on supports and supports securely attached to car.

(b)(1) Brake equipment on cars other than passenger cars must be cleaned, repaired, lubricated and tested (''COT&S'') as often as required to maintain it in a safe and suitable condition for service but not less frequently than as required by Rule 4 of the AAR Field Manual.

(2) Brake equipment on passenger cars must be cleaned, repaired, lubricated and tested (''COT&S'') as often as necessary to maintain it in a safe and suitable condition for service but not less frequently than as required in Standard S–4045–13 in the Manual of Standards and Recommended Practices of the AAR or an alternative procedure approved by FRA pursuant to § 232.717(d).

(c) For a brake system once, but no longer, included in AAR's current Code of Rules or Code of Tests (presently known as the Field Manual of the AAR Interchange Rules or the Manual of Standards and Recommended Practices), the brake system must be maintained in a safe and suitable condition for service according to a railroad's written maintenance plan. The maintenance plan, including its COT&S component and a periodic attention schedule, must be based upon a standard appropriate to the equipment. The railroad must comply with and make its written maintenance plan available to FRA upon request.

(d) *Modification of standards.* The AAR or other authorized representative of the railroad industry may seek modification of the industry standards identified in or approved pursuant to paragraph (a) of this section. The request for modification will be handled and must be submitted in accordance with the modification procedures contained in § 232.307 of this part.

(e) *Incorporation by Reference.* The Director of the Federal Register approves the incorporation by reference of the standards required in this section into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of the material at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 855–368–4200). You may also inspect the material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* You may obtain the material from the following source(s):

(1) Association of American Railroads (AAR), 425 Third Street SW, Washington, DC 20024, telephone: (202) 639–2345, email: *publications@aar.com,* website: *https://aarpublications.com.*

(i) Rule 4 of the ''2020 Field Manual of the AAR Interchange Rules''.

(ii) AAR Standard S–4045–13, ''Passenger Equipment Maintenance Requirements,'' 2013.

(2) [Reserved]

§ 232.719 End-of-train devices.

Requirements are contained in Subpart E of this rule.

■ 24. Remove appendices A and B.

Issued in Washington, DC.

Ronald L. Batory,

Administrator.

[FR Doc. 2019–27749 Filed 1–14–20; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 240 and 249b

Disclosure of Payments by Resource Extraction Issuers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249b

[Release No. 34–87783; File No. S7–24–19]

RIN 3235–AM06

Disclosure of Payments by Resource Extraction Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing Rule 13q–1 and an amendment to Form SD to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') relating to disclosure of payments by resource extraction issuers. Section 1504 of the Dodd-Frank Act added Section 13(q) to the Securities Exchange Act of 1934. Section 13(q) directs the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Section 13(q) requires these issuers to provide information about the type and total amount of payments made for each of their projects related to the commercial development of oil, natural gas, or minerals, and the type and total amount of payments made to each government. In addition, Section 13(q) requires a resource extraction issuer to provide information about those payments in an interactive data format.

DATES: Comments should be received by March 16, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment forms (*http://www.sec.gov/rules/proposed.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number S7–24–19 on the subject line.

Paper Comments

• Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–24–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on our internet website (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for website viewing and printing in our Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

We or the staff may add studies, memoranda or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission initially adopted Rule 13q–1 and amendments to Form SD on August 22, 2012. Those rules were vacated by the U.S. District Court for the District of Columbia on July 2, 2013. On June 27, 2016, the Commission adopted a revised version of Rule 13q–1 and amendments to Form SD. On February 14, 2017, the revised rules were disapproved by a joint resolution of Congress pursuant to the Congressional Review Act. Although the joint resolution vacated the 2016 Rules, the statutory mandate under Section 13(q) of the Exchange Act remains in effect. As a result, we are proposing 17 CFR 240.13q–1 (''Rule 13q–1'') and an amendment to Form SD [1] under the Securities Exchange Act of 1934 (''Exchange Act'').[2]

Table of Contents

[1] 17 CFR 249b.400.

[2] 15 U.S.C. 78a *et seq.*

I. Background

A. Section 13(q) of the Exchange Act

Section 13(q) was added to the Exchange Act in 2010 by Section 1504 of the Dodd-Frank Act.[3] It directs the Commission to issue final rules that require each resource extraction issuer to include in an annual report information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. The information must include: (i) The type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals, and (ii) the type and total amount of such payments made to each government.[4]

On August 22, 2012, the Commission adopted Rule 13q–1 and amendments to Form SD (the ''2012 Rules'') as mandated by Section 13(q) of the Exchange Act.[5] The 2012 Rules were vacated by the U.S. District Court for the District of Columbia on July 2, 2013.[6] On June 27, 2016, the Commission adopted a revised version of Rule 13q–1 and amendments to Form SD (the ''2016 Rules'') that addressed the concerns raised in the prior litigation.[7] On February 14, 2017, the 2016 Rules were disapproved by a joint resolution[8] of Congress pursuant to the Congressional Review Act (the ''CRA'').[9] We are proposing a new Rule 13q–1 and amendments to Form SD to implement Section 13(q).[10]

Section 13(q) defines several key terms:

- ''Resource extraction issuer'' means an issuer that is required to file an annual report with the Commission and engages in the commercial development of oil, natural gas, or minerals;[11]
- ''Commercial development of oil, natural gas, or minerals'' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;[12]
- ''Foreign government'' means a foreign government, a department, agency or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;[13] and
- ''Payment'' means a payment that:
  - Is made to further the commercial development of oil, natural gas, or minerals;
  - Is not de minimis; and
  - Includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (the ''EITI'')[14] (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.[15]

Section 13(q) specifies that ''[t]o the extent practicable, the rules . . . . shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.''[16] Although the statutory definition of ''payment'' explicitly refers to the EITI, the provision in Section 13(q) about supporting the Federal Government's commitment to international transparency promotion efforts does not mention the EITI.[17]

Pursuant to Section 13(q), the rules must require a resource extraction issuer to submit the payment information included in an annual report in an interactive data format[18] using an interactive data standard established by the Commission.[19] Section 13(q) defines ''interactive data format'' to mean an electronic data format in which pieces of information are identified using an interactive data standard.[20] It also defines ''interactive data standard'' as a standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.[21] Section 13(q) also requires that the rules include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government:

- The total amounts of the payments, by category;
- The currency used to make the payments;
- The financial period in which the payments were made;
- The business segment of the resource extraction issuer that made the payments;
- The government that received the payments and the country in which the government is located; and
- The project of the resource extraction issuer to which the payments relate.[22]

Section 13(q) further authorizes the Commission to require additional

[3] Public Law 111–203 (July 21, 2010).

[4] 15 U.S.C. 78m(q)(2)(A). As discussed further below, Section 13(q) also specifies that the Commission's rules must require certain information to be provided in an interactive data format.

[5] *See* Release No. 34–67717 (Aug. 22, 2012) [77 FR 56365 (Sept. 12, 2012)] (the ''2012 Rules Adopting Release'') *available at http://www.sec.gov/rules/final/2012/34-67717.pdf. See also* Release No. 34–63549 (Dec. 15, 2010) [75 FR 80978 (Dec. 23, 2010)] (the ''2012 Rules Proposing Release'') *available at http://www.sec.gov/rules/proposed/2010/34-63549.pdf.*

[6] *See API* v. *SEC,* 953 F. Supp. 2d 5 (D.D.C. July 2, 2013). The District Court based its decision on two findings: First, that the Commission misread Section 13(q) to compel the public disclosure of the issuers' reports; and second, the Commission's explanation for not granting an exemption for when disclosure is prohibited by foreign governments was arbitrary and capricious. *See* 953 F. Supp. 2d at 17–19 and 21–23.

[7] *See* Release No. 34–78167 (June 27, 2016) [81 FR 49359 (July 27, 2016)] *available at https://www.sec.gov/rules/final/2016/34–78167.pdf* (the ''2016 Rules Adopting Release''). *See also* Release No. 34–76620 (Dec. 11, 2015) [80 FR 80057 (Dec. 23, 2015)] *available at https://www.sec.gov/rules/proposed/2015/34-76620.pdf* (the ''2016 Rules Proposing Release''). Unless otherwise indicated, comment letters referenced in this release were submitted in connection with the 2016 Rules.

[8] *See* H.R.J. Res. 41, 115th Cong. (2017) (enacted).

[9] 5 U.S.C. 801 *et seq.*

[10] Although the joint resolution vacated the 2016 Rules, the statutory mandate under Section 13(q) remains in effect. We discuss the CRA's requirements for subsequent rulemaking in connection with disapproved rules in Section I.C.2. below.

[11] 15 U.S.C. 78m(q)(1)(D).

[12] 15 U.S.C. 78m(q)(1)(A).

[13] 15 U.S.C. 78m(q)(1)(B).

[14] The EITI is a voluntary coalition of oil, natural gas, and mining companies, foreign governments, investor groups, and other international organizations committed to establishing a global standard (the ''EITI Standard'') for the good governance of oil, gas, and mineral resources. The coalition was formed with industry participation and describes itself as being dedicated to fostering and improving transparency and accountability in resource-rich countries through the publication and verification of company payments and government revenues from oil, natural gas, and mining. *See* Implementing EITI for Impact—A Handbook for Policymakers and Stakeholders (2012) (''EITI Handbook''), at xii. After volunteering to become an EITI candidate, a country must implement a series of requirements set forth in the EITI Standard and complete an EITI validation process to become a compliant member. Although the United States became an EITI candidate country in March 2014, it withdrew its EITI candidacy in November 2017. *See infra* Section II.B.

[15] 15 U.S.C. 78m(q)(1)(C).

[16] 15 U.S.C. 78m(q)(2)(E).

[17] *See id.*

[18] 15 U.S.C. 78m(q)(2)(C).

[19] 15 U.S.C. 78m(q)(2)(D).

[20] 15 U.S.C. 78m(q)(1)(E).

[21] 15 U.S.C. 78m(q)(1)(F).

[22] 15 U.S.C. 78m(q)(2)(D)(ii).

electronic tags that it determines are necessary or appropriate in the public interest or for the protection of investors.[23]

In addition, Section 13(q) requires, to the extent practicable, that the Commission make publicly available online a compilation of the information required to be submitted by resource extraction issuers under the rules.[24] The statute does not define the term compilation.

Finally, Section 13(q) provides that the final rules ''shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year . . . that ends not earlier than one year after the date on which the Commission issues final rules . . .'' [25]

Congress enacted Section 1504 of the Dodd-Frank Act to increase the transparency of payments made by oil, natural gas, and mining companies to governments for the purpose of the commercial development of their oil, natural gas, and minerals. According to Senator Richard Lugar, who co-sponsored the amendment that was the basis for this statutory provision, a goal of requiring transparency was to provide more information to the global commodity markets and ''help empower citizens to hold their governments to account for the decisions made by their governments in the management of valuable oil, gas, and mineral resources and revenues.'' [26]

B. International Transparency Promotion Efforts

In 2013, the European Parliament and Council of the European Union (''EU'') adopted two directives that include payment disclosure rules.[27] The EU Accounting Directive and the EU Transparency Directive (the ''EU Directives'') are very similar in content. Both determine the applicability and scope of the disclosure requirements and set the baseline in each EU member state and European Economic Area (''EEA'') [28] country for annual disclosure requirements for oil, gas, mining, and logging companies concerning the payments made to governments on a per country and per project basis.[29] All EU member states have implemented both of the EU Directives.[30] Norway has also adopted regulations similar to the EU Directives.[31]

Canada adopted a Federal resource extraction disclosure law, the Extractive Sector Transparency Measures Act (''ESTMA''), which went into effect on June 1, 2015.[32] In March 2016, Canada finalized its ESTMA Guidance [33] and the ESTMA Technical Reporting Specifications (''ESTMA Specifications''), which provide guidelines for complying with the ESTMA disclosure regime.[34] ESTMA covers entities that are engaged in the commercial development of oil, gas, or minerals or that control another entity that is engaged in those activities, subject to certain limitations.[35] Public reporting under ESTMA was required for fiscal years beginning after June 1, 2015.[36]

On March 19, 2014, the United States became an EITI candidate country,[37] following which the United States Extractive Industries Transparency Initiative (the ''USEITI'') submitted reports for 2015 and 2016. On November 2, 2017, the United States withdrew as an EITI implementing country.[38] It has, however, maintained

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[23] *Id.*

[24] 15 U.S.C. 78m(q)(3).

[25] 15 U.S.C. 78m(q)(2)(F).

[26] *See* 156 Cong. Rec. S3816 (daily ed. May 17, 2010).

[27] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (''EU Accounting Directive''); and Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Directive 2007/14/EC on the implementation of certain provisions of Directive 2004/109/EC (''EU Transparency Directive'').

[28] *See* European Commission Memo (June 12, 2013) (''New disclosure requirements for the extractive industry and loggers of primary forests in the Accounting (and Transparency) Directives (Country by Country Reporting)—frequently asked questions''). The EEA is composed of the EU member states plus Iceland, Liechtenstein, and Norway.

[29] The EU Accounting Directive regulates disclosure of financial information by all ''large'' companies incorporated under the laws of an EU member state or those of an EEA country, even if the company is privately held, and requires covered oil, gas, mining, and logging companies to disclose specified payments to governments. *See* Article 3(4) of the EU Accounting Directive, which defines ''large undertakings'' (*i.e.,* large companies) to mean those which on their balance sheet dates exceed at least two of the three following criteria: (a) Balance sheet totaling €20 million; (b) net turnover of €40 million; and (c) average number of employees of 250. The EU Transparency Directive applies these disclosure requirements to all companies listed on EU-regulated markets even if they are not registered in the EEA or are incorporated in other countries. *See* EU Transparency Directive, Art. 2(1)(d) and Art. 6.

[30] Resource extraction issuers commenced filing reports under the EU Directives for 2015 and have since annually filed such reports. According to the National Resource Governance Institute (''NRGI''), approximately 90 U.K.-reporting companies have entered their fourth annual round of public payments to governments disclosures in 2019. *See* NRGI, *U.K. Financial Regulator Confirms Extractive Companies Must Name Government Entities to Which They Make Payments* (April 25, 2019), *available at https://resourcegovernance.org/blog/uk-financial-regulator-confirms-extractive-companies-must-name-govts-they-pay*; *see also* BHP Billiton's Economic Contribution Report 2018, *available at https://www.bhp.com/investor-centre/-/media/documents/investors/annual-reports/2018/bhpeconomiccontributionreport2018.pdf*; BP p.l.c.'s Report on Payments to Governments for the year ended December 31, 2018, *available at https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-report-on-payments-to-governments-2018.pdf*; and Royal Dutch Shell's Payments to Governments Report for the Year 2017, *available at https://www.shell.com/sustainability/transparency/payments-to-governments/_jcr_content/par/textimage.stream/1554163266774/0354390d1d06f4fe154700810bc50102817feb82/royal-dutch-shell-the-payments-to-governments-report-for-the-year-2018.pdf*.

[31] *See* PWYP-Norway, *Norwegian Regulations concerning country-by-country reporting* (Feb. 24, 2014), *available at http://www.publishwhatyoupay.no/en/node/16414,* which provides an English translation of the Norwegian source document, Forskrift om land-for-land rapportering (Dec. 20, 2013), *available at https://www.regjeringen.no/no/dokumenter/forskrift-om-land-for-land-rapportering/id748525/*.

[32] *See* ESTMA, 2014 S.C., ch. 39, s. 376 (Can.).

[33] ESTMA Guidance *available at https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA%E2%80%93Guidance.pdf*.

[34] ESTMA Specifications *available at https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA%E2%80%93TRS.pdf*.

[35] ESTMA, Section 2. The reporting obligation applies to (a) an entity that is listed on a stock exchange in Canada; (b) an entity that has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years: (i) It has at least $20 million (CAD) in assets, (ii) it has generated at least $40 million (CAD) in revenue, (iii) it employs an average of at least 250 employees; and (c) any other prescribed entity. ESTMA, Section 8.

[36] Links to reports made under ESTMA can be found on Natural Resources Canada's website at *https://www.nrcan.gc.ca/mining-materials/estma/18198*.

[37] When becoming an EITI candidate, a country must establish a multi-stakeholder group, including representatives of civil society, industry, and government, to oversee implementation of the EITI. The stakeholder group for a particular country agrees to the terms of that country's EITI plan, including the requirements for what information will be provided by the governments and by the companies operating in that country. Generally, under the EITI, companies and the host country's government submit payment information confidentially to an independent administrator selected by the country's multi-stakeholder group, which is frequently an independent auditor. The auditor reconciles the information provided to it by the government and by the companies and produces a report. While the information provided in the reports vary among countries, the reports must adhere to the EITI requirements provided in the EITI Standard. *See* the EITI's website at *http://eiti.org*.

[38] *See* letter from Gregory Gould, Director of the Office of Natural Resources Revenue, U.S. Department of the Interior, to Fredrik Reinfeldt, Chair of the EITI (Nov. 2, 2017) (noting ''the fact that the U.S. laws prevent us from meeting specific

its status as a supporting country of the EITI.[39]

C. The 2016 Rulemaking and Congress's Actions Under the CRA

1. Key Aspects of the 2016 Rules

The 2016 Rules provided for issuer-specific, public disclosure of payment information broadly in line with the standards adopted under other international transparency promotion regimes, including the EU Directives, ESTMA and the EITI. The 2016 Rules differed from the 2012 Rules in certain key aspects. These aspects included:

• Defining project to mean ''operational activities governed by a single contract, license, lease, concession, or similar legal agreement, which forms the basis for payment liabilities with a government;'' [40]

• Adopting a targeted exemption to permit issuers to delay reporting payment information in connection with certain exploratory activities for one year; [41]

• Revising the definition of ''control'' under the 2012 Rules, which had relied on the definition of control under Exchange Act Rule 12b–2,[42] by basing the definition instead on applicable accounting principles; [43]

• Adopting an alternative reporting mechanism whereby issuers would be able to meet the requirements of the 2016 Rules by providing disclosure that complies with a foreign jurisdiction's or the USEITI's resource extraction payment disclosure requirements if they are deemed ''substantially similar'' by the Commission; [44]

• Adopting transitional relief for issuers that had recently acquired companies, where such companies had not previously been subject to the Section 13(q) rules or another ''substantially similar'' jurisdiction's requirements in its last full fiscal year; [45]

• Expressly permitting the submission of requests for exemptive relief on a case-by-case basis; [46] and

• Including a provision requiring the Commission's staff, to the extent practicable, to periodically make available online a public compilation of the payment information required to be filed by issuers on Form SD.[47]

In other respects, the 2016 Rules were the same or similar to the 2012 Rules. For example, under both sets of rules:

• There was no broad, rule-based exemption for situations where a foreign law or contract term prohibited the payment disclosure;

• A resource extraction issuer had to provide the payment information, including the issuer's identity, publicly on Form SD; [48]

• Form SD was to be filed with, and not furnished to, the Commission, thereby making the payment disclosure subject to liability under Section 18 of the Exchange Act; [49]

• The definitions for ''foreign government'' and ''federal government'' were the same under both sets of rules; [50]

• The definitions for ''payment'' [51] and ''commercial development of oil, natural gas, or minerals'' [52] were similar under both sets of rules; and

• Issuers had to electronically tag the payment information using the eXtensible Business Reporting Language (''XBRL'') electronic format.[53]

2. Congressional Disapproval Under the CRA

On February 14, 2017, the President signed a joint resolution of Congress disapproving the 2016 Rules pursuant to the CRA. Members of the House and the Senate who supported the joint resolution expressed a number of concerns with the 2016 Rules. The principal concerns focused on the potential adverse economic effects of the rules. Specifically, members expressed the view that the 2016 Rules would impose undue compliance costs on companies,[54] undermine job growth and burden the economy,[55] and impose competitive harm to U.S. companies relative to foreign competition.[56]

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provisions of the EITI Standard''). This letter is available at *https://www.doi.gov/sites/doi.gov/files/uploads/eiti_withdraw.pdf*.

[39] *See id.* The United States is currently one of 15 supporting countries of the EITI. Supporting governments are committed to promote good governance in the extractive industries across the world. Although the only formal requirement of a supporting country is to make a clear public endorsement, a country can also support the EITI through financial, technical, and political support at the international level and in implementing and other resource-rich countries. *See https://eiti.org/supporters/countries*.

[40] *See* Item 2.01(d)(9) of the 2016 Form SD; *see also* the 2016 Adopting Release, Section II.E.3. This definition also provided that ''[a]greements that are both operationally and geographically interconnected may be treated by the resource extraction issuer as a single project.'' The 2012 Rules did not define the term ''project'' but provided guidance on the meaning of the term. *See* the 2012 Adopting Release, Section II.D.3.c.

[41] *See* the 2016 Form SD, Item 2.01(b)(1); *see also* the 2016 Rules Adopting Release, Section II.I.3. The 2012 Rules did not provide for any exemptions, targeted or otherwise.

[42] *See* the 2012 Rules Adopting Release, Section II.D.4.c.

[43] *See* the 2016 Form SD, Item 2.01(d)(3); *see also* 2016 Rules Adopting Release, Section II.D.3.

[44] *See* the 2016 Form SD, Item 2.01(c); *see also* the 2016 Rules Adopting Release, Section II.J.3.

[45] *See* the 2016 Form SD, Item 2.01(b)(2); *see also* the 2016 Rules Adopting Release, Section II.G.3.

[46] *See* the 2016 Rules Adopting Release, Section II.I.3.

[47] *See* the 2016 Release, Section II.H.3. In the 2012 rulemaking, the Commission did not affirmatively adopt such a provision after noting that, by providing an issuer's Form SD filings to the public through the searchable, online EDGAR system, users of the information would be able to produce their own up-to-date compilations in real time. In the 2016 rulemaking, however, after reasserting this position, the Commission acknowledged that, as some commenters maintained, the statute could be read to require the Commission to periodically provide a public compilation separate from the individual compilations.

[48] *See* the 2016 Rules Adopting Release, Section II.H.3. and the 2012 Rules Adopting Release, Section II.F.1.c. Mindful of the 2013 District Court decision, the Commission acknowledged that Section 13(q) provides the Commission with the discretion to require public disclosure of payments by resource extraction issuers or to permit confidential filings. The Commission, however, explained its continued belief that requiring public disclosure of each issuer's specific filings (including all the payment information) would best accomplish the purpose of the statute.

[49] *See* the 2016 Rules Adopting Release, Section II.L.3. and the 2012 Rules Adopting Release, Section II.F.3.c.

[50] *See* the 2016 Adopting Release, Section II.F.3. and the 2012 Adopting Release, Section II.E.3.

[51] The 2012 Rules' definition of payments added payments for infrastructure improvements to the list of statutorily mandated payment types required to be disclosed. *See* the 2012 Rules Adopting Release, Section II.D.1.c. The 2016 Rules added to the 2012 Rules' list of required payment types community and social responsibility payments that are required by law or contract. The 2016 Rules also added an instruction clarifying the types of royalty payments required to be disclosed. *See* the 2016 Rules Adopting Release, Section II.C.3.

[52] In the 2012 rulemaking, the Commission defined ''commercial development of oil, natural gas, or minerals'' to include certain statutorily mandated activities. It then provided guidance that the term ''commercial development'' applied only to activities directly related to the commercial development of oil, natural gas, or minerals, and was not intended to capture ancillary or preparatory activities. *See* 2012 Rules Adopting Release, Section II.C.3. In the 2016 rulemaking, the Commission adopted the same definition of ''commercial development of oil, natural gas, or minerals'' as in the earlier rulemaking while expanding upon and codifying the guidance regarding activities pertaining to ''processing'' and ''export.'' *See* the 2016 Rules Adopting Release, Section II.B.3.

[53] *See* the 2016 Rules Adopting Release, Section II.K.3. and the 2012 Rules Adopting Release, Section II.F.2.c.

[54] *See, e.g.,* 163 Cong. Rec. H.848 (February 1, 2017) (Statement of Rep. Hensarling) (''The SEC has estimated that ongoing compliance costs for his rule could reach as high as $591 million annually . . . Furthermore, this rule still goes far beyond the statute passed by Congress and mandates public specialized disclosures that cost more and more, and is more burdensome than the law requires.'').

[55] *See id.* (Statement of Rep. Hensarling) (''That is $591 million every year that could better be used to hire thousands more Americans in an industry where the average pay is 50 percent higher than the U.S. average. Literally we could be talking about 10,000 jobs on the line for this ill-advised rule.'').

[56] *See id.* (Statement of Rep. Hensarling) (''The economic opportunities of . . . millions of Americans . . . are not helped by top-down, politically driven regulations that give many foreign companies an advantage over American public companies. That is exactly what this Securities and Exchange Commission regulation that we are talking about today does. It forces American public companies to disclose [expensive] proprietary information that can actually be obtained by their

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Members also expressed concern that the rule extended beyond the SEC's core mission.[57]

Some members who voted in favor of the disapproval nonetheless reiterated the rule's transparency and anti-corruption objectives. For instance, a group of senators who voted for the joint resolution expressed their ''strong support'' for anticorruption policies and stated that they were ''committed to efforts to encourage corporate transparency on these matters consistent with the international standards already adopted by European and other governments.'' [58] They also indicated, however, that they voted in favor of disapproving the 2016 Rules in part due to their concern that those rules would place U.S. and other SEC-registered companies at a significant competitive disadvantage.[59]

Although the joint resolution vacated the 2016 Rules, the statutory mandate under Section 13(q) of the Exchange Act remains in effect. As a result, the Commission is statutorily obligated to issue a new rule.[60] Under the CRA, however, the Commission may not reissue the same rule in ''substantially the same form'' or issue a new rule that is ''substantially the same'' as the disapproved rule.[61] The CRA does not define the phrase ''substantially the same,'' but the legislative history [62] urges Congress to provide direction to agencies regarding the possibility of issuing a new rule when debating the resolution of disapproval.[63] Given this legislative history, and the absence of further general guidance from the CRA or any specific legislative guidance from Congress addressing the form of a new rulemaking, we looked to the concerns raised by members of Congress during the floor debates on the joint resolution to assist us in developing a rule that is not ''substantially the same'' [64] as the 2016 Rules.[65]

Request for Comment

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

1. Are there any data since the 2016 Rules concerning actual costs of compliance with mandatory disclosure regimes that relate to or otherwise address the Congressional concerns about the potential adverse economic effects of the rules, and specifically, that the 2016 Rules would impose undue compliance costs on companies? Should we consider, and if so how, the compliance cost data in the UK Government's Department for Business, Energy and Industrial Strategy post-implementation review of the UK regulations,[66] in determining how to address the stated Congressional concerns?

2. Have there been any developments or changes in industry practices since the 2016 Rules related to how companies track and record payment information or how they capture the cost of compliance with mandatory disclosure regimes that could impact or otherwise address the stated Congressional concerns?

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foreign competitors, including state-owned companies in China and Russia. This is just one regulation out of thousands and thousands that are burdening our companies, our job creators, and are costing our households by one estimate, over $14,000 a year . . .''); *see also* 163 Cong. Rec. H.851 (February 1, 2017) (Statement of Rep. Wagner) (''This particular SEC regulation . . . regarding resource extraction disclosures will make it more expensive for our public companies that are involved with energy production to be competitive overseas with foreign state-owned companies.'').

[57] *See, e.g.,* 163 Cong. Rec. H.850 (February 1, 2017) (Statement of Rep. Huizenga) (observing that the Congressional goals underlying Section 13(q) are outside of the SEC's ''core mission'' of ''protect[ing] investors,'' ''maintain[ing] fair, orderly and efficient markets,'' and ''facilitat[ing] capital formation'').

[58] *See* Letter from Senator Bob Corker, Senator Susan Collins, Senator Marco Rubio, Senator Johnny Isakson, Senator Lindsey Graham, Senator Todd Young (Feb. 2, 2017), *available at https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resource-extraction-issuers.shtml.*

[59] *See id.*

[60] A number of members who supported the joint resolution noted that the Commission would be obligated to issue a new rule fulfilling the statutory mandate. *See, e.g.,* 163 Cong. Rec. H.848, 849 (February 1, 2017) (Statement of Rep. Hensarling) (''Let's also remember that this joint resolution does not repeal section 1504 of Dodd-Frank. I wish it did, but it doesn't . . . It simply tells the SEC to go back to the drawing board, comply with the Dodd-Frank Act, and come up with a better rule . . .''); 163 Cong. Rec. S.635 (Feb. 2, 2017) (Statement of Sen. Crapo) (''What this resolution does is to cause the current SEC rule to not take effect. As it was characterized yesterday on the House floor and will be characterized further today on the Senate floor, what the SEC will need to do is to go back to the drawing board and come up with a better rule that complies with the law of the land.'').

[61] *See* 5 U.S.C. 801(b)(2).

[62] The principal sponsors of the CRA submitted identical joint explanatory statements that were ''intended to provide guidance to the agencies, the courts, and other interested parties when interpreting the act's terms.'' *See* Joint Explanatory Statement of House and Senate Sponsors (Senators Nickles, Reid, and Stevens), 142 Cong. Rec. S.3683 (April 18, 1996).

[63] 142 Cong. Rec. S.3686 (''The authors intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.'').

[64] *See* 5 U.S.C. 801(b)(2).

[65] *See supra* n. 54–57. In this regard, we note that many of the concerns raised by members of Congress were raised by commenters in the previous rulemakings. *See, e.g.,* Letters from the American Petroleum Institute (''API'') (Feb. 16, 2016); ExxonMobil Corporation (''ExxonMobil'') (Feb. 16, 2016); and Chevron Corporation (''Chevron'') (Feb. 16, 2016).

[66] *See* Department for Business, Energy and Industrial Strategy (BEIS), *Reports on Payments to Governments Regulations: Final Report,* BEIS Research Paper, Jan. 2018, *available at http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksiod_20143209_en_001.pdf. See infra* Section III.D.11. for a related discussion of the UK report.

3. Proposed Rules in Response to the CRA Disapproval

Similar to the prior rules, the proposed rules, which are described in more detail in Part II below, would require resource extraction issuers to submit on an annual basis a Form SD that includes information about payments related to the commercial development of oil, natural gas, or minerals that are made to governments. Given the requirements of Section 13(q), certain elements of the proposed rules are also in the 2016 Rules.[67] Nevertheless, we believe that the proposed rules, considered as a whole, are not in substantially the same form as the 2016 Rules and therefore in compliance with the CRA's restriction on subsequent rulemaking.[68]

In this regard, the proposed new rules include several significant changes to the core provisions of the 2016 Rules. Specifically, the proposed rules would: (1) Revise the definition of the term ''project'' to require disclosure at the national and major subnational political jurisdiction, as opposed to the contract, level; [69] (2) revise the definition of ''not de minimis'' to include both a project threshold and an individual payment threshold; [70] (3) add two new conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure; [71] (4) add an exemption for smaller reporting companies and emerging growth companies; [72] (5) revise the definition of ''control'' to exclude entities or operations in which an issuer has a proportionate interest; [73] (6) limit the liability for the required disclosure by deeming the payment information to be furnished to, but not filed with, the Commission; [74] (7) add an instruction in Form SD that would permit an issuer to aggregate payments by payment type made at a level below the major subnational government level; [75] (8) add relief for issuers that have recently completed their U.S. initial public offerings; [76] and (9) extend the deadline for furnishing the payment disclosures.[77] These changes, which directly impact the amount, granularity, timing, scope of, and liability for, the required disclosures, form the basis for our belief that, when considered as a whole, the proposed rules are not in substantially the same form as the 2016 Rules.

The following chart summarizes the primary changes in the proposed rules compared to the 2016 Rules:

Issue	2016 Rules (disapproved)	Proposed rules
Definition of "project"	• Defined as operational activities governed by a single contract, license, lease, concession, or similar legal agreement, which forms the basis for payment liabilities with a government.	• Defined using three factors: (1) Type of resource; (2) type of operation; and (3) major subnational jurisdiction.
Aggregation of payments	• No aggregation of payments beyond contract level, except that payments related to operational activities governed by multiple legal agreements could be aggregated together as long as the multiple agreements were operationally and geographically related.	• Aggregation of payments permitted at major subnational jurisdiction level, which must be identified; • Aggregation of payments permitted at levels below major subnational level, which may be described generically (*e.g.,* as county or municipality).
Definition of "not de minimis" payment	• Defined as a payment that equals or exceeds $100,000.	• Defined as any payment that equals or exceeds $150,000 made in connection with a project that equals or exceeds $750,000 in total payments.
Exemptions from compliance based on conflicts with foreign laws or contract terms.	• No exemptions for conflicts with foreign laws or contract terms. • Case-by-case exemptive process established.	• Conditional exemptions for foreign law conflicts and pre-existing (pre-adoption) contract terms that prohibit disclosure.
Exemption for smaller reporting companies or emerging growth companies.	• No exemption for smaller reporting companies or emerging growth companies.	• Exemption for smaller reporting companies and emerging growth companies.
Definition of "control"	• Based on established financial reporting principles: Issuer has control over an entity when it is required under GAAP or IFRS to consolidate or proportionately consolidate the financial results of that entity.	• Similar to approach under 2016 Rules, except that an issuer is not required to disclose payments made by entities that it only proportionately consolidates.
Filed vs. Furnished—Application of Exchange Act Section 18 liability.	• Reports required to be filed; • Potential Section 18 liability.	• Reports are furnished; • No Section 18 liability.

[67] For example, we are proposing the same targeted exemption for exploratory activities, the same transitional relief for recently acquired companies, and a similar alternative reporting mechanism, all of which were adopted in 2016 primarily to limit compliance costs. *See supra* Section I.C.1. We also are proposing the same definitions as adopted in 2016 for ''resource extraction issuer,'' ''commercial development of oil, natural gas, or minerals,'' ''payment,'' and ''foreign government.'' As further discussed below, most commenters who addressed those definitions in the 2016 rulemaking generally supported them.

[68] The CRA instructs that the ''new rule'' cannot be ''substantially the same'' or in ''substantially the same form'' as the disapproved rule. *See* 5 U.S.C. 801(b)(1). We believe that this language clearly reflects Congress' intent that, in issuing a new rule, an agency must do more than substantially revise the rationales supporting the prior rule or the economic analysis underlying the prior rule. Rather, the CRA instructs that the ''new rule'' itself must be substantially different. As such, we do not believe that readopting the 2016 Rules with modifications only to the rationales or economic analysis in the release would satisfy the substantially different requirement mandated by the plain language of the CRA. Instead, we concur with the views of two scholars that the CRA requires changes to the rule itself. *See* Adam M. Finkel and Jason W. Sullivan, 63 *Administrative Law Review* 707, 757–58 (2011) (asserting that the view that ''anything goes so long as the agency merely asserts that external conditions have changed . . . would contravene all the plain language and explanatory material in the CRA. Even if the agency believes it now has better explanations for an identical reissued rule, the appearance of asking the same question until you get a different answer is offensive enough to bedrock good government principles that the regulation should be required to have different costs and benefits after a veto, not just new rhetoric about them.'').

[69] *See infra* Section II.F.

[70] *See infra* Section II.C.9.

[71] *See infra* Sections II.J.1. and II.J.2.

[72] *See infra* Sections II.J.3.

[73] *See infra* Section II.E.

[74] *See infra* Section II.M.

[75] *See infra* Section II.G.

[76] *See infra* Section II.J.5.

[77] *See infra* Section II.H.

Issue	2016 Rules (disapproved)	Proposed rules
Relief for Initial Public Offerings (IPOs)	• No relief for IPOs.	• Transitional relief for IPOs; • Issuer would not have to comply with the Section 13(q) rules until the first fiscal year following the fiscal year in which it completed its initial public offering.
Deadline for Furnishing Payment Disclosures ...	• For all issuers, no later than 150 days after the end of the issuer's most recent fiscal year.	• For issuers with fiscal years ending on or before June 30, no later than March 31 in the following calendar year; • For issuers with fiscal years ending after June 30, no later than March 31 in the second calendar year following their most recent fiscal year.

In proposing these provisions and other aspects of this rulemaking, we have striven to achieve an appropriate balance between implementing the statute as required by Congress and addressing the concerns expressed by commenters and members of Congress.[78] Specifically, we expect that the proposal would meaningfully reduce the compliance burden for issuers compared to the compliance burden estimated for the 2016 Rules, for example, by permitting greater aggregation of payments at the major subnational level and at lower government levels. We also believe that, for the same reason, the proposal would address the concerns about potential competitive harm that the 2016 Rules would have caused as a result of the public disclosure of contract level payment information.

On the other hand, we have not provided for the confidential submission of payment information, as suggested by some commenters.[79] In addition, we have not provided for the release of information only through an anonymized, aggregated compilation produced by the Commission, as suggested by some commenters.[80] As explained below, we believe that public disclosure of company-specific, project-level payment information provides an appropriate balance between the stated concerns with the 2016 Rules and the mandate of Section 13(q) to increase transparency of payments to governments in resource-rich nations.[81] However, we are requesting comment on an alternative approach that would allow for confidential filing and would release information only through an anonymized, aggregated compilation.[82]

II. Proposed Rules Under Section 13(q)

A. Definition of ''Resource Extraction Issuer''

Section 13(q) defines a resource extraction issuer in part as an issuer that is ''required to file an annual report with the Commission.'' We believe this language could reasonably be read to include or to exclude issuers that file annual reports on forms other than Forms 10–K, 20–F, or 40–F. We are therefore using our discretion and proposing to cover only issuers filing annual reports on Forms 10–K, 20–F, or 40–F. Specifically, the proposed rules would define the term ''resource extraction issuer'' to mean an issuer that is required to file with the Commission an annual report on one of those forms pursuant to Section 13 or 15(d) of the Exchange Act and that engages in the commercial development of oil, natural gas, or minerals.[83] As with the 2016 Rules, we believe that covering issuers that provide disclosure outside of the Exchange Act reporting framework would do little to further the transparency objectives of Section 13(q) but would add costs and burdens to the existing disclosure regime governing those categories of issuers. The proposed definition would therefore exclude issuers subject to Tier 2 reporting obligations under Regulation A and issuers filing annual reports pursuant to Regulation Crowdfunding.[84] In addition, investment companies registered under the Investment Company Act of 1940 (''Investment Company Act'') would not be subject to the proposed rules.[85]

Almost all of the commenters on the 2016 Rules Proposing Release supported a definition similar to the one we are proposing today [86] Consistent with the 2016 Rules, we are not proposing exemptions to our definition of ''resource extraction issuer'' based on foreign private issuer status [87] or the extent of business operations constituting commercial development of oil, natural gas, or minerals.

We are, however, proposing to exempt smaller reporting companies [88] and emerging growth companies [89] from the

[78] As noted above, the estimated cost of compliance of the 2016 Rules and the potential for competitive harm were specifically noted by the members of Congress who voted to disapprove the rules. *See, e.g.,* 163 Cong. Rec. H.848 (daily ed. Feb. 1, 2017) (statement of Rep. Hensarling); 163 Cong. Rec. at H.852 (statement of Rep. Barr).

[79] *See, e.g.,* Letters from API (Nov. 7, 2013) (submitted prior to the 2016 Proposing Release) and (Feb. 16, 2016); Letter from Chevron (Feb. 16, 2016); and Letter from Royal Dutch Shell plc (''RDS'') (Feb. 5, 2016).

[80] *See id.*

[81] *See infra* Sections II.F. and II.I.

[82] *See infra* Section II.I.

[83] *See* proposed Rule 13q–1(a) and proposed Item 2.01(d)(11) of Form SD. We interpret ''engages'' as used in Section 13(q) and proposed Rule 13q–1 to include indirectly engaging in the specified commercial development activities through an entity under a company's control. *See infra* Section II.E. for our discussion of ''control.''

[84] In prior releases, the Commission noted that, in the staff's experience, resource extraction issuers rarely use Regulation A. This continues to be the case. Between June 2015 through September 2017, only one of the Regulation A issuers with a qualified offering statement appears to have been a resource extraction issuer at the time of filing based on a review of assigned Standard Industrial Classification (SIC) codes. Similarly, between May 2016 and December 2016, only one of the Regulation Crowdfunding issuers appears to have been a resource extraction issuer.

[85] It seems unlikely that an entity that fits within the definition of ''investment company'' would be one that is ''engag[ing] in the commercial development of oil, natural gas, or minerals.'' *See* Section 3(a)(1) of the Investment Company Act (15 U.S.C. 80a–3(a)(1)).

[86] *See* 2016 Rules Adopting Release, Section II.A.2.

[87] *See* the definition of ''foreign private issuer'' in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4 [17 CFR 240.3b–4]. We are, however, proposing to exclude from the proposed rules foreign private issuers that are exempt from Exchange Act registration and reporting obligations pursuant to Exchange Act Rule 12g3–2(b) (17 CFR 240.12g3–2(b). As discussed in prior releases, we believe that expanding the statutory definition of ''resource extraction issuer'' to include foreign private issuers that are relying on Rule 12g3–2(b) would discourage reliance on the exemption and would be inconsistent with the effect and purpose of that rule. *See* the 2016 Rules Adopting Release, Section II.A.3; and the 2016 Rules Proposing Release, Section II.A.

[88] *See* the definition of smaller reporting company in Securities Act Rule 405 (17 CFR 230.405) and Exchange Act Rule 12b–2 (17 CFR 240.12b–2).

[89] *See* the definition of emerging growth company in Securities Act Rule 405 and Exchange Act Rule 12b–2; *see also* Securities Act Section 2(a)(19) (15 U.S.C. 77b(a)(19)) and Exchange Act Section 3(a)(80) (15 U.S.C. 78c(a)(80)).

scope of Rule 13q–1. As explained below,[90] we believe that this proposed change from the 2016 Rules would reduce the overall cost of the proposed rules [91] and address the related Congressional concerns.[92]

Request for Comment

3. Should we define ''resource extraction issuer'' to mean an issuer that is required to file with the Commission an annual report on Form 10–K, Form 20–F, or Form 40–F pursuant to Section 13 or 15(d) of the Exchange Act and that engages in the commercial development of oil, natural gas, or minerals, as proposed? Should we alter our approach to the definition of ''resource extraction issuer'' based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

4. Should we exclude other categories of issuers, such as foreign private issuers, from the definition of ''resource extraction issuer''?

B. Definition of ''*Commercial Development of Oil, Natural Gas, or Minerals*''

Consistent with the statutory definition, the proposed rules would define ''commercial development of oil, natural gas, or minerals'' as exploration, extraction, processing, and export of oil, natural gas, or minerals, or the acquisition of a license for any such activity.[93] Although we have discretionary authority to include other significant activities relating to oil, natural gas, or minerals,[94] we are not proposing to expand the list of covered activities beyond the explicit terms of Section 13(q). We adopted the same approach when defining ''commercial development of oil, natural gas, or minerals'' in the 2016 rulemaking, and most commenters that addressed this aspect of the prior rules supported this approach.[95] As was the case with the 2016 Rules, we have not sought to impose disclosure obligations that extend beyond Congress' required disclosures in Section 13(q) and the disclosure standards developed in connection with international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals. This approach should limit the compliance costs of the Section 13(q) rules.

The proposed definition of ''commercial development'' would capture only those activities that are directly related to the commercial development of oil, natural gas, or minerals, and not activities ancillary or preparatory to such commercial development. Accordingly, a company that is only providing products or services that support the exploration, extraction, processing, or export of such resources would not be a ''resource extraction issuer'' under the proposed rules.[96] For example, a company that manufactures drill bits or provides hardware to help companies explore and extract would not be considered a resource extraction issuer. Similarly, a company engaged by an operator to provide hydraulic fracturing or drilling services, to enable the operator to extract resources, would not be a resource extraction issuer.[97] We believe this approach is consistent with Section 13(q) and the approach adopted in the 2016 rulemaking, which most commenters who addressed the issue supported.[98]

In the past, commenters have requested clarification of the activities covered by the definition of ''commercial development.'' [99] We discuss our proposals to define or provide guidance on several terms contained within the definition in the subsections that follow.

Request for Comment

5. Should we define ''commercial development of oil, natural gas, or minerals'' using the list of activities described in the statute, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

1. ''Extraction'' and ''Processing''

As proposed, and consistent with the definitions adopted in the 2016 rulemaking,[100] ''extraction'' would be defined as the production of oil and natural gas as well as the extraction of minerals.[101] ''Processing'' would include, but would not be limited to, midstream activities such as removing liquid hydrocarbons from gas, removing impurities from natural gas prior to its transport through a pipeline and the upgrading of bitumen and heavy oil, through the earlier of the point at which oil, gas, or gas liquids (natural or synthetic) are either sold to an unrelated third party or delivered to a main pipeline, a common carrier, or a marine terminal. ''Processing'' would also include the crushing or preparing of raw ore prior to the smelting or refining phase.[102] ''Processing'' would not include downstream activities, such as refining or smelting. As noted above,[103] the focus of Section 13(q) is on transparency in connection with the payments that resource extraction issuers make to governments. Those payments are primarily generated by ''upstream'' activities like exploration and extraction and not in connection with refining or smelting.[104] Accordingly, we do not believe that, for purposes of the proposed rules, the term ''processing'' should cover downstream activities. We also note that including refining or smelting within the rules

[90] *See infra* Section II.J.3.

[91] We solicit comment on our proposed exemption for smaller reporting companies and emerging growth companies in Section II.J.3. below.

[92] *See supra* n. 54 and accompanying text.

[93] *See* 15 U.S.C. 78m(q)(1)(A).

[94] *See id.*

[95] *See* the 2016 Rules Adopting Release, Section II.B.2.a.

[96] Marketing activities would also not be included. Section 13(q) does not include marketing in the list of activities covered by the definition of ''commercial development.'' In addition, including marketing activities within the final rules under Section 13(q) would go beyond what is covered by the EITI and other international regimes. *See, e.g.,* the EITI Handbook, at 35. For similar reasons, the definition of ''commercial development'' does not include activities relating to security support. *See* 2012 Rules Adopting Release at n.146 and Section II.D. for a related discussion of payments for security support.

[97] A resource extraction issuer would be required, under the proposed rules, to disclose payments when such a service provider makes a payment to a government on its behalf that meets the definition of ''payment.'' *See* proposed Instruction 7 to Item 2.01 of Form SD. We discuss the definition of ''payment'' in Section II.C below.

[98] *See* the 2016 Rules Adopting Release, Section II.B.2.a.

[99] *See* 2016 Rules Adopting Release, Section II.B.2; 2012 Rules Adopting Release, Section II.C.2.

[100] Several commenters specifically supported the definitions of ''extraction'' and ''processing'' proposed in the 2016 rulemaking while other commenters sought additional guidance regarding the types of activities covered by the term ''processing.'' *See* 2016 Rules Adopting Release, Section II.B.3.

[101] *See* proposed Item 2.01(d)(5) of Form SD.

[102] *See* proposed Instruction 8 to Item 2.01 of Form SD. Although substantively the same as the instruction found in the 2016 Rules, we are proposing revisions for additional clarity.

[103] *See supra* Section I.A.

[104] We also note that, in other contexts, Congress has treated midstream activities like ''processing'' and downstream activities like ''refining'' as separate activities, which further supports our view that Congress did not intend to include ''refining'' and ''smelting'' as ''processing'' activities. For example, the Sudan Accountability and Divestment Act of 2007 (''SADA''), which also relates to resource extraction activities, specifically includes ''processing'' and ''refining'' as two distinct activities in its list of ''mineral extraction activities'' and ''oil-related activities . . .'' *See* 110 Public Law 174 (2007). Similarly, the Commission's oil and gas disclosure rules exclude refining and processing from the definition of ''oil and gas producing activities'' (other than field processing of gas to extract liquid hydrocarbons by the company and the upgrading of natural resources extracted by the company other than oil or gas into synthetic oil or gas). *See* Rule 4–10(a)(16)(ii) of Regulation S–X [17 CFR 210.4–10(a)(16)(ii)] and the 2012 Rules Adopting Release, n.108.

under Section 13(q) would go beyond what is contemplated by the statute.

Request for Comment

6. Should we define ''extraction'' as the production of oil and natural gas as well as the extraction of minerals, as proposed?

7. Are the types of activities covered by the term ''processing'' appropriate?

8. Should we alter our approach to the definition of ''extraction'' or the instruction on ''processing'' based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

2. ''Export''

The proposed definition of ''commercial development of oil, natural gas, or minerals'' would not cover transportation made for a purpose other than export. Instead, ''export'' would be defined as the transportation of a resource from its country of origin to another country by an issuer with an ownership interest in the resource, with certain exceptions described below.[105] This definition would reflect the significance of the relationship between upstream activities, such as exploration and extraction, and the categories of payments to governments identified in the statute. In contrast, we do not believe that Section 13(q) was intended to capture payments related to transportation on a fee-for-service basis across an international border by a service provider with no ownership interest in the resource.[106] Nor do we believe that ''export'' was intended to capture activities with little relationship to upstream or midstream activities, such as commodity trading-related activities.

Accordingly, the proposed definition of ''export'' would not cover the movement of a resource across an international border by a company that (a) is not engaged in the exploration, extraction, or processing of oil, natural gas, or minerals and (b) acquired its ownership interest in the resource directly or indirectly from a foreign government or the Federal Government.[107] The definition would cover, however, the purchase of such government-owned resources by a company otherwise engaged in resource extraction due to the stronger nexus between the movement of the resource across an international border and the upstream development activities. This nexus would be particularly strong in instances where the company is repurchasing government production entitlements that were originally extracted by that issuer.[108]

The proposed definition of export is consistent with the approach regarding ''export'' adopted by the Commission in the 2016 rulemaking. The Commission articulated this approach in specific response to one commenter who sought additional guidance on the scope of the term ''export'' under the Section 13(q) rules.[109]

Request for Comment

9. Should we adopt the definition of ''export,'' as proposed? If we should provide a different definition, what should it be? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

3. ''Minerals''

The proposed rules would include an instruction on the meaning of the term ''minerals'' but would not provide a defined term. We believe that the term is commonly understood and includes, at a minimum, any material for which an issuer with mining operations would provide disclosure under the Commission's existing disclosure requirements for mining properties.[110] In support of this approach, which is consistent with the Commission's approach in the 2016 rulemaking, we note that no industry commenter suggested that we define the term in connection with the 2016 Rules.[111] We also believe that a flexible approach to this term would preserve consistency between the term's use under Rule 13q–1 and its use in our other disclosure requirements and policies.[112]

The proposed instruction to Form SD would refer issuers to the use of the term ''minerals'' in our other disclosure rules.[113] As such, the guidance would encompass any changes to that term that may be reflected in our disclosure requirements for mining registrants.

Request for Comment

10. Should we adopt the instruction on the meaning of the term ''mineral,'' as proposed? Is the proposed instruction sufficiently clear for issuers to identify when they are engaged in the commercial development of a mineral?

11. Have there been developments since the 2016 Rules that should lead us to provide a defined term for ''mineral'' or different guidance? If so, what should be the definition or guidance?

C. Definition of ''*Payment*''

Section 13(q) defines ''payment'' to mean a payment that:

- Is made to further the commercial development of oil, natural gas, or minerals;
- Is not de minimis; and
- Includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the EITI's guidelines (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial

[105] *See* proposed Item 2.01(d)(4) of Form SD.

[106] It is noteworthy that Section 13(q) includes export, but not transportation, in the list of covered activities. In contrast, SADA specifically includes ''transporting'' in the definition of ''oil and gas activities'' and ''mineral extraction activities.'' The inclusion of ''transporting'' in SADA, in contrast to the language of Section 13(q), suggests that the term export means something different than transportation.

[107] *See* proposed Item 2.01(d)(4) of Form SD.

[108] *See infra* Section II.C.6 (discussing when and how payments must be reported in instances where an issuer is repurchasing government production entitlements that were originally extracted by that issuer).

[109] *See* Letter from Pietro Poretti (Feb. 15, 2016). Except for this commenter, the Commission's proposed definition of ''export'' was largely unaddressed by commenters in the 2016 rulemaking.

[110] The Commission recently revised its disclosure requirements for mining properties to provide investors with a more comprehensive understanding of a registrant's mining properties and to align those disclosure requirements and policies more closely with current industry and global regulatory practices and standards. *See* Release No. 33–10570 (October 31, 2018) [83 FR 66344 (December 26, 2018)]. The new mining property disclosure rules, which are codified in subpart 1300 of Regulation S–K (17 CFR 229.1300), will replace the mining property disclosure guidance in Industry Guide 7 [17 CFR 229.801(g) and 802(g)] and requirements in Item 102 of Regulation S–K (17 CFR 229.102). Registrants engaged in mining operations must comply with the new rules for the first fiscal year beginning on or after January 1, 2021. Industry Guide 7 will remain effective until all registrants are required to comply with the final rules, at which time Industry Guide 7 will be rescinded. *See* Release No. 33–10570, Section I.

[111] *See* 2016 Rules Adopting Release, n.149 and accompanying text.

[112] For example, new subpart 1300 of Regulation S–K defines ''mineral resource'' to mean a concentration or occurrence of material of economic interest in or on the Earth's crust in such form, grade or quality, and quantity that there are reasonable prospects for economic extraction. ''Material of economic interest'' is then defined to include ''mineralization, including dumps and tailings, mineral brines, and other resources extracted on or within the earth's crust'' while excluding oil and gas resources resulting from oil and gas producing activities, gases (*e.g.,* helium and carbon dioxide), geothermal fields, and water. *See* 17 CFR 229.1300. Industry Guide 7 similarly does not explicitly define the term ''minerals,'' but does provide a definition of, and guidance regarding the disclosure of, ''reserves,'' which includes references to ''minerals'' and ''mineralization.''

[113] *See* proposed Instruction 13 to Item 2.01 of Form SD. The Commission's staff has previously provided similar guidance. *See* Disclosure of Payments by Resource Extraction Issuers FAQ 3 (May 30, 2013) *available at https://www.sec.gov/divisions/corpfin/guidance/resourceextraction-faq.htm.*

development of oil, natural gas, or minerals.[114]

As with the 2016 Rules, the proposed rules would define payments to include the specific types of payments identified in the statute, as well as community and social responsibility (''CSR'') payments that are required by law or contract, payments of certain dividends, and payments for infrastructure. The proposed rules would also provide additional guidance on the statutory payment categories of royalties, fees, and bonuses. Finally, the proposed rules would address in-kind payments.

In addition to the types of payments expressly included in the definition of ''payment'' in the statute, Section 13(q) provides that the Commission include within the definition ''other material benefits'' that it determines are ''part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.''[115] According to Section 13(q), these ''other material benefits'' must be consistent with the EITI's guidelines ''to the extent practicable.''[116] Some commenters on the 2012 Rules Proposing Release suggested that we include a broad, non-exhaustive list of payment types or category of ''other material benefits.''[117] Commenters on the 2016 Rules Proposing Release, however, did not make a similar suggestion. We continue to believe that Section 13(q) directs us to make an affirmative determination that the other ''material benefits'' are part of the commonly recognized revenue stream. Accordingly, the other material benefits specified in the proposed rules would be limited to CSR payments required by law or contract, dividends, and infrastructure payments. As was the case with the 2016 Rules, and as discussed in more detail below, we have determined that these payment types represent material benefits that are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, and minerals and that otherwise meet the definition of payment.

1. Taxes

Consistent with Section 13(q), the proposed rules would require a resource extraction issuer to disclose tax payments. The proposed rules also include an instruction to clarify that a resource extraction issuer would be required to disclose payments for taxes levied on corporate profits, corporate income, and production, but would not be required to disclose payments for taxes levied on consumption, such as value added taxes, personal income taxes, or sales taxes.[118] In response to earlier concerns expressed by commenters about the difficulty of allocating payments that are made for obligations levied at the entity level, such as corporate taxes, to the project level,[119] the proposed rules would provide that issuers may disclose those payments at the entity level rather than the project level.[120]

Request for Comment

12. Is the proposed approach to disclosure of tax payments appropriate? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release? Would allowing disclosure of tax payments at the entity level improperly inflate reported payments?

13. Should we provide additional guidance on how to isolate the corporate income tax payments made on income generated from the commercial development of oil, natural gas, or minerals given that income may be earned from other business activities in the same jurisdiction as well? If so, what guidance should we provide?

2. Royalties, Fees, and Bonuses

The definition of ''payment'' in Section 13(q) includes royalties, fees, and bonuses. The statute provides ''license fees'' as an example of the types of fees covered by that term but does not provide examples of royalties and bonuses.[121] As under the 2016 Rules, the proposed rules would provide further clarification of these terms by including an instruction setting forth a non-exclusive list of fees (rental fees, entry fees, and concession fees), bonuses (signature, discovery, and production bonuses), and royalties (unit-based, value-based, and profit-based royalties) that would be considered payments under the proposed rules. The types of fees and bonuses we are proposing to include are specifically mentioned in the EITI's guidance as payments that should be disclosed by EITI participants,[122] which supports our view that they are part of the commonly recognized revenue stream. The types of royalties we are proposing to include are not mentioned in the EITI's guidance but, based on the experience of the Commission staff's mining engineers, we believe they are also part of the commonly recognized revenue stream and that including them would provide additional clarity for issuers.[123] These examples would be provided as guidance, and resource extraction issuers could be required to disclose other types of fees, bonuses, and royalties depending on the facts and circumstances.

Request for Comment

14. Should we adopt an instruction providing examples of fees, bonuses, and royalties that would be considered ''payments,'' as proposed? Is our interpretation of royalties overly broad? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

3. Dividend Payments

As under the 2016 Rules, the proposed rules would include dividends in the list of payment types required to be disclosed. None of the commenters on the 2016 Rules Proposing Release objected to the inclusion of dividend payments.

The proposed rules would clarify in an instruction that a resource extraction issuer generally would not need to disclose dividends paid to a government as a common or ordinary shareholder of the issuer as long as the dividend is paid to the government under the same terms as other shareholders.[124] The issuer would, however, be required to disclose any dividends paid to a government in lieu of production entitlements or royalties. Under this approach, ordinary dividend payments would not be part of the commonly recognized revenue stream because they are not made to further the commercial development of oil, natural gas, or minerals. This approach is consistent with the approach taken towards dividend payments in both the 2012 Rules and 2016 Rules. Most of the commenters who discussed the definition of payments in the earlier rulemakings either supported or did not

[114] 15 U.S.C. 78m(q)(1)(C).

[115] 15 U.S.C. 78m(q)(1)(C)(ii).

[116] *Id.*

[117] *See* 2012 Rules Adopting Release, n.175 and accompanying text.

[118] *See* proposed Instruction 9 to Item 2.01 of Form SD.

[119] *See* 2012 Rules Adopting Release, n.155 and accompanying text.

[120] *See* proposed Instruction 4 to Item 2.01 of Form SD.

[121] 15 U.S.C. 78m(q)(1)(C)(ii).

[122] *See* EITI Standard, at 23.

[123] *See* proposed Instruction 10 to Item 2.01 of Form SD. For a discussion of these types of royalties, *see* World Bank, *Mining Royalties: Their Impact on Investors, Government and Civil Society* (2006), pp. 50–54 *available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/09/11/000090341_20060911105823/Rendered/PDF/372580Mining0r101OFFICIAL0USE0ONLY1.pdf.*

[124] *See* proposed Instruction 11 to Item 2.01 of Form SD.

object to this approach towards dividends.[125]

Request for Comment

15. Should we require disclosure of dividend payments, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

4. Infrastructure Payments

The proposed rules would require the disclosure of payments for infrastructure, such as building a road or railway to further the development of oil, natural gas, or minerals.[126] We believe such payments are ''other material benefits'' that are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.[127] Like dividend payments, none of the commenters on the 2016 Rules Proposing Release objected to the inclusion of infrastructure payments.

Request for Comment

16. Should we require the disclosure of infrastructure payments, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

5. Community and Social Responsibility Payments

The proposed rules would require disclosure of CSR payments that are required by law or contract.[128] For the reasons discussed below, we believe that such CSR payments are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.

Most commenters on the 2016 Rules Proposing Release that addressed the issue supported the inclusion of CSR payments.[129] We find the evidence cited by those commenters to be persuasive. For example, one commenter noted prevalent discussion of CSR payments in industry conferences, studies, guidance, and compliance manuals.[130] This view was supported by a broad range of commenters and not limited to academia or civil society organizations. One industry commenter also stated that CSR payments are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals, at least when required by law or contract.[131]

In addition to the views of commenters, there is other evidence supporting the significant role that CSR payments have in the extractive industries. For example, several issuers already report their required or voluntary CSR payments.[132] Furthermore, disclosure of CSR payments that are required by law or contract has been required under the EITI since 2013.[133] Accordingly, we find that the evidence on balance supports the conclusion that such payments are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.

Request for Comment

17. Should we require disclosure of CSR payments, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release? For example, is there evidence to suggest that CSR payments are not part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals?

18. If we exclude CSR payments from the list of covered payment types, should we provide additional guidance concerning how an issuer would distinguish CSR payments from infrastructure payments?

6. In-Kind Payments

The proposed rules would require disclosure of payments that fall within the specified payment types that are made in-kind rather than through a monetary payment to the host country government.[134] Examples include production entitlement payments and infrastructure payments. None of the commenters on the 2016 Rules Proposing Release objected to the inclusion of in-kind payments in the 2016 Rules.

Section 13(q) specifies that the rules require the disclosure of the type and total amount of payments made for each project and to each government. Accordingly, issuers would need to determine the monetary value of in-kind payments.[135] Similar to the 2016 Rules, the proposed rules specify that issuers must report in-kind payments at historical cost, or if historical costs are not reasonably determinable, fair market value, and provide a brief description of how the monetary value was calculated.[136] We continue to believe that the required disclosure would be more consistent and comparable if issuers are required to report in-kind payments at cost and only permitted to report using fair market value if historical costs are not reasonably available or determinable.[137]

As under the 2016 Rules, the proposed rules would also include an instruction clarifying how to report payments made to a foreign government or the Federal Government to purchase the resources associated with production entitlements that are reported in-kind.[138] An issuer's purchase of production entitlements affects the ultimate cost of such entitlements. Accordingly, if the issuer would be required to report an in-kind production entitlement payment under the rules and then repurchases the resources associated with the

[125] *See* 2012 Adopting Release, Section II.D.1.b. and 2016 Adopting Release, Section II.C.2.a.

[126] We note that payments for infrastructure often are in-kind payments rather than direct monetary payments. For additional discussion of our proposed approach to in-kind payments, *see infra* Section II.C.6.

[127] *See* Letters from AngloGold Ashanti (Jan. 31, 2011) (''AngloGold''); Barrick Gold Corporation (Feb. 28, 2011) (''Barrick Gold''); EarthRights International (Jan. 26, 2011) (''ERI 1''); Earthworks (Mar. 2, 2011) (''Earthworks''); Global Witness (Feb. 25, 2011); ONE (Mar. 2, 2011) (''ONE''); and Publish What You Pay U.S. (Feb. 25, 2011). Disclosure of payments for infrastructure improvements is also required under the EITI. *See, e.g.,* EITI Standard at 24.

[128] CSR payments could include, for example, funds to build or operate a training facility for oil and gas workers, funds to build housing, payments for tuition or other educational purposes, and in general payments to support the social or economic well-being of communities within the country where the expenditures are made.

[129] *See* 2016 Rules Adopting Release, Section II.C.2.a. The one commenter that opposed including CSR payments stated that those payments were not part of the commonly recognized revenue stream due to their philanthropic or voluntary nature. *See* Letter from Encana Corporation (Jan. 25, 2016) (''Encana'').

[130] *See* Letter from Prof. Harry G. Broadman and Bruce H. Searby (Jan. 25, 2016).

[131] *See* Letter from ExxonMobil (Feb. 16, 2016).

[132] *See, e.g.,* Statoil ASA, *2017 Sustainability Report,* p. 36 (disclosing that in 2017 Statoil made $4.6 million in social investments); Newmont Goldcorp, *Beyond the Mine: 2017 Sustainability Report,* p. 87 (reporting a total of over $13.9 million in community investments); and BHP Billiton Ltd., 2018 Sustainability Report, pp. 7 and 37 (reporting that BHP's voluntary community investment totaled $77.1 million in 2018).

[133] As is currently the case under the 2016 EITI Standard, the 2013 version of the EITI Standard required social contribution payments to be disclosed if the company was legally or contractually required to make those payments. *See* EITI Standard, at 28.

[134] *See* proposed Instruction 12 to Item 2.01 of Form SD.

[135] In addition, in light of the requirement in Section 13(q) to tag the information to identify the currency in which the payments were made, the proposed rules would instruct issuers providing a monetary value for in-kind payments to tag the information as ''in-kind'' for purposes of the currency tag. *See* proposed Instruction 12 to Item 2.01 of Form SD.

[136] *See id.*

[137] This approach is consistent with the recommendation of some commenters in the 2012 rulemaking. *See* 2012 Adopting Release, Section II.D.1.c.

[138] *See* proposed Instruction 12 to Item 2.01 of Form SD.

production entitlement within the same fiscal year, the issuer would be required to use the purchase price (rather than using the valuation methods described above) when reporting the in-kind value of the production entitlement.

If the in-kind production entitlement payment and the subsequent purchase are made in different fiscal years and the purchase price is greater than the previously reported value of the in-kind payment, the issuer would be required to report the difference in values in the latter fiscal year if that amount exceeds the de minimis threshold. In other situations, such as when the purchase price in a subsequent fiscal year is less than the in-kind value already reported, no disclosure relating to the purchase price would be required.

We also considered whether to require issuers to report the volume of in-kind payments. Commenters on the 2016 Rules Proposing Release were divided on whether to require the reporting of volume.[139] We generally agree with the commenter that stated such information was unnecessary.[140] In this regard, we note that issuers would be required to provide a brief description of how the monetary value was calculated, which will provide additional context for assessing the reasonableness of the disclosure. Based on these considerations, we are not proposing disclosure related to volume.

Request for Comment

19. Should we require an issuer to report in-kind payments at cost, or if cost is not reasonably available or determinable, at fair market value, and provide a brief description of how the monetary value was calculated, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules, in light of our other proposals in this release or for any other reason? Specifically, should we require an issuer to report in-kind payments at fair market value, or at cost only if fair market value is not reasonably available or determinable? Should we instead permit resource extraction issuers to choose whether to report in-kind payments at cost or fair market value?

20. Should we include an instruction regarding how to calculate the in-kind value of a production entitlement, as proposed? Is the proposed instruction sufficiently clear for resource extraction issuers to determine how to calculate the in-kind value?

7. Other Payment Types

Some commenters on the 2016 Rules Proposing Release suggested that we add other payment types such as commodity trading related payments, payments for government expenses, providing jobs or tuition to persons related to government officials, investing in companies created by officials or related persons, or other similar payments.[141] We are not proposing to require disclosure for such payment types because we do not believe that they represent material benefits that are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.

With respect to commodity trading-related payments, we believe that the proposed definition of ''export'' and the categories of payments in the proposed rules, particularly in-kind payments, accurately reflect the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals. We acknowledge that significant payments may be made by buying/trading companies or similar companies to purchase natural resources. Nevertheless, we do not believe that purchasing or trading oil, natural gas, or minerals, even at a level above the de minimis threshold, is on its own sufficiently related to the ''commercial development'' of those resources to warrant being covered by the proposed rules, particularly when the proposed rules already would require disclosure of in-kind payments of production entitlements. As discussed above, the proposed rules would, however, address how such production entitlement payments must be valued when initially made by an issuer in-kind but the associated resources are subsequently purchased by the same issuer from the recipient government.

We are also not specifically proposing requirements to disclose payments for government expenses, providing jobs or tuition to persons related to government officials, investing in companies created by officials or related persons, or other similar payments that could reasonably raise corruption concerns. We find it unnecessary to do so because, when these payments are made to further the commercial development of oil, natural gas or minerals (in connection with or in lieu of the identified payments), they would be covered by the proposed anti-evasion provision discussed below.[142]

In addition, the proposed rules would not require issuers to disclose payments for fines and penalties. We do not believe that such payments relate sufficiently to the commercial development of natural resources to warrant inclusion.

Request for Comment

21. In light of developments since the 2016 Rules or other aspects of the proposed rules, should we add other payment types or eliminate certain payment types from the proposed list of covered payment types? If so, please explain which payment types should or should not be considered part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals. If you recommend adding other payment types, please also explain how they are consistent with the EITI's guidelines and how their inclusion would support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas or minerals.

8. Accounting Considerations

Under the proposed rules, Form SD would expressly state that the payment disclosure must be made on a cash basis instead of an accrual basis and need not be audited.[143] We believe that requiring reporting to be made on a cash basis is the best approach because: (1) These payment disclosures are largely cash-based, so reporting them on a cash basis would limit the associated compliance burden, and (2) requiring a consistent approach to reporting would improve comparability and therefore result in greater transparency. This is consistent with the approach that the Commission proposed and adopted in the 2016 rulemaking.[144]

With respect to whether to require the payment information to be audited, we note that the EITI approach is different from Section 13(q). Under the EITI, companies and the host country's government generally each submit payment information confidentially to an independent administrator selected by the country's multi-stakeholder group, frequently an independent auditor, who reconciles the information

[139] *See* 2016 Rules Adopting Release, Section II.C.2.a.

[140] *See* Letter from ExxonMobil (Mar. 8, 2016).

[141] *See* 2016 Rules Adopting Release, Section II.C.2.a.

[142] *See infra* Section II.D. *See also generally* U.S. Senate Permanent Subcommittee on Investigations, Committee on Government Affairs, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank Report, at 98–111 (July 14, 2004) (providing examples of the roles that resource extraction companies can play in facilitating the suspect or corrupt practices of foreign officials seeking to divert resource extraction payments that belong to the government).

[143] *See* proposed Item 2.01(a)(2) of Form SD.

[144] *See* the 2016 Adopting Release, Section II.C.3.

provided by the companies and the government and then produces a report.[145] In contrast, Section 13(q) does not contemplate that an administrator would audit and reconcile the information or produce a report as a result of the audit and reconciliation. Moreover, while Section 13(q) refers to ''payments,'' it does not require the information to be included in the financial statements. In addition, we recognize the concerns raised by some previous commenters that an auditing requirement for the payment information would significantly increase implementation and ongoing reporting costs.[146]

Request for Comment

22. Should we require issuers to disclose payment information on a cash basis rather than an accrual basis, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

9. The ''Not De Minimis'' Threshold

The 2016 Rules defined a ''not de minimis'' payment as one that equals or exceeds $100,000, or its equivalent in the issuer's reporting currency, whether made as a single payment or series of related payments.[147] In light of the previously expressed concerns that the threshold was unreasonably low and costly to calculate[148] and the likely impact of the revised definition of project that we are proposing,[149] we no longer believe that the $100,000 threshold is the best method for determining whether a payment is ''not de minimis'' under Section 13(q).[150] Rather, we believe that an appropriate threshold for determining what is a ''not de minimis payment'' must consider the value of individual payments as well as the value of the total company payments per project.[151]

Under the proposed rules, an issuer would not be required to provide disclosure if the aggregate project payments for all types of payments for an individual project are below $750,000. Where the aggregate payments for an individual project equal or exceed $750,000, only payments made to each foreign government in a host country or the Federal Government that equal or exceed $150,000, or its equivalent in the issuer's reporting currency, whether made as a single payment or a series of related payments, will need to be reported.[152] Thus, if no single payment or series of related payments of the same type equals or exceeds $150,000 for an individual project, even if the aggregate payments for that project are equal to or greater than $750,000, no payments disclosure would be required for that project.

We believe that this change is necessary to take into account the proposed definition of project, which aggregates payments at a higher level, which would likely increase the value of the individual types of payments. As such, we believe that using the 2016 threshold of $100,000 would likely require more payment disclosure, thus increasing rather than decreasing the cost and disclosure burden on issuers, contrary to the guidance provided by Congress in its disapproval of the 2016 Rules. We further believe that, in light of the larger aggregations permitted under the revised definition of project, a quantitative standard based upon project level and individual payment information establishes a more appropriate threshold for determining ''not de minimis.'' In addition, we believe that $750,000 in total payments is the appropriate project threshold and $150,000 is the appropriate threshold for individual payments because we are proposing to exempt smaller reporting companies and emerging growth companies from the Section 13(q) disclosure requirements,[153] thereby resulting in larger companies, with larger projects and larger individual payments, being primarily affected by the proposed rules. We also believe that this ''not de minimis'' threshold would further the statutory objectives of Section 13(q) by requiring disclosure of those payments that are of a significant enough size such that they would likely benefit the host country and its local communities.

When adopting the 2016 Rules, we observed that Section 13(q) uses a ''not de minimis'' standard instead of a materiality standard, which is used elsewhere in the Federal securities laws and in the EITI. This suggests that Congress did not intend ''not de minimis'' to equate to a materiality standard.[154] We continue to believe that this is the better approach to take when defining ''not de minimis.''

An instruction to the 2016 Rules allowed an issuer to choose several methods to calculate currency conversions for payments not made in U.S. dollars or the issuer's reporting currency. That instruction also provided that the same methods are available to issuers when calculating whether a payment not made in U.S. dollars exceeds the de minimis threshold.[155] We are proposing the same instruction[156] as we continue to believe that providing alternative methods for calculating currency conversions would help limit compliance costs under Section 13(q). Like the 2016 Rules, an issuer would be required to use a consistent method for its payment currency conversions, including when determining if a payment is not de minimis, and would be required to disclose which method it used.[157]

[145] *See* EITI Standard, at 15, 25–26.

[146] *See, e.g.,* Letters from Anadarko Petroleum Corporation (Mar. 2, 2011), AngloGold, API (Jan. 28, 2011), British Petroleum p.l.c. (Feb. 11, 2011), Chevron Corporation (Jan. 28, 2011), Ernst & Young (Jan. 31, 2011), New York State Bar Association, Securities Regulation Committee (Mar. 1, 2011), Petroleo Brasileiro S.A. (Feb. 21, 2011), and PricewaterhouseCoopers LLP (Mar. 2, 2011).

[147] *See* 2016 Adopting Release, Section II.C.3.c. The 2012 Rules also defined a ''not de minimis'' payment using the $100,000 threshold. *See* 2012 Adopting Release, Section II.D.2.c.

[148] *See, e.g.,* letter from Nouveau Inc. (Feb. 16, 2016) (stating that the $100,000 reporting threshold would be unreasonably low for companies working on massive scale projects and would require parties to engage in the costly collection, compilation, and standardization of potentially thousands of different data points); *see also* 2012 Adopting Release, Section II.D.2.b (discussing a variety of approaches suggested by commenters to the ''not de minimis'' payment requirement).

[149] *See infra* Section II.F.2.

[150] Section 13(q) does not define ''not de minimis.'' Consistent with the 2012 and 2016 rules, and for the reasons stated therein, we continue to believe that it is appropriate to adopt a definition of ''not de minimis'' to provide clear guidance regarding when a resource extraction issuer must disclose a payment.

[151] *See* proposed Item 2.01(d)(8) of Form SD.

[152] *See id.*

[153] *See supra* Section II.J.3.

[154] *See* 2012 Rules Adopting Release, Section II.D.2.c. Some commenters suggested that we adopt a materiality-based definition of ''not de minimis'' in the 2012 rulemaking. *See id.,* n. 224 and accompanying text.

[155] *See* Instruction 2 to Item 2.01 of Form SD under the 2016 Rules.

[156] *See* proposed Instruction 2 to Item 2.01 of Form SD, which states: ''A resource extraction issuer must report the amount of payments made for each payment type, and the total amount of payments made for each project and to each government, during the reporting period in either U.S. dollars or the resource extraction issuer's reporting currency. If a resource extraction issuer has made payments in currencies other than U.S. dollars or its reporting currency, it may choose to calculate the currency conversion between the currency in which the payment was made and U.S. dollars or the resource extraction issuer's reporting currency, as applicable, in one of three ways: (a) By translating the expenses at the exchange rate existing at the time the payment is made; (b) using a weighted average of the exchange rates during the period; or (c) based on the exchange rate as of the resource extraction issuer's fiscal year end. When calculating whether the de minimis threshold has been exceeded, a resource extraction issuer may be required to convert the payment to U.S. dollars, even though it is not required to disclose those payments in U.S. dollars. For example, this may occur when the resource extraction issuer is using a non-U.S. dollar reporting currency. In these instances, the resource extraction issuer may use any of the three methods described above for calculating the currency conversion.''

[157] *See id.* (stating that ''[i]n all cases, a resource extraction issuer must disclose the method used to calculate the currency conversion and must choose

Request for Comment

23. The definition of ''not de minimis'' requires issuers to disclose payments for an individual project if the payments in the aggregate equal or exceed $750,000, unless no individual payments per that project equal or exceed $150,000. Is this approach appropriate in light of our proposed definition of ''project,'' which would allow for greater aggregation of payments? Should we instead continue to use the same quantitative threshold of $100,000 that we used in the 2016 and 2012 Rules without regard to the proposed definition of project? If it is appropriate to take into account the proposed definition of project, are there any data or have there been any developments since the 2016 Rules that suggest a quantitative threshold lower or higher than $750,000 is the more appropriate project threshold, or that an individual payment threshold lower or higher than $150,000 is the more appropriate threshold?

24. The statute does not define ''not de minimis'' or explain how that term should be applied. Should we base the ''not de minimis'' threshold on an amount that is not de minimis relative to (i) a particular resource extraction issuer, (ii) a particular country, or (iii) a particular project?

25. Should the focal point for determining whether a payment is ''not de minimis'' be the relationship between individual and total company payments per payment type? If not, what should the focal point be? Should we consider the relation of the payment to the government recipient and/or the local community when adopting the ''not de minimis'' payment threshold?

26. As an alternative to setting a bright line threshold based on dollar amount of payment, should we not define ''not de minimis'' and allow resource extraction issuers to make the determination of what qualifies as a payment that is not de minimis, based on the particular facts and circumstances?

27. If we should adopt an absolute quantitative threshold, should we include a mechanism to adjust periodically the de minimis threshold to reflect the effects of inflation? If so, what is an appropriate interval for such adjustments? What should the basis be for making any such adjustments if the appropriate focal point for determining whether a payment is ''not de minimis'' is in relation to the host country recipient?

28. Should we adopt a definition of ''not de minimis'' using a standard based on the materiality of the payment to the issuer? If so, would this be consistent with the language of the statute, which uses the term ''not de minimis'' rather than ''material''?

D. Anti-Evasion

As under the 2016 Rules, the proposed rules would require disclosure with respect to an activity or payment that, although not within the categories included in the proposed rules, is part of a plan or scheme to evade the disclosure required under Section 13(q).[158] This provision is designed to emphasize substance over the form or characterization of payments. We believe that it covers most of the situations that have concerned commenters in past releases. For example, the provision would cover payments that were substituted for otherwise reportable payments in an attempt to evade the disclosure rules,[159] as well as activities and payments that were structured, split, or aggregated in an attempt to avoid application of the rules.[160] Similarly, a resource extraction issuer could not avoid disclosure by re-characterizing an activity as transportation that would otherwise be covered under the rules, or by making a payment to the government via a third party in order to avoid disclosure under the proposed rules.

Request for Comment

29. Should we adopt an anti-evasion provision, as proposed? Should we provide additional guidance about when the anti-evasion provision would apply?

30. Have there been any developments since the 2016 Rules that suggest that a different approach to the anti-evasion provision would be appropriate?

E. Definition of ''Subsidiary'' and ''Control''

Section 13(q) requires a resource extraction issuer to disclose payments by a subsidiary or an entity under the control of the issuer. Similar to the 2016 Rules, the proposed rules would define the terms ''subsidiary'' and ''control'' based on accounting principles rather than using the definitions of those terms provided in Rule 12b–2,[161] which was the case under the 2012 Rules.[162] All of the commenters on the 2016 Rules Proposing Release that addressed this aspect of the proposed rules generally supported using accounting principles to define ''control.''[163]

Under the proposed approach, a resource extraction issuer would have ''control'' of another entity when the issuer consolidates that entity under the accounting principles applicable to its financial statements included in the periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act. Thus, for purposes of determining control, the resource extraction issuer would follow the consolidation requirements under generally accepted accounting principles in the United States (''U.S. GAAP'') or under the International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board, as applicable.[164]

We believe that the proposed definition, compared to the use of the definition of ''control'' in Rule 12b–2, would better balance transparency for users of the payment disclosure and the burden on issuers. Issuers already apply the concept of control for financial reporting purposes, which should facilitate compliance. Assuming a reporting issuer consolidates the entity making the eligible payment, this approach also should have the benefit of limiting the potential overlap of the disclosed payments because generally, under applicable financial reporting principles, only one party can control, and therefore consolidate, that entity.

a consistent method for all such currency conversions within a particular Form SD submission'').

[158] *See* proposed Rule 13q–1(b). Several commenters supported this provision in the 2016 rulemaking although a few commenters recommended revising the provision to address specific concerns. *See* 2016 Adopting Release, Section II.C.2.c.

[159] *See, e.g.,* Letter from Elise J. Bean (Feb. 16, 2016). *See also* Section II.F below (discussing application of the anti-evasion provision in the context of the definition of ''project'' under the proposed rules).

[160] *See, e.g.,* Letter from PWYP–US (Feb. 16, 2016).

[161] Under Exchange Act Rule 12b–2 [17 CFR 240.12b–2], ''control'' (including the terms ''controlling,'' ''controlled by'' and ''under common control with'') is defined to 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. Rule 12b–2 also defines ''subsidiary'' of a specified person to mean an affiliate controlled by such person directly, or indirectly through one or more intermediaries. *See also* the definitions of ''majority-owned subsidiary,'' ''significant subsidiary,'' and ''totally held subsidiary'' in Rule 12b–2.

[162] *See* 2012 Adopting Release, Section II.D.4.c.

[163] *See, e.g.,* Letters from the API (Feb. 16, 2016); British Petroleum p.l.c. (Feb. 16, 2016); Chevron Corporation (Feb. 16, 2016); Encana; ExxonMobil (Feb. 16, 2016); Global Witness (Mar. 8, 2016); and PWYP–US (Feb. 16, 2016).

[164] *See* Accounting Standards Codification (''ASC'') 810, Consolidation; and IFRS 10, Consolidated Financial Statements. A foreign private issuer that prepares financial statements according to a comprehensive set of accounting principles, other than U.S. GAAP or IFRS, and files with the Commission a reconciliation to U.S. GAAP would be required to determine whether or not an entity is under its control using U.S. GAAP.

Further, this approach could enhance the quality of the reported data since each resource extraction issuer is required to provide audited financial statement disclosure of its significant consolidation accounting policies in the notes to the audited financial statements included in its existing Exchange Act annual reports.[165] The disclosure of these accounting policies should provide greater transparency about how the issuer determined which entities and payments should be included within the scope of the required disclosures. Finally, a resource extraction issuer's determination of control under the proposed rules would be subject to the audit process as well as to the internal accounting controls that issuers are required to have in place with respect to reporting audited financial statements filed with the Commission.[166]

The proposed rules would not require disclosure of the proportionate amount of the payments made by a resource extraction issuer's proportionately consolidated entities or operations.[167] After reconsidering the comments raising concern about the definition of control and the potential compliance costs associated with using a broader definition of control, the definition we are proposing would exclude entities or operations in which an issuer has only a proportionate interest.[168] Compared to an issuer that consolidates an entity, an issuer with a proportionate interest in an entity or operations may not have the same level of ability to direct the entity or operations making the payments. For example, as commenters have noted, an issuer that holds a proportionate interest in a joint venture typically does not have ready access to detailed payment information when it is not the operator of that venture.[169] Requiring such a non-operator issuer to provide the payment disclosure based on its proportionate interest in the venture could compel that issuer to renegotiate its joint venture agreement or make other arrangements to obtain sufficiently detailed payment information to comply with the Section 13(q) rules, which could significantly increase its compliance burden. Excluding proportionate interest entities or operations from the proposed definition of control would result in less payment information about joint ventures becoming public,[170] as compared to the 2016 Rules; however, we believe that this potential reduction in transparency is an appropriate tradeoff to help reduce the compliance burden of the proposed rules.

We also reconsidered the recommendation of commenters on the 2016 Rules Proposing Release to include a ''significant influence'' test for determining control in addition to the accounting consolidation principles we are proposing.[171] We do not believe, however, that we should define control such that significant influence by itself would constitute control.[172] The concept of significant influence does not reflect the same level of ability to direct or control the actions of an entity that is generally reflected in the concept of consolidation. As such, we believe that the consolidation principles are better aligned with the purposes underlying Section 13(q) than a significant influence test. Moreover, unlike a potential significant influence test, the consolidation principles used to define control for the purposes of Section 13(q) more closely capture the situations where the resource extraction issuer has access to the information that is required to be reported.

Request for Comment

31. Should we define the term ''control'' based on applicable accounting principles, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

32. Should we exclude from the definition of control entities or operations in which an issuer has only a proportionate interest, as proposed? Should we instead require an issuer to disclose its proportionate share of the payments made by a joint venture based on its proportionate interest in the venture even when it is not the operator of the venture? Should we require such a non-operator joint venture participant to disclose its proportionate share of the joint venture payments if it knows or is able to obtain the information necessary to comply with the proposed rules without undue difficulty or expense?

33. Are there alternatives to the proposed definition of control that would better balance transparency for users of the payment information and the compliance burden on issuers? For example, should we require only the operator of a joint venture to disclose all of the payments it makes to governments, including those made on behalf of non-operator joint venture participants? Should we require the operator of a joint venture to disclose its proportionate share of the payments made? When the operator is not an Exchange Act reporting company, and therefore not subject to the Section 13(q) rules, should each non-operator participant that is subject to the Section 13(q) rules be required to disclose the payments made by itself and entities or operations that it fully or proportionately consolidates or accounts for as a joint operation? In the event that none of the joint venture participants is a consolidated entity, should we require a registrant that owns a proportionate interest in the operator of the venture to disclose the payments made either on behalf of all the participants or based on the registrant's proportionate share of the venture? In these circumstances, should we require a registrant that owns a proportionate interest in a non-operator venture participant to disclose its proportionate share of the payments if it is able to obtain the necessary payment information without undue burden or expense?

34. Alternatively, should we adopt a definition of control that includes more than just consolidated entities (*e.g.,* entities over which an issuer has significant influence)?

F. Definition of ''Project''

Consistent with Section 13(q), the proposed rules would require a resource extraction issuer to disclose payments made to governments relating to the commercial development of oil, natural gas, or minerals by type and total amount per project. The proposed rules would define ''project'' using the following three criteria: (1) The type of resource being commercially developed; (2) the method of extraction; and (3) the major subnational political jurisdiction where the commercial development of

[165] *See* ASC 235–10–50; IFRS 8. *See also* Rules 1–01, 3–01, and 4–01 of Regulation S–X [17 CFR 210.1–01, 2–01 and 4–01].

[166] *See* Exchange Act Section 13(b)(2)(B) [15 U.S.C. 78m(b)(2)(B)]. *See also* Rules 13a–15 [17 CFR 240.13a–15] and 15d–15 [17 CFR 240.15d–15]. We note, however, that the proposed rules would not create a new auditing requirement.

[167] Proportionately consolidated entities or operations include those entities or operations that are proportionately consolidated in accordance with ASC 810–10–45–14 and ''joint operations'' as defined in IFRS 11, Joint Arrangements.

[168] *See, e.g.,* Letters from API (Feb. 16, 2016); BP (Feb. 16, 2016); Chevron (Feb. 16, 2016); ExxonMobil (Feb. 16, 2016); Petro1eo Brasileiro S.A-Petrobras (''Petrobras'') (Feb. 16, 2016); and RDS (Feb. 5, 2016).

[169] *See, e.g.,* Letters from API (Feb. 16, 2016); and ExxonMobil (Feb. 16, 2016).

[170] *See, e.g.,* Letters from PWYP–US (Feb. 16, 2016); and Global Witness (Mar. 8, 2016).

[171] *See, e.g.,* Letter from PWYP–US (Feb. 16, 2016).

[172] In this regard, we note that under U.S. GAAP and IFRS, significant influence alone does not represent a level of control that would result in consolidation. *See* ASC 323–10–15, paragraphs 6 through 11 and IAS 28, paragraph 3.

the resource is taking place.[173] The proposed definition (''Modified Project Definition'') differs from the definition included in the 2016 Rules, which defined ''project'' as the operational activities governed by a single contract, license, lease, concession, or similar agreement, which form the basis for payment liabilities with a government (''Contract-Level Project Definition'').[174]

1. Considerations for Modified ''Project'' Definition

In adopting the 2016 Rules, the Commission expressly considered the Modified Project Definition as an alternative to the Contract-Level Project Definition that it ultimately adopted. In considering the Modified Project Definition, the Commission acknowledged that such a definition ''could lower the potential for competitive harm when compared to [the Contract-Level Project Definition].'' [175] However, the Commission stated that, in its view, the Contract-Level Project Definition was ''on balance, necessary and appropriate notwithstanding the potential competitive concerns that may result in some instances.'' [176] In doing so, the Commission acknowledged that both approaches would provide the public with information concerning ''the overall revenue that national governments receive from natural resources, so that the public can seek to hold the government accountable for how much it is receiving and how it spends that money.'' [177] Nevertheless, the Commission determined that the more granular transparency provided by the Contract-Level Project Definition could potentially go further in combating corruption. Specifically, the Commission found that the Contract-Level Project Definition, by providing transparency about the revenues generated from each contract, license, and concession, could serve to reduce the potential for corruption in connection with the negotiation and implementation of a resource-extraction contract.[178] In this way, the Contract-Level Project Definition could minimize instances of corruption that may occur *before* resource-extraction revenue is paid to the government.

In advancing a contract-level definition of ''project,'' the Commission acknowledged that such an approach increases the potential that resource-extraction issuers might be required to disclose sensitive competitive information about the underlying contracts, licenses, or concessions.[179] The Commission nevertheless concluded that the additional benefits of this more granular disclosure justified any attendant competitive effects.[180]

In light of the concerns expressed by prior commenters and members of Congress that the 2016 Rules imposed undue competitive harm, we have reconsidered the balance that the Commission previously struck. In proposing the Modified Project Definition, we acknowledge that we may be narrowing the scope of the transparency benefits that the disclosures under Section 13(q) were intended to produce. Although we believe that the proposed definition would continue to provide substantial transparency about the overall revenue flows to foreign governments and the U.S. Federal Government, under the Modified Project Definition, these disclosures would no longer provide the additional transparency benefits associated with contract-level information. For the reasons discussed below, we believe that forgoing these additional transparency benefits is an appropriate trade-off to address commenters' and Congress's concerns about the potentially adverse impacts on resource extraction issuers arising from the 2016 Rules.

The proposed change to the definition of ''project'' directly addresses the primary concerns expressed about the 2016 Rules. Those concerns included the costs, burdens, and risks of competitive harm related to tracking, recording, and disclosing the payment information on a per contract basis using the contract-based definition of ''project'' in the 2016 Rules.[181] The Modified Project Definition should alleviate those concerns by reducing the likelihood of competitively harmful information being released. As one industry commenter noted in connection with the 2016 Rules Proposing Release, disclosure that is less detailed and not as closely linked to individual contracts would assuage concerns that competitors could reverse-engineer proprietary commercial information.[182]

A broader project definition should also reduce the compliance burden of the proposed rules compared to the 2016 Rules. Because the Modified Project Definition would allow an issuer to make the payment disclosure at a greater level of aggregation than under the Contract-Level Project Definition, there would be fewer individual data points that have to be electronically tagged and reported, which should make it easier to disclose the payment information on an ongoing basis. An issuer's costs could be further reduced to the extent that it has already aggregated the payment information for its own internal accounting or financial reporting purposes. In that event, it may be less costly for an issuer to modify its internal accounting/financial reporting system to collect the required payment information than it would be to build from scratch a system to collect the payment information on a contract-by-contract basis.[183]

Moreover, we believe that this change is consistent with the CRA's instruction that an agency may not reissue ''a new rule that is substantially the same as'' the rule that Congress disapproved.[184] As is evident from the discussions in

[173] This proposed definition is similar to the definition of ''project'' suggested by one industry commenter. *See* Letters from the API (Nov. 7, 2013) and (Feb. 16, 2016). The term ''project'' as used in this release would only apply to disclosure provided pursuant to Rule 13q–1 and not, for example, the disclosure required by Article 4–10 of Regulation S–X (17 CFR 210.4–10) or subpart 1200 of Regulation S–K (17 CFR 229.1200).

[174] 2016 Rules Adopting Release, Section II.E.3.

[175] *Id.*

[176] *Id.*

[177] *Id.*

[178] Among other things, the Commission found that the Contract-Level Project Definition had the advantage that, in some instances, it could combat corruption by: (1) ''help[ing] assist citizens, civil society groups, and others to monitor individual companies' contributions to the public finances and ensur[ing] firms are meeting their payment obligations,'' at least ''[t]o the extent that a company's contractual or legal obligations are known''; (2) deterring ''companies from either entering into agreements that contain suspect payment provisions or following government officials' suspect payment instructions''; (3) ''help[ing] local communities and civil society groups to weigh the costs and benefits of an individual project''; and (4) ''allow[ing] for comparisons of revenue flow among different projects . . . to identify payment discrepancies[.]'' *Id.*

[179] *See* 2016 Rules Adopting Release, Section II.E.3.

[180] *See id.*

[181] *See supra* n. 54 through 56. In addition, one congressman noted that extractive companies ''are already publicly disclosing the work they do in foreign countries and will continue to do so'' but ''at a level that does not cause competitive harms.'' 163 Cong. Rec. at H854 (statement of Rep. Williams). *See also* Letters from API (Nov. 7, 2013) and (Feb. 16, 2016); Letter from ExxonMobil (Feb. 16, 2016); and Letter from Chevron (Feb. 16, 2016).

[182] *See* letter from ExxonMobil (Feb. 16, 2016).

[183] *See infra* Section III.C.2.

[184] 5 U.S.C. 801(b)(1). The CRA instructs that the ''new rule'' cannot be ''substantially the same'' or in ''substantially the same form'' as the disapproved rule. *Id.* (emphasis added). We believe that this language clearly reflects Congress' intent that, in issuing a new rule, an agency must do more than substantially revise the rationales supporting the prior rule or the economic analysis underlying the prior rule. Rather, the CRA instructs that the ''new rule'' itself must be substantially different. As such, we do not believe that readopting the 2016 rule with modifications only to the rationales or economic analysis in the release will satisfy the substantially different requirement mandated by the plain language of the CRA.

the Commission's previous releases and the comments received in response, the definition of ''project'' is a critical element of the disclosure regime contemplated by Section 13(q).[185] We therefore believe that the Modified Project Definition would help to satisfy the CRA's requirement that the new rule that we are proposing not be substantially the same as the 2016 Rules.[186]

Finally, we note that some prior commenters maintained that a Contract-Level Project Definition would provide material benefits to investors by, for example, assisting in the assessment of financial, political, social, and market risks regarding a particular issuer's projects,[187] or helping to mitigate systemic financial market risk generally in the extractive industries sector.[188] However, we believe that Commission rules requiring disclosure of the most significant risks affecting a company or the securities being offered [189] and disclosure of known trends or uncertainties that have had or are reasonably likely to have a material impact on the registrant's liquidity, capital resources, or results of operations,[190] should elicit all appropriate risk-related disclosure.

2. Discussion of the Modified ''Project'' Definition

In the following three subsections, we discuss the disclosure required by each of the three prongs of the proposed Modified Project Definition in greater detail. In each instance, we have striven to achieve an appropriate balance between the policy goal of promoting transparency about a resource extraction issuer's payments to governments and the concerns expressed by commenters and members of Congress about the compliance costs and burdens of the proposed rules, including the risk of competitive harm by requiring the disclosure of proprietary commercial information.

a. Type of Resource

Under the Modified Project Definition, the first prong for determining the parameters of a project is the type of resource that is being commercially developed. As proposed, a resource extraction issuer would have to disclose whether the project relates to the commercial development of oil, natural gas, or a specified type of mineral. Thus, an issuer would not be required to describe the specific type or quality of oil or natural gas or distinguish between subcategories of the same mineral type. For example, an issuer disclosing payments relating to an oil project would not be required to describe whether it is extracting light or heavy crude oil. Similarly, an issuer disclosing payments relating to a mining project would be required to disclose whether the mineral is gold, copper, coal, sand, gravel, or some other generic mineral class, but not whether it is, for example, bituminous coal or anthracite coal. For clarity and consistency, a proposed instruction to Form SD would require synthetic oil or gas obtained through processing of coal to be classified as ''coal.'' [191]

We believe that a requirement to provide greater detail regarding the type of resource that is the subject of extractive activities, although perhaps useful in some instances for tracking specific payments, is not necessary for citizens of resource rich countries to determine whether those activities have given rise to government revenues in which they may have an interest. On the other hand, such a requirement could unnecessarily increase an issuer's compliance costs and burdens, including the risk that such additional detail may reveal proprietary information that could cause competitive harm.

b. Method of Extraction

The second prong for determining the parameters of a project is the method of extraction. This prong would require a resource extraction issuer to identify whether the resource is being extracted through the use of a well, an open pit, or underground mining. Additional detail about the method of extraction would not be required. For example, a resource extraction issuer would not be required to disclose whether it is using horizontal or vertical drilling, hydraulic fracturing, or strip, sublevel stope, or block cave mining. Similar to the type of resource prong, we preliminarily believe that such a level of specificity regarding the particular method of extraction is not necessary for citizens of resource rich countries to determine generally if extractive activities in their region have given rise to government revenues in which they may have an interest. Thus, a requirement to provide more specificity regarding the particular method of extraction could unnecessarily increase an issuer's regulatory costs and burdens, including the risk of having to disclose proprietary information that could potentially result in competitive harm.

c. Major Subnational Political Jurisdiction

The third prong for determining the parameters of a project is the major subnational political jurisdiction where the commercial development of the resource is taking place. This prong would require an issuer to disclose only two levels of jurisdiction: (1) The country; and (2) the state, province, territory or other major subnational jurisdiction in which the resource extraction activities are occurring.[192] For example, extractive activities in the city of Timika in the province of Papua, Indonesia could be disclosed as occurring in Papua, Indonesia without identifying Timika. In addition, an issuer could treat its activities in the counties of Elko, Nevada and White Pine, Nevada, as part one project because Nevada would be the major subnational political jurisdiction. If the extractive activity is offshore, the proposed rules would require an issuer to disclose that it is offshore and the nearest major subnational political jurisdiction.

We believe that defining project with regard to the major subnational jurisdiction in which a project is located would alleviate one of the most significant concerns (and related harms) expressed by commenters in the 2016 rulemaking about the Contract-Level Project Definition, including that contract-level disclosure would:

- Allow competitors to derive important information about new areas under exploration for potential resource development, the value the company

[185] *See* 2012 Rules Adopting Release, Section III.D.3; 2016 Rules Adopting Release, Section III.E.3.

[186] In the 2016 Rules Adopting Release, the Commission expressed the view that the Contract-Level Project Definition embodied a more natural understanding of what constitutes a ''project.'' *See* 2016 Rules Adopting Release, Section III.E.3. However, the Commission did not foreclose the Modified Project Definition as a plausible alternative. In light of Congress's disapproval of the 2016 Rules, we believe that it is appropriate to utilize the Modified Project Definition.

[187] *See, e.g.,* Letter from Calvert Investments and Social Investment Forum (Nov. 15, 2010); Letter from Calvert Investments (Feb. 16, 2016); and Columbia Center on Sustainable Investment (Oct. 30, 2015).

[188] *See, e.g.,* Letter from ACTIAM NV et al. (Mar. 8, 2016); Allianz Global Investors et al. (April 28, 2014); and the First Swedish National Pension Fund et al. (May 9, 2014).

[189] *See* Item 503(c) of Regulation S–K (17 CFR 229.503(c)).

[190] *See* Item 303 of Regulation S–K (17 CFR 229.303).

[191] *See* proposed Instruction 5 to Item 2.01 of Form SD.

[192] As proposed, an issuer would have to provide an electronic tag for both the country and the major subnational political jurisdiction in which the extractive activities are occurring that is consistent with the International Organization for Standardization (''ISO'') code pertaining to countries and their major subdivisions. *See infra* Section II.K.

places on such resources, and the costs associated with acquiring the right to develop these new resources;

• Enable competitors to evaluate the new resources more precisely, and as a result, structure their bids for additional opportunities in the areas with new resources more effectively; and

• Allow competitors to reverse-engineer proprietary commercial information: For example, to determine the commercial and fiscal terms of the agreements, get a better understanding of an issuer's strategic approach to bidding and contracting, and identify rate of return criteria.[193]

We also note that the proposed use of ISO codes[194] to identify subnational jurisdictions would provide a standardized data format that may be more easily analyzed than the data produced under the Contract-Level Project Definition.

d. Special Situations

The proposed definition of project would include commercial development activities using multiple resource types or extraction methods if such activities are located in the same major subnational political jurisdiction. The issuer would be required to describe each type of resource that is being commercially developed and each method of extraction used for that project. For example, an open pit and underground zinc mining project in Erongo, Namibia would be described as ''NA-ER/Zinc/Open Pit/Underground'' and a drilling project off the shore of Nigeria that produced oil and natural gas would be described as ''NG-BY/Offshore/Oil/Natural Gas/Well.''

We recognize that such an approach could result in broad aggregation of projects within a major subnational political jurisdiction, which could make it more difficult for end-users of the disclosure to identify the specific commercial development activities associated with the disclosed payments. Nevertheless, we believe this approach to be appropriate because issuers often develop more than one type of resource at a particular location and use more than one method of extraction. Limiting the definition of project to only commercial development activities comprising the same type of resource, method of extraction, and major subnational political jurisdiction may result in artificial distinctions. For example, an issuer would be required to treat oil and natural gas extraction from the same well as separate projects, and similarly, open pit and underground mining in the same location as separate projects. Requiring that these types of related activities be treated as separate projects could also lead to confusion about how reportable payments should be allocated between such projects. In addition, we note that greater aggregation could result in additional payments being disclosed on a per project basis because it would be less likely that such a payment would be de minimis than if project was defined more granularly.

In some situations the site where a resource is being commercially developed could cross the borders between multiple major subnational political jurisdictions. In such a case, the proposed rules would require the issuer to treat the activities in each major subnational political jurisdiction as separate projects. This approach reflects the fact that, although the cross-border extractive activities are related, they likely would give rise to a separate set of payments to different subnational payees in each jurisdiction.

Request for Comment

35. Should we define ''project'' by the type of resource being commercially developed, the method of extraction, and the major subnational political jurisdiction where the commercial development of the resource is taking place, as proposed?

36. Would the Modified Project Definition achieve an appropriate balance between promoting transparency regarding a resource extraction issuer's payments to governments and reducing regulatory costs and burdens, including the risk of harming the issuer's competitive position by requiring disclosure of proprietary commercial information? Are there any specific changes that we could make to the Modified Project Definition that would improve transparency and/or help limit compliance costs and burdens consistent with the Section 13(q) mandate and the CRA's restrictions on subsequent rulemaking?

37. Have companies experienced compliance problems or burdens with reporting contract-based payments under the EU Directives and Canada's ESTMA? Does that experience confirm that our proposed approach to the definition of ''project'' is appropriate, or does it suggest that we should adopt a different approach? If the latter, describe that approach and whether it would also help limit compliance costs and burdens for resource extraction issuers.

38. Is there an alternative to using either the Modified Project Definition or the Contract-level Project Definition that would support the commitment of the Federal Government to promote international transparency promotion efforts relating to the commercial development of oil, natural gas or minerals while limiting compliance costs and mitigating competitive concerns for resource extraction issuers? To what extent is comparability among Section 13(q) disclosures important for transparency purposes? To the extent it is important, would requiring more or less granular project information impact comparability?

39. Are the proposed requirements for describing the type of resource appropriate? If not, please explain how the type of resource should be described and why.

40. Should we require issuers to provide greater detail on the type of resource than proposed? If so, what level of detail should we require? What benefits would such additional detail provide to end-users? What costs would an issuer incur to provide such additional detail?

41. Are the proposed requirements for describing the method of extraction appropriate? If not, please explain how the method of extraction should be described and why.

42. Should we require issuers to provide greater detail on the method of extraction being used? If so, what level of detail should we require? What benefits would such additional detail provide to end-users? What costs would an issuer incur to provide such additional detail?

43. Does the proposed requirement to describe the major subnational political jurisdiction where the commercial development of the resource is taking place provide the appropriate balance between promoting payment transparency and limiting an issuer's compliance costs and burdens? If not, how should we alter the requirement and why? Does the reference to ''the state, province, territory or other major subnational jurisdiction'' provide adequate guidance concerning how to identify the political jurisdiction where the commercial development of the resource is taking place?

44. The proposed rules would permit an issuer to combine separate resources

[193] *See, e.g.,* Letters from the API (Feb. 16, 2016) and ExxonMobil (Feb. 16, 2016). In particular, we understand that exploratory activities, particularly in a subnational jurisdiction that is small, may pose a significant risk of competitive harm to a resource extraction issuer. We discuss that risk and our proposed targeted exemption to mitigate that risk in Section II.J.4 below.

[194] The International Organization for Standardization (ISO) created and maintains codes for the representation of names of countries and their subdivisions. *See infra* Section II.L (discussing the proposed requirement to use ISO codes to describe the country in which the project is located and the subnational geographic location of a project).

and different extraction methods into one project if they occur in the same major subnational political jurisdiction. Would this result in too much aggregation even if, as proposed, issuers would be required to describe each resource and each method of extraction?

45. If we do not allow for multiple resource types or methods of extraction to be aggregated, would it result in confusion for issuers or end-users? Would requiring issuers to treat each resource type or method of extraction as a separate project result in more payments being considered de minimis and thus reduce the overall amount of disclosure?

46. Is our proposed approach to disclosing activities that cross the borders of major subnational political jurisdictions appropriate? Are there specific cross-border situations that we should address? Should we instead allow issuers to include all the major subnational political jurisdictions in the description of the project in such a cross-border situation? Would such an approach make it more difficult to identify the location of the project?

G. Definition of ''Foreign Government'' and ''Federal Government''

As with the 2016 Rules, we are proposing definitions of ''foreign government'' and ''Federal Government'' that are consistent with Section 13(q).[195] Under the proposed rules, a ''foreign government'' would be defined as a foreign government, a department, agency, or instrumentality of a foreign government, or a company at least majority owned by a foreign government. The term ''foreign government'' would include a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.[196] ''Federal Government'' would be defined as the Federal Government of the United States and would not include subnational governments within the United States.

For purposes of identifying the foreign governments that received payments at a level below the major subnational government level, the proposed rules would permit an issuer to aggregate all of its payments of a particular payment type without having to identify the particular subnational government payee. The issuer would only be required to identify the type of administrative or political level of subnational government that received the payments. For example, an issuer could aggregate payments by payment type made to multiple counties and municipalities (the level below major subnational government level) and disclose the aggregate amount without having to identify the particular subnational government payee. The issuer would instead generically identify the subnational government payee (*e.g.,* as ''county,'' ''municipality'' or some combination of subnational governments).[197]

In contrast, for payments made at the major subnational government level, the issuer would have to disclose the particular major subnational payee. Under the proposed Modified Project Definition, however, the issuer could aggregate payments of a particular payment type made to that particular payee.[198] For example, an issuer with extractive operations in the three oil sands regions of Alberta, Canada[199] would be able to aggregate all of its fees paid for environmental and other permits to the Regional Municipality of Wood Buffalo, Northern Sunrise County and the Municipality of Cold Lake, but would not have to identify any of those subnational governments. Instead, when disclosing the aggregate amount, the issuer would identify the payment type as ''fees'' and the government as ''county and municipality.''

For royalties paid to the Alberta Department of Energy, at the major subnational government level, however, the issuer would have to identify the payee as ''Alberta Department of Energy.'' It could aggregate all of the royalties arising from its operations in the three oil sands areas, when disclosing the aggregate amount and identifying the payment type as ''royalties.''

We are proposing this option for aggregated disclosure of subnational government payments to reduce the potential for competitive harm that could result from implementation of the Section 13(q) rules. Some prior commenters stated that overly granular disclosure requirements could permit the reverse-engineering of an issuer's proprietary commercial information or otherwise cause the issuer competitive harm.[200] Moreover, in disapproving the 2016 Rules, members of Congress were particularly concerned about the rules' potential for causing competitive harm.[201] In light of these concerns, we are proposing to permit an issuer to aggregate payments made to entities below the major subnational level without having to identify the particular subnational government payee to mitigate the risk that an issuer could be exposed to potential competitive harm from the disclosure.

Separately, under the proposed rules, a company owned by a foreign government would be defined as a company that is at least majority-owned by a foreign government.[202] Although we acknowledge the concerns of the commenters on the 2016 Rules Proposing Release that argued for a more expansive definition,[203] we believe it would be difficult for issuers to determine when the government has control over a particular entity outside of a majority-ownership context. In this regard, we note that the statute refers to a company ''owned'' by a foreign government, not ''controlled'' by a foreign government. Moreover, the ''control'' concept is explicitly included in Section 13(q) in other contexts.[204]

With respect to the definition of ''Federal Government,'' we believe that Section 13(q) is clear in only requiring disclosure of payments made to the Federal Government in the United States and not to state and local governments. In this regard, we believe that typically the term ''Federal Government'' refers only to the U.S. national government and not the states or other subnational governments in the United States.

Request for Comment

47. Should the definition of ''foreign government'' include a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as proposed?

48. Should we permit an issuer to aggregate payments made to subnational governments below the major subnational level without having to identify any particular subnational government payee, as proposed? If we should instead require the disclosure of

[195] *See* 2016 Adopting Release, Section II.F.3. We also adopted the same definitions in the 2012 rulemaking. *See* 2012 Adopting Release, Section II.E.3.

[196] To the extent that aboriginal, indigenous, or tribal governments are subnational governments in foreign countries, payments to those government entities would be covered by the proposed rules.

[197] *See* proposed Instruction (14) to Item 2.01 of Form SD.

[198] *See supra* Section II.F.

[199] The three major oil sands regions in Alberta are the Athabasca, Peace River, and Cold Lake regions. *See, e.g.,* Regional Aquatics Monitoring Program, ''The Oil Sands Described,'' *available at http://www.ramp-alberta.org/resources/development/distribution.aspx.*

[200] *See, e.g.,* Letter from ExxonMobil (Feb. 16, 2016); and Letter from API (Feb. 16, 2016).

[201] *See supra* Section I.C.2.

[202] *See* proposed Item 2.01(d)(7) of Form SD.

[203] *See, e.g.,* Letters from Global Witness (Mar. 8, 2016) and PWYP–US (Feb. 16, 2016).

[204] *Compare* Section 13(q)(1)(B) *with* Section 13(q)(2(A).

each subnational government payee, please explain why that approach would be more appropriate and address whether such a requirement could increase the potential for competitive harm.

49. Should we include an instruction in the rules clarifying that a company owned by a foreign government is a company that is at least majority-owned by a foreign government, as proposed? Should we instead provide that a company owned by a foreign government is a company in which the foreign government is the controlling shareholder?

50. Should the definition of ''foreign government'' include federally recognized American Indian or Alaska Native tribal entities?

51. Should we alter our approach to the terms ''foreign government'' or ''Federal Government'' based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

H. Annual Report Requirement

Section 13(q) mandates that a resource extraction issuer provide the payment disclosure required by that section in an annual report but otherwise does not specify the location of the disclosure, either in terms of a specific form or in terms of location within a form. We believe that resource extraction issuers should provide the required disclosure about payments on Form SD.

Form SD is already used for specialized disclosure not included within an issuer's periodic or current reports, specifically, the disclosure required by the rule implementing Section 1502 of the Act.[205] As such, we believe that using Form SD would facilitate interested parties' ability to locate the disclosure. We also believe that using Form SD would address issuers' concerns about providing the disclosure in their Exchange Act annual reports on Forms 10–K, 20–F or 40–F.[206] For example, it should alleviate the concern that the disclosure will be subject to the officer certifications required by Exchange Act Rules 13a–14 and 15d–14. It would also allow the Commission, as discussed below, to adjust the timing of the submission without directly affecting the broader Exchange Act disclosure framework.[207] As proposed, Form SD would require an issuer to include a brief statement in the body of the form in an item entitled, ''Disclosure of Payments by Resource Extraction Issuers,'' directing readers to the detailed payment information provided in the exhibits to the form.[208]

While Section 13(q) mandates that a resource extraction issuer include the relevant payment disclosure in an ''annual report,'' it does not specifically mandate the time period in which a resource extraction issuer must provide the disclosure. We believe fiscal year reporting would limit resource extraction issuers' compliance costs by allowing them to use their existing tracking and reporting systems for their public reports to also track and report payments under Section 13(q).

The 2016 Rules required resource extraction issuers to submit Form SD on EDGAR no later than 150 days after the end of the issuer's most recent fiscal year. We based this deadline in part on the need to avoid a conflict with the deadline for an issuer's annual report on Form 10–K, 20–F, or 40–F under the Exchange Act.[209] While we continue to believe that it is reasonable to provide a deadline that would be later than an issuer's Exchange Act annual report deadline, in light of the concerns about excessive compliance costs and burdens and potential competitive harm under the 2016 Rules,[210] we are proposing a submission deadline for Form SD that is longer than the 150 day deadline. The proposed rules would require an issuer with a fiscal year ending on or before June 30 to submit Form SD no later than March 31 in the calendar year following its most recent fiscal year. For an issuer with a fiscal year ending after June 30, the Form SD submission deadline would be no later than March 31 in the second calendar year following its most recent fiscal year.[211]

We believe that the proposed submission deadlines would be sufficient to enable all resource extraction issuers to prepare timely disclosure regarding payments to governments made in their most recent fiscal year, no matter when their fiscal year-end may be, and therefore mitigate the compliance burdens under Section 13(q). We also believe that the lengthened submission deadlines would also address the concerns that the public disclosure of the payment information could cause competitive harm.

We also considered the possibility that certain resource extraction issuers may be required to submit two reports on Form SD every year if we use a reporting period based on the fiscal year and they are subject to the May 31st conflict minerals disclosure deadline.[212] Nevertheless, we continue to believe that the fiscal year is the more appropriate reporting period for the payment disclosure. We believe it would reduce resource extraction issuers' compliance costs when compared to a fixed, annual reporting requirement by allowing them to use their existing tracking and reporting systems for their public reports to also track and report payments under Section 13(q). In addition, although minimizing the number of Forms SD an issuer would need to submit if it was also subject to the conflict minerals disclosure rules could have benefits, we do not believe that those benefits outweigh those arising from a reporting regime tailored to a resource extraction issuer's fiscal year.[213]

Request for Comment

52. Should we require resource extraction issuers to provide the payment disclosure mandated under Section 13(q) on Form SD, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release? Would extending the submission deadline in this way help to mitigate potential competitive harm from the payment disclosures?

53. What would be a suitable submission deadline? Should we base the furnishing deadline on an issuer's

[205] Rule 13p–1 [17 CFR 240.13p–1]. *See also* Exchange Act Release No. 34–67716 (Aug. 22, 2012) [77 FR 56273 (Sept. 12, 2012)] (''Conflict Minerals Release'').

[206] *See* 2012 Rules Adopting Release, n.366–370 and accompanying text. Under the rules proposed in the 2012 Rules Proposing Release, a resource extraction issuer would have been required to furnish the payment information in its annual report on Form 10–K, Form 20–F, or Form 40–F. One commenter continued to support this approach after the 2012 Rules Adopting Release. *See* Letter from Susan Rose-Ackerman (Mar. 28, 2014) (''[t]here is no need for the cost of a separate report.'').

[207] In this regard, we considered permitting the resource extraction payment disclosure to be submitted as an amendment to Form 10–K, 20–F, or 40–F, as applicable, but we are concerned that this might give the false impression that a correction had been made to a previous filing. *See also* 2012 Rules Adopting Release, n.379 and accompanying text.

[208] *See* proposed Item 2.01(a)(3).

[209] *See* 2016 Adopting Release, Section II.G.3.

[210] *See, e.g., supra* note 54 and accompanying text.

[211] *See* proposed General Instruction B.2. of Form SD.

[212] General Instruction B.1 of Form SD. *See also* Exchange Act Rule 13p–1.

[213] Of the 236 companies that we estimate would be subject to the proposed rules, only 39 filed a Form SD pursuant to Rule 13p–1 in 2018. In addition, we note that the conflict minerals reporting regime adopted a uniform reporting period, in part, because such a period allows component suppliers that are part of a manufacturer's supply chain to provide reports to their upstream purchasers only once a year. *See* Conflict Minerals Release, n.352 and accompanying text. The same reasoning does not apply to the issuer-driven disclosure under the proposed rules.

calendar year-end rather than fiscal year-end?

I. Public Reporting

1. Public Disclosure of the Issuer's Payment Information, Including the Company Name

Section 13(q) provides the Commission with the discretion to require public disclosure of payments by resource extraction issuers, including their names, or to permit nonpublic filings.[214] For the reasons set forth below, we preliminarily believe that exercising our discretion to require public disclosure, including the issuer's name, might better accomplish the objectives of Section 13(q). We are therefore proposing that resource extraction issuers provide the required payment disclosure publicly through the searchable, online EDGAR system.

Section 13(q) requires us to adopt rules that, to the extent practicable, support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas or minerals.[215] We understand that existing transparency regimes require public disclosure of each reporting company's annual report, including the identity of the company.[216] A public disclosure requirement of the payment information under Section 13(q), including the resource extraction issuer's name, would further the statutory directive to support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas or minerals by increasing the total number of companies that provide public, project-level disclosure. In addition, companies that could be subject to the proposed rules may already be publicly reporting under the Canadian or EU regimes, using a more granular contract-level definition of project. For these companies, there would likely be only minimal burden or harm due to public reporting under the proposed rules.

We recognize that some previous commenters suggested that we permit issuers to submit their annual reports to the Commission non-publicly and have the Commission use those nonpublic submissions to produce an aggregated, anonymized compilation that would be made available to the public.[217] Rather than follow this approach, the proposed rules seek to preserve the public disclosure of payment information while incorporating other changes that we believe would significantly alleviate, and in some cases eliminate, the concerns of commenters and certain members of Congress about the rules' potential adverse competitive effects. These changes from the 2016 Rules include (1) the Modified Project Definition—which would permit aggregation of project data at the major subnational level,[218] (2) the proposal to permit aggregation of subnational government payments,[219] (3) the proposed exemptions for conflicts with foreign law and pre-existing contracts,[220] (4) the proposed targeted exemption allowing delayed reporting for exploratory activities,[221] and (5) the extended filing deadline.[222]

While we preliminarily believe that the proposed rules strike an appropriate balance, we are also considering the alternative approach of permitting resource extraction issuers to submit their annual reports on Form SD to the Commission non-publicly and the Commission using those nonpublic submissions to produce an aggregated, anonymized public compilation. In this regard, we note that some commenters have indicated that public disclosure of each issuer's specific payments would increase the risk of competitive harm and that such public disclosure would force issuers to reveal highly confidential, commercially-sensitive information, which could also endanger the safety of an issuer's employees.[223] Similarly, as discussed above, several members of Congress who voted to disapprove the 2016 Rules expressed anti-competitive concerns.[224] We also note the view expressed by commenters that the disclosure of issuer-specific information is not necessary to achieve the statutory goal of transparency.[225] These commenters have expressed the view that the information that is necessary to achieve the statute's purposes is the type and amount of payments to governments, which would be provided in an anonymized compilation. We acknowledge our statutory duty in a public rulemaking to consider whether a proposed action would promote competition in addition to protect investors.[226]

We are interested in commenters' views on whether the rules, as proposed, would sufficiently alleviate concerns about adverse competitive effects or whether we should go further and permit nonpublic submission of the required payment information. If commenters feel that nonpublic submission is necessary or appropriate, it would be helpful if commenters could provide specific explanations for why nonpublic submission is warranted (*i.e.,* what incremental benefits would it provide as compared to the proposed rules) and how aggregated, anonymized payment information would impact the statute's transparency goals. We welcome feedback from all interested parties on these points.

2. Public Compilation

Consistent with Section 13(q), the proposed rules would provide that the Commission's staff will periodically make a separate public compilation of the payment information submitted on Forms SD available online, to the extent practicable.[227] The staff may determine the form, manner, and timing of each

[214] *See API* v. *SEC,* 953 F. Supp. 2d at 11 (finding that the Commission ''misread the statute to mandate public disclosure of the reports'').

[215] Section 13(q)(2)(E).

[216] *See, e.g.,* ESTMA Specifications, Section 2.4 (''Reporting Entities are required to publish their reports on the internet so they are available to the public''); EITI Standard (2013) at 6 (requiring all EITI reports to show payments by individual company rather than aggregated data) and EITI Standard (2016) at Section 2.5(c) (in addition to individual company disclosure, requiring disclosure of the company's beneficial owners in EITI reports by 2020); and EU Accounting Directive Arts. 42(1) and 45(1) (requiring disclosure of payments to governments in a report made public on an annual basis and published pursuant to the laws of each member state). We are not aware of any existing transparency regimes that do not require public disclosure.

[217] *See, e.g.,* Letters from API (Feb. 16, 2016) and (Jan. 28, 2011); BP (Feb. 16, 2016); Chevron (Feb. 16, 2016); and Royal Dutch Shell (Feb. 5, 2016); *see also* 2016 Rules Proposing Release, Section II.G.2 and 2016 Adopting Release, n.345.

[218] *See supra* Section II.F. Disclosure that is less granular and not as closely linked to individual contracts should also assuage concerns that competitors could reverse-engineer proprietary commercial information.

[219] *See supra* Section II.G. In this regard, one industry commenter on the 2016 Rules Proposing Release stated that its concerns about company-specific public disclosure causing competitive harm would be ''substantially mitigated'' if the Commission adopted a definition of ''project'' similar to the one we have proposed. *See* Letter from ExxonMobil (Feb. 16, 2016).

[220] *See infra* Sections II.J.1. and 2.

[221] *See infra* Section II.J.4.

[222] *See infra* Section II.H.

[223] One of these commenters also stated that these harms would not be mitigated by the European Union or Canadian disclosure regimes because 46 of the top 100 oil and gas companies are listed only in the United States, with many having no reportable operations in Europe or Canada, or only limited operations in those jurisdictions conducted through subsidiaries. *See* Letter from API (Feb. 16, 2016).

[224] *See supra* n.56.

[225] *See, e.g.,* Letter from API (Feb. 16, 2016).

[226] *See* Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)], which requires that, whenever the Commission is engaged in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

[227] *See* proposed Rule 13q–1(e).

compilation.[228] As proposed, the staff would not anonymize or change the information included in the compilation.[229]

However, as discussed above, the Commission is also considering the alternative of making available a public aggregated, anonymized compilation instead of making public individual Forms SD. If we choose this alternative, we are considering including information relating to the aggregate payments that flowed to a particular jurisdiction by resource and extraction method.

Request for Comment

54. Should the rules require public disclosure of payment information, as proposed? Would the proposed definition of ''project'' together with the proposed exemptions (discussed in Section II.J. below) and other provisions of the proposed rules sufficiently mitigate the risk of competitive harm that may arise from public disclosure?

55. Should we instead permit issuers to submit the required payment information non-publicly and then provide an anonymized compilation? What are the incremental benefits and costs of permitting non-public submission and providing an anonymized compilation as compared to the proposed rules? Please be as specific as possible in your response.

56. If we permit non-public submission of Form SD information and provide an anonymized compilation, what information should we include in the compilation? Should it include all information other than the identity of the issuer and identify payments by specific project, or should other information be omitted? Would the disclosure of the project raise similar competitive concerns as providing the issuer's identity? When and how often should the compilation be provided? Please be as specific as possible in your response.

J. Exemptions From Compliance

The proposed rules include two new exemptions from reporting under Section 13(q) where disclosure is prohibited by foreign law or pre-existing contracts. As the 2013 District Court opinion found, the Commission has the authority to grant exemptions with respect to Section 13(q).[230] Several industry commenters specifically recommended these two exemptions in connection with prior rulemakings in order to reduce the risk of competitive harm that could result from the required Section 13(q) payment disclosure.[231] According to these commenters, without these exemptions, a resource extraction issuer that faced a legal or contractual conflict would have to choose between complying with Section 13(q) or the host country law or contract.

For example, if an issuer chose to provide the payment disclosure in violation of the host country law, the issuer could face the shut down and, in the extreme case, expropriation of its facilities in the host country, the imposition of fines or the withholding of permits.[232] Similarly, an issuer whose contract prohibits the disclosure of payment information without the host government's permission, and who fails to obtain such permission, could also face adverse financial consequences. For example, the issuer would have to incur costs associated with having to renegotiate its contract with the host government in order to provide the payment disclosure required under Section 13(q).[233]

These two new exemptions would be in addition to the targeted exemption for exploratory activities and transitional relief for recently acquired companies that were included in the 2016 Rules[234] and that are being retained in the proposed rules.[235] We are also proposing similar transitional relief for a resource extraction issuer that has recently conducted its initial public offering.[236] Together, we believe that these provisions, as well as our continued willingness to consider additional exemptive relief on a case-by-case basis, would significantly mitigate the concerns of commenters and members of Congress about the burdens of Section 13(q) disclosure and the potential for competitive harm. As a result, we believe these provisions, when considered together with the other proposed changes to the 2016 Rules discussed in this release, should serve to satisfy the CRA's restriction on adopting rules that are in substantially the same form as the disapproved rules. We discuss each of these provisions in more detail below.

1. Exemption for Conflicts of Law

We are proposing an exemption for when an issuer is unable to provide the required disclosure without violating the laws of the jurisdiction where the project is located.[237] Unlike the exemption provided in the 2016 Rules, the proposed exemption would not require issuers to apply to the Commission for exemptive relief. Although the Commission stated in the 2016 rulemaking that a case-by-case exemptive approach for handling situations involving conflicts of law or contract prohibitions was preferable, after reconsidering the comments and with a view to limiting compliance costs and burdens, we are proposing to permit issuers to avail themselves of the exemptions without seeking individual relief on a case-by-case basis.

We believe that the proposed approach would facilitate an issuer's timely submission of Form SD and the timely resolution of any conflict of laws situations with the host government. It also would alleviate some of the uncertainties of handling conflict of laws situations and the potential competitive harm that could result. In this respect, we note that one commenter in the 2016 rulemaking stated that, with a case-by-case approach, ''there would be substantial practical and administrative difficulties associated with obtaining timely exemptive relief'' from the Section 13(q)

[228] *See id.* We do not anticipate that the staff would produce such a compilation more frequently than once a year.

[229] As noted above, we also are considering an alternative approach whereby resource extraction issuers would submit their annual reports on Form SD to the Commission non-publicly. Under this alternative approach, the Commission would use those nonpublic submissions to produce an aggregated, anonymized public compilation of the required payment information.

[230] *See API* v. *SEC,* 953 F. Supp. 2d at 21–23.

[231] *See, e.g.,* Letters from the API (Feb. 16, 2016) and (Nov. 7, 2013); Letter from Chevron (Feb. 16, 2016); and Letter from ExxonMobil (Feb. 16, 2016); *see also* Letter from Nouveau (Feb. 16, 2016).

[232] *See, e.g.,* Letter from API (Feb. 16, 2016).

[233] *See id.* (stating that ''many companies' contracts with host governments contain clauses requiring the government's permission before a company publicly reveals payment information'' and noting that ''[a]lthough some of these contracts allow an issuer to disclose payment information to comply with securities laws, many do not, particularly older contracts.'').

[234] *See* 2016 Adopting Release, Section II.G.3. Some commenters on the 2016 rulemaking also sought an exemption for disclosure that could jeopardize the safety of an issuer's personnel. *See* the 2016 Adopting Release, Section II.I.3. The Commission decided not to adopt such an exemption primarily because of its belief that issues involving safety concerns are inherently fact specific and require an analysis of the underlying facts and circumstances. Accordingly, the Commission reasoned that, rather than adopting an exemption regarding safety concerns that issuers might apply in an overly broad way, the better approach would be to permit issuers to raise such concerns by applying for exemptive relief on a case-by-case basis. *See id.* We continue to believe that a case-by-case exemptive process, which would be available under the proposed rules, is the more appropriate approach for addressing issuers' safety concerns. *See* proposed Rule 13q–1(d)(4). We also believe that other proposed provisions, such as the proposed exemptions for conflicts with foreign law or pre-existing contracts as well as the proposed definition of project, should help to alleviate concerns about employee safety that could potentially result from the proposed payment disclosure.

[235] *See infra* Sections II.J.3. and II.J.4.

[236] *See infra* Section II.J.5.

[237] *See* proposed Rule 13q–1(d)(1).

rules.[238] Another commenter expressed concern about a case-by-case approach for handling conflicts of law situations for a company threatened with the potential total loss of its operations in the host country.[239] We anticipate that the proposed rule-based exemption for foreign law conflicts would substantially address these administrative difficulties and concerns about potential losses.

Further, to the extent that the requirement to obtain a case-by-case exemption (and the attendant uncertainties surrounding whether such relief might be granted) could inhibit companies from bidding on or initiating resource extraction projects in particular countries or otherwise impair the ability of companies to compete effectively for such projects, we anticipate that our revised approach would substantially eliminate these potential barriers.

Although issuers could avail themselves of the exemption without further Commission action, an issuer seeking to rely on the exemption would be required to take certain steps to qualify for the exemption, including providing specified disclosures about its eligibility for relief. We believe that these proposed conditions would help ensure that issuers forgo disclosure only when there is a legitimate conflict of law, so that the exemption does not unreasonably frustrate the statutory goal of increasing transparency regarding resource extraction payments. Moreover, as is the case with all filings, the issuer's disclosure and reliance on this exemption would be subject to Commission staff review, which should discourage potentially inappropriate uses of the exemption.

As proposed, the issuer would first have to take reasonable steps to seek and use exemptions or other relief under the applicable law of the foreign jurisdiction. After taking such steps and failing to obtain an exemption or other relief, the issuer would have to disclose the foreign jurisdiction for which it has excluded disclosure, the law preventing disclosure, its efforts to seek and use exemptions or other relief under such law, and the results of those efforts. This disclosure would be required in the body of Form SD. The issuer would also be required to furnish as an exhibit to Form SD a legal opinion from counsel that opines on the inability of the issuer to provide the required disclosure without violating the foreign jurisdiction's law.

The proposed exemption would not be limited to pre-existing foreign laws. We acknowledge that this may provide an incentive for foreign jurisdictions to enact such laws. Although not eliminating this incentive, the absence of a similar exemption under the EU Directives or ESTMA, which generally require disclosure at a more granular level, should serve to limit the likelihood that jurisdictions will pass such laws. In this regard, one previous commenter observed that no country has adopted a rule or law prohibiting payment disclosures since the initial adoption of Section 13(q) in July 2010.[240]

Request for Comment

57. Should we provide an exemption from disclosing payments when an issuer is unable to provide such disclosure without violating the laws of the jurisdiction where the project is located, as proposed? If we should adopt such an exemption, should issuers be permitted to rely on it without first seeking relief from the Commission, as proposed?

58. Should we include qualifying conditions to the exemption, as proposed? Would these proposed conditions provide adequate protection against potentially inappropriate uses of the exemption? Are the proposed required disclosures appropriate? For example, should we require an issuer to disclose the steps taken to seek and use exemptions or other relief under foreign law as a condition to claiming the conflicts of law exemption? Would requiring such disclosure exacerbate any conflict the issuer may have with foreign law? Should we include additional or different disclosures?

59. Should we require a legal opinion to be furnished in support of the exemption, as proposed? If so, are the requirements for the legal opinion appropriate?

60. An issuer would be required to take reasonable steps to seek and use exemptions or other relief under the applicable law of the foreign jurisdiction in which there is a conflict in order to qualify for the proposed exemption. Should we provide guidance about what would constitute reasonable steps to satisfy this condition of the exemption? If so, what should we include in the guidance?

61. Are there other conditions to the proposed exemption that we should adopt instead of, or in addition to, the proposed conditions? For example, should we limit the exemption to foreign laws that pre-date the effective date of the new rules or some earlier date, such as the date of this release? Should we limit the exemption to situations involving a conflict with a foreign national law and preclude its availability when the conflict arises with the law of a foreign subnational jurisdiction, such as a province? If so, please explain why any additional limitation would be appropriate.

2. Exemption for Conflicts With Pre-Existing Contracts

We are proposing an exemption from disclosing payments when the terms of an existing contract prohibit disclosure.[241] The exemption would only apply to contracts in which such terms are expressly included in writing prior to the effective date of the Section 13(q) rules. Similar to the exemption for conflicts of law, and for the same reasons, issuers would not need to seek the exemption on an individual, case-by-case basis. The issuer would, however, have to meet certain conditions to qualify for relief, and its disclosure and reliance on the exemption would be subject to staff review, which should help to discourage potentially inappropriate uses of the exemption.

As proposed, an issuer would first have to take reasonable steps to seek and use any contractual exceptions or other contractual relief (*e.g.,* attempting to obtain the consent of the relevant contractual parties) to disclose the payment information. This obligation to take reasonable steps would not include an obligation to renegotiate an existing contract or to compensate the other contractual parties in exchange for their

[238] *See* Letter from API (Feb. 16, 2016).

[239] *See* Letter from ExxonMobil (Feb. 16, 2016).(stating that ''we do not believe the mere possibility of an exemption—which may or may not be granted and even if granted could be revoked or challenged at any time—provides adequate comfort to companies and investors against the potential for being forced to halt operations in a country because of a conflict of laws situation, especially given that any such action by a company would likely represent a breach of the company's contractual obligation to the country and force the company potentially to suffer a total loss of its local operations—operations which could be worth tens of billions of dollars as previously indicated . . .'')

[240] Letter from API (Nov. 7, 2013) (''Despite their broad potential application, these exemptions are only invoked in limited cases and have not led to a notable spread of non-disclosure laws'' [referring to other Commission provisions that similarly permit a registrant to limit its disclosure, and in particular, mentioning Rule 1202 of Regulation S–K, which allows registrants to omit disclosure of proved reserves if that country's government prohibits such disclosure, and General Instruction E to Form 10–K, which allows registrants to omit any item or other requirement of Form 10–K with respect to any foreign subsidiary to the extent that the required disclosure would be detrimental to the registrant.] *See also* Letter from API (Feb. 16, 2016) (noting that currently ''two countries—Qatar and China—continue to prohibit the required disclosures.'').

[241] *See* proposed Rule 13q–1(d)(2).

consent to disclose the payments. If the issuer fails to obtain consent, the issuer would have to disclose the jurisdiction where it has excluded such disclosure, the particular contract terms preventing the issuer from providing disclosure, its efforts to seek consent or other contractual relief, and the results of those efforts. This disclosure would be required in the body of Form SD. The issuer would also be required to furnish as an exhibit to Form SD a legal opinion from counsel that opines on the inability of the issuer to provide the required disclosure without violating the applicable contractual terms.

This exemption would differ from the conflicts of law exemption in that it would only apply to written terms of contracts that were entered into prior to the date the Section 13(q) rules take effect. We believe that this limitation is justified because issuers have control over the terms of their contracts and would be in a position to modify future contract terms accordingly. By contrast, issuers would not have similar control over the laws of the jurisdiction where they are engaged in the commercial development of natural resources.

Request for Comment

62. Should we provide an exemption from disclosing payments when the written terms of a pre-existing contract restrict such disclosure, as proposed?

63. Should we include qualifying conditions to the exemption, as proposed? Would these proposed conditions provide adequate protection against potentially inappropriate uses of the exemption? In particular, should we require an issuer to disclose the reasonable steps taken to seek and use any contractual exceptions or other contractual relief to disclose the payment information? Would requiring such disclosure exacerbate any conflict the issuer may have with a pre-existing contract term?

64. Should we require a legal opinion to be furnished in support of the exemption, as proposed? If so, are the proposed requirements for the legal opinion appropriate?

65. As proposed, the exemption would apply only to contracts that were entered into prior to the effective date of the Section 13(q) rules. Should it instead apply to contracts entered into by an earlier or later date? If so, please identify the different date and explain why it would be more appropriate.

66. Should we provide further guidance on the scope of the proposed exemption for pre-existing contracts? For example, how should we treat amendments or extensions of pre-existing contracts that occur after the effective date of the Section 13(q) rules? Should the proposed exemption apply to such amendments or extensions?

3. Exemption for Smaller Reporting Companies and Emerging Growth Companies

We propose to exempt smaller reporting companies [242] and emerging growth companies [243] from the scope of Rule 13q–1.[244] As proposed, neither a smaller reporting company nor an emerging growth company would be required to provide any of the payment disclosure mandated by Section 13(q) and proposed Rule 13q–1. Given the potentially significant fixed cost component of the proposed rules,[245] we believe that this proposed change from the 2016 Rules, eliminating the compliance burden for those companies that are less able to afford it, would reduce the overall cost of the proposed rules and address the related Congressional concerns.[246]

This proposed exemption is consistent with our statutory duty in a public rulemaking to consider, in addition to investor protection concerns, whether an action will promote efficiency, competition, and capital formation.[247] It also is consistent with our treatment of smaller reporting companies and emerging growth companies in other rulemakings [248] undertaken since the enactment of the Jumpstart Our Business Startups Act (''JOBS Act'').[249]

Request for Comment

67. Should we exempt smaller reporting companies or emerging growth companies from the scope of Rule 13q–1, as proposed?

68. Should we instead provide a longer transition period for smaller reporting companies or emerging growth companies to comply with Rule 13q–1? If so, what should be the compliance date for those companies?

69. Should we instead adopt scaled disclosure requirements for smaller reporting companies or emerging growth companies under Rule 13q–1? If so, what should those scaled disclosure requirements entail?

4. Targeted Exemption for Payments Related to Exploratory Activities

We are proposing a targeted exemption for payments related to exploratory activities. We adopted such an exemption in the 2016 Rules after considering the concerns raised by industry commenters that the disclosure of payment information regarding exploratory activities could result in competitive harm to a resource extraction issuer.[250] We have considered whether such an exemption would continue to be necessary in light of the proposed Modified Project Definition, which would provide the geographic location of a project at the national and major subnational political jurisdiction—rather than contract—level. We believe the exemption is necessary, given the inherently commercially sensitive nature of exploratory activities. We also have considered whether this targeted exemption is necessary in light of the proposed extended deadline for furnishing the payment information. Again, we believe it is, because of the difficulty of determining the precise point at which exploratory activities cease being commercially sensitive.

Although the Modified Project Definition should help alleviate competitive harm, we remain concerned that such harm could still occur. For example, harm could occur if the major subnational political jurisdiction is

[242] The Commission recently amended the definition of ''smaller reporting company'' to expand the number of registrants that qualify as smaller reporting companies, and to reduce compliance costs for these registrants and promote capital formation, while maintaining appropriate investor protections. The amended definition of ''smaller reporting company'' includes registrants with a public float of less than $250 million (compared to $75 million in the earlier rule), as well as registrants with annual revenues of less than $100 million for the previous year and either no public float or a public float of less than $700 million. *See* Release No. 33–10513 (Jun. 28, 2018) [83 FR 31992 (Jul. 10, 2018)].

[243] The term ''emerging growth company'' means an issuer that had total annual gross revenues of less than $1,070,000,000 during its most recently completed fiscal year. *See* the definition of emerging growth company in Securities Act Rule 405 and Exchange Act Rule 12b–2.

[244] *See* proposed Rule 13q–1(d)(3).

[245] *See infra* Section III.C.

[246] *See supra* n. 54 and accompanying text. This change would also help to fulfill Congress' mandate that the proposed rules are not substantially the same as the 2016 Rules.

[247] *See supra* n. 226.

[248] *See, e.g., Pay Ratio Disclosure,* Release No. 33–9877 (Aug. 5, 2015) [80 FR 50103 (Aug. 18, 2015)] (exempting smaller reporting companies and emerging growth companies, among others, from the scope of the required pay ratio disclosure).

[249] Public Law 112–106, 126 Stat. 306 (2012).

[250] *See* 2016 Adopting Release, Section II.I.3. (citing Letter from API (Feb. 16, 2016), which explained the competitive harm that could result from the disclosure of bonus and other payments to the host government regarding high-potential exploratory territory and stating that a case-by-case exemptive approach would be insufficient to protect against competitive harm in those situations). *See also* Letter from ExxonMobil (Feb. 16, 2016) (discussing the competitive harm from the forced disclosure of payments that may allow competitors to identify new areas of potential resource development an issuer has identified, and to determine the value the issuer places on such resources).

small or if other indicators, such as disclosure of a particular payment type that is associated with the commencement of exploratory activities, would provide enough information to reveal an issuer's exploratory activities. Thus, we continue to believe that a targeted exemption for disclosure of payments related to exploratory activities would mitigate the potential competitive harm that issuers might experience in these circumstances. Importantly, we do not believe it would substantially reduce the overall benefits of the disclosure to its users.[251]

Under this proposed targeted exemption, issuers would not be required to report payments related to exploratory activities in the Form SD for the fiscal year in which payments are made. Instead, an issuer could delay reporting such payments until it submits a Form SD for the fiscal year following the fiscal year in which the payments were made.[252] We are proposing a limited, delayed approach because we believe that the likelihood of competitive harm from the disclosure of payment information related to exploratory activities diminishes over time.

For purposes of this proposed exemption, we would consider payments to be related to exploratory activities if they are made as part of the process of identifying areas that may warrant examination or examining specific areas that are considered to have prospects of containing oil and gas reserves, or as part of a mineral exploration program. In all cases, exploratory activities would be limited to activities conducted prior to the commercial development (other than exploration) of the oil, natural gas, or minerals that are the subject of the exploratory activities.[253]

In proposing this exemption, we considered the fact that the total payment streams from the first year of exploration that would be covered by the exemption should often be relatively small compared to, for example, the annual payment streams that would likely occur once an issuer commences development and production. Given this likelihood, we believe that any diminished transparency as a result of the one-year delay in reporting of such payments is justified by the potential competitive harms that we anticipate may be avoided as a result of this exemptive relief. Nevertheless, we are proposing to limit the exemption to one year because we believe that the likelihood of competitive harm from disclosing the payment information diminishes over time once exploratory activities have begun.[254]

Request for Comment

70. Should we provide a targeted exemption for payments related to exploratory activities, as proposed? If so, should it be for longer or shorter than the proposed one-year delay in reporting? For example, should an issuer be permitted to wait until the second fiscal year following the fiscal year in which the exploratory activities occurred before having to provide the Section 13(q) disclosure?

71. Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release? For example, does the proposed definition of project, which is non-contract based, mitigate the need for, or support a modification to, the targeted exemption regarding exploratory activities?

5. Transitional Relief for Recently Acquired Companies

We are proposing transitional relief with respect to recently acquired companies where such companies were not previously subject to Section 13(q) or an alternative reporting regime deemed by the Commission to satisfy the transparency objectives of Section 13(q).[255] The Commission provided this relief under the 2016 Rules based on the recommendations of commenters who asserted that such relief was necessary to reduce the compliance costs associated with recently acquired companies that may experience difficulty timely complying with the payment disclosure requirements.[256] As noted by those commenters, the Commission adopted a similar provision under Rule 13p–1,[257] which also requires disclosure on Form SD.[258]

Under proposed Rule 13q–1 and Form SD, an issuer would be required to disclose resource extraction payment information for every entity it controls. Therefore, absent an exemption, an issuer would be required to include the acquired company's resource extraction payment information in its first annual submission after obtaining control. We are concerned that implementing the appropriate reporting mechanisms in a timely manner for a company that was not previously subject to reporting under Section 13(q) or an alternative reporting regime might remain a significant undertaking, notwithstanding our belief that the Modified Project Definition would reduce compliance costs and burdens compared to the 2016 Rules. As such, we are providing transitional relief with respect to such companies.[259]

Under the proposed rules, issuers would not need to report payment information for a company that it

[251] *See* 2016 Rules Adopting Release, Section II.I.3.

[252] In the Form SD for the fiscal year following the fiscal year in which the exploratory payments were made, the issuer would be required to report those exploratory payments as well as all applicable non-exploratory payments, if any, made during the fiscal year following the fiscal year in which the issuer made the exploratory payments.

[253] *See* proposed Item 2.01(b)(1) of Form SD.

[254] We appreciate that the exploratory phase may vary from project to project, and that this variance can depend on such considerations as the geographic area in which the exploration is being undertaken and the type of resource being sought. In proposing to provide a one-year reporting delay, we looked to considerations in the oil and gas industry in particular as oil and gas industry commenters asserted a specific need for the exemptive relief. We understand that the exploratory period for oil and gas generally involves a seismic survey/analysis phase followed by an exploratory drilling phase. We further understand that, while the time periods for those activities can vary considerably, conducting seismic surveys and analyzing the data can take six months or more, while (at least for conventional onshore hydrocarbons) exploratory drilling and site clearance can potentially take a similar length of time. These considerations lead us to believe that one year is an appropriate period for the proposed delay in reporting exploratory payments, although we solicit comment below on other potential timeframes for relief. We further note that an issuer would be able to apply for an exemption on a case-by-case basis, as discussed below in Section II.J.6., if it believes that its individual circumstances warranted a longer exemptive period than the proposed one-year exemption.

[255] *See* proposed Item 2.01(b)(2) of Form SD. For purposes of this provision, an issuer that has recently acquired a company that has not been subject to an alternative reporting regime pursuant to proposed Item 2.01(c) of Form SD would be eligible for the transitional relief. Under that provision, a resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime that has been deemed by the Commission to require disclosure that satisfies the transparency objectives of Section 13(q) may satisfy its Section 13(q) disclosure obligations by including, as an exhibit to the Form SD, a report complying with the reporting requirements of the alternative jurisdiction. *See infra* Section K.

[256] *See* 2016 Adopting Release, Section II.G.3. (citing Letter from Cleary, Gottlieb, Steen and Hamilton (''Cleary'') (Feb. 17, 2016) and Letter from Ropes & Gray (Feb. 16, 2016)).

[257] 17 CFR 240.13p–1.

[258] *See* Instruction (3) to Item 1.01 of Form SD. The proposed rules differ, however, from what is provided for under Rule 13p–1 because disclosure under Rule 13p–1 occurs on a calendar year basis rather than a fiscal year basis.

[259] As explained in the 2016 rulemaking, the proposed transitional relief would not apply to companies that have been subject to Section 13(q)'s disclosure requirements or to those of an alternative reporting regime prior to their acquisition because such companies should already be generally familiar with the Section 13(q) requirements or have sufficient notice of them to establish reporting systems and prepare the appropriate disclosure during the fiscal year of their acquisition. *See* 2016 Adopting Release, Section II.G.3.

acquired or over which it otherwise obtained control, if the acquired company, in its last full fiscal year, was not obligated to disclose resource extraction payment information pursuant to Rule 13q–1 or an alternative reporting regime's requirements deemed by the Commission to satisfy Section 13(q)'s transparency objectives. In these circumstances, the resource extraction issuer would begin reporting payment information for the acquired company starting with the Form SD submission for the first full fiscal year immediately following the effective date of the acquisition. As under the 2016 Rules, and in contrast to the targeted exemption for exploratory activities, an issuer would not be required to provide the (excluded) payment disclosure for the year in which it acquired the company in a future Form SD.[260]

Request for Comment

72. Should we provide transitional relief for an issuer that has acquired or obtained control over a company whose resource extraction payments are required to be disclosed and was not previously obligated to provide such disclosure, as proposed? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

73. Should the transitional relief be for a longer or shorter period than as proposed? For example, should an issuer that has acquired a recently acquired company, which is eligible for the proposed transitional relief, be permitted to wait until its second fiscal year following the fiscal year in which the acquisition occurred before having to comply with the Section 13(q) rules?

6. Transitional Relief for Initial Public Offerings

We are proposing similar transitional relief for a resource extraction issuer that has completed its initial public offering in the United States in its last full fiscal year. Such an issuer would not have to comply with the Section 13(q) rules until the first fiscal year following the fiscal year in which it completed its initial public offering.[261]

This proposed transitional relief for companies that have recently completed their U.S. initial public offerings is a change from the 2016 Rules. At that time, the Commission stated its belief that such companies would have sufficient notice of the payment reporting requirements to establish reporting systems and prepare the appropriate disclosure prior to undertaking the initial public offering.[262]

An issuer that is preparing to conduct its U.S. initial public offering would have notice of the Section 13(q) rules. Thus, such an issuer would likely need to incur costs to establish a payment reporting system to comply with the Section 13(q) rules in advance of the public offering despite not knowing whether it will successfully conduct that initial public offering. The company would then incur these costs unnecessarily if it chose not to move forward with a planned initial public offering. We believe that the proposed transitional relief would prevent the situation where an issuer contemplating a U.S. initial public offering would need to postpone or, in the extreme case, refrain from conducting its U.S. initial public offering to avoid the Section 13(q) compliance costs. These outcomes would be contrary to the stated goals of Section 13(q) as they would delay or reduce the disclosure provided under that section.

Request for Comment

74. Should we provide transitional relief for an issuer that has completed its U.S. initial public offering in its last full fiscal year, as proposed?

75. Should we limit the transitional relief only to those issuers that, prior to completion of their initial public offering, have not been subject to an alternative reporting regime deemed by the Commission to require disclosure that satisfies the transparency objectives of Section 13(q)?

76. Should the transitional relief be for a longer or shorter period than as proposed? For example, should an issuer that has recently completed its U.S. initial public offering be permitted to wait until its second fiscal year following the fiscal year in which the initial public offering occurred before having to comply with the Section 13(q) rules?

7. Case-by-Case Exemption

To address any other potential bases for exemptive relief, beyond the rule-based exemptions and transitional relief described above, the proposed rules would provide that issuers may apply for exemptions on a case-by-case basis using the procedures set forth in 17 CFR 240.0–12 (Rule 0–12 of the Exchange Act).[263] Issuers seeking an exemption would be required to submit a written request for exemptive relief to the Commission. The request should describe the particular payment disclosures it seeks to omit (*e.g.,* signature bonuses in Country X or production entitlement payments in Country Y) and the specific facts and circumstances that warrant an exemption, including the particular costs and burdens it faces if it discloses the information. The Commission would be able to consider all appropriate factors in making a determination whether to grant requests, including whether the disclosure is already publicly available and whether (and how frequently) similar information has been disclosed by other companies, under the same or similar circumstances. If the proposed rules are adopted, we would anticipate relying on Section 36(a) of the Exchange Act to provide exemptive relief under this framework. In situations where exigent circumstances exist, the Commission staff, acting pursuant to delegated authority from the Commission, could rely on Exchange Act Section 12(h)[264] for the limited purpose of providing interim relief while the Commission considered the Section 36(a) exemptive application.[265]

This approach would allow the Commission to determine if and when exemptive relief may be warranted and how broadly it should apply, based on the specific facts and circumstances presented in the application. For example, an issuer could apply for an exemption in situations where disclosure would have a substantial likelihood of jeopardizing the safety of an issuer's personnel, or in other situations posing a significant threat of commercial harm that fall outside the scope of the proposed rule-based exemptions and transitional relief described above. The Commission could then determine the best approach to take based on the facts and circumstances, including denying an exemption, providing an individual exemption, providing a broader exemption for all issuers operating in a particular country, or providing some other appropriately tailored exemption.

Request for Comment

77. In light of the other proposed exemptions and transitional relief, should the Section 13(q) rules provide that issuers may apply for exemptions on a case-by-case basis using the procedures set forth in Rule 0–12 of the Exchange Act, as proposed?

[260] *See id.*

[261] *See* proposed Item 2.01(b)(3) of Form SD.

[262] *See* 2016 Adopting Release, Section II.G.

[263] *See* proposed Rule 13q–1(d)(4).

[264] 15 U.S.C. 78*l*(h).

[265] *See* Section 36(a) of the Exchange Act [15 U.S.C. 78mm(a)] (providing the Commission with broad authority to provide exemptions when it is necessary or appropriate in the public interest, and it is consistent with the protection of investors).

K. Exhibits and Interactive Data Format Requirements

As required by Section 13(q), the proposed rules would require a resource extraction issuer to submit the required disclosure on EDGAR in an XBRL exhibit to Form SD.[266] Providing the required disclosure elements in a machine readable (electronically tagged) format would enable users easily to extract, aggregate, and analyze the information in a manner that is most useful to them. For example, it would allow the information received from the issuers to be converted by EDGAR and other commonly used software and services into an easily readable tabular format.

In proposing to require the use of XBRL as the interactive data format, we note that most commenters on the 2016 Rules Proposing Release who addressed the issue supported the use of XBRL.[267] Commenters, however, did not similarly support the use of Inline XBRL, which is a particular form of XBRL that allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit.

The Commission recently proposed to require the use of the Inline XBRL format for the submission of operating company financial statement information and mutual fund risk/return summaries.[268] We are not proposing to require a resource extraction issuer to use Inline XBRL when submitting the Section 13(q) payment information. Given the nature of the disclosure required by the proposed rules, which is primarily an exhibit with tabular data, we do not believe that Inline XBRL would improve the usefulness or presentation of the required disclosure.

Under the proposed rules, and consistent with the statute, a resource extraction issuer would be required to submit the payment information in XBRL using electronic tags—a taxonomy of defined reporting elements—that identify, for any payment required to be disclosed:

- The total amounts of the payments, by category;[269]
- The currency used to make the payments;
- The financial period in which the payments were made;
- The business segment of the resource extraction issuer that made the payments;
- The government that received the payments, and the country in which the government is located; and
- The project of the resource extraction issuer to which the payments relate.[270]

In addition to the electronic tags specifically required by the statute, a resource extraction issuer would also be required to provide and tag the type and total amount of payments, by payment type, made for each project and the type and total amount of payments, by payment type, for all projects made to each government.[271] These additional tags relate to information that is specifically required to be included in the resource extraction issuer's annual report by Section 13(q).[272]

The proposed rules would also require resource extraction issuers to tag the particular resource that is the subject of commercial development, the method of extraction, and the country and major subnational political jurisdiction of the project. While these three items of information also would be included in the project description, we believe that having separate tags for these items would further enhance the usefulness of the data with an insignificant corresponding increase in compliance costs.

For the country in which the government and project is located and the major subnational geographic location of a project, we are proposing that the issuer use a tag that is consistent with the appropriate ISO code.[273] As some previous commenters pointed out, such use would standardize references to those geographic locations and thereby help to reduce confusion caused by a particular project description.[274]

Consistent with the statute, the proposed rules would require a resource extraction issuer to include an electronic tag that identifies the currency used to make the payments. The statute also requires a resource extraction issuer to present the type and total amount of payments made for each project and to each government, but does not specify how the issuer should report the total amounts. We believe that the statutory requirement to provide a tag identifying the currency used to make the payment, coupled with the requirement to disclose the total amount of payments by payment type for each project and to each government, requires issuers to perform currency conversions when payments are made in multiple currencies.

We are proposing an instruction to Form SD clarifying that issuers would have to report the amount of payments made for each payment type, and the total amount of payments made for each project and to each government, in U.S. dollars or in the issuer's reporting currency if not U.S. dollars.[275] We understand that issuers may have concerns regarding the compliance costs related to making payments in multiple currencies and being required to report the information in another currency.[276] As we did in the 2016 Rules,[277] in order to address those concerns, we are proposing that a resource extraction issuer would be able to choose to calculate the currency conversion between the currency in which the payment was made and U.S. dollars or the issuer's reporting currency, as applicable, in one of three ways:

- By translating the expenses at the exchange rate existing at the time the payment is made;
- By using a weighted average of the exchange rates during the period; or
- Based on the exchange rate as of the issuer's fiscal year end.[278]

Under the proposed rules, a resource extraction issuer would have to disclose the method used to calculate the currency conversion. In addition, in order to avoid confusion, we are proposing to require that an issuer choose a consistent method for all such currency conversions within a particular Form SD.[279]

Consistent with the statute, the proposed rules would require a resource extraction issuer to include an

[266] 15 U.S.C. 78m(q)(2)(C) and 15 U.S.C. 78m(q)(2)(D)(ii). The Commission has defined an ''interactive data file'' to be the interactive data submitted in a machine-readable format. See 17 CFR 232.11; Release No. 33–9002 (Jan. 14, 2009) [74 FR 6776 (Feb. 10, 2009)], 6778, n.50.

[267] *See* 2016 Rules Adopting Release, Section II.K.3.

[268] *See* Release No. 33–10323 (Mar. 1, 2017) [82 FR 13928 (Mar. 15, 2017)].

[269] For example, categories of payments could be royalties, bonuses, taxes, fees, or production entitlements.

[270] *See* proposed Item 2.01(a)(5) of Form SD.

[271] *See* proposed Item 2.01(a)(5)(i) through (ii).

[272] *See* Section 13(q)(2)(A)(i) through (ii).

[273] ISO 3166–1 pertains to countries whereas ISO 3166–2 pertains to major subdivisions in the listed countries.

[274] *See* 2016 Rules Adopting Release, Section II.K.3.

[275] *See* proposed Instruction 2 to Item 2.01 of Form SD. Foreign private issuers may currently present their financial statements in a currency other than U.S. dollars for purposes of Securities Act registration and Exchange Act registration and reporting. See Rule 3–20 of Regulation S–X [17 CFR 210.3–20].

[276] *See* 2012 Rules Adopting Release, n.485 and accompanying text.

[277] *See* 2016 Adopting Release, Section II.K.1. Only one commenter addressed the Commission's currency conversion approach in the 2016 rulemaking. That commenter stated that ''the three proposed methods for calculating the currency conversion when payments are made in multiple currencies provide issuers with sufficient options to address any possible concerns about compliance costs and comparability of the disclosure among issuers.'' Letter from Petrobras (Feb. 16, 2016).

[278] *See* proposed Instruction 2 to Item 2.01 of Form SD.

[279] *See id.*

electronic tag that identifies the business segment of the resource extraction issuer that made the payments. We are proposing to define ''business segment'' as a business segment consistent with the reportable segments used by the resource extraction issuer for purposes of financial reporting.[280] Defining ''business segment'' in this way would enable issuers to report the information according to how they currently report their business operations, which should help to limit compliance costs.

Finally, to the extent that payments, such as corporate income taxes and dividends, are made for obligations levied at the entity level, issuers could omit certain tags that may be inapplicable (*e.g.,* project tag, business segment tag) for those payment types. Issuers would, however, have to provide all other electronic tags, including the tag identifying the recipient government.[281]

Request for Comment

78. Should we require the resource extraction payment disclosure to be electronically formatted in XBRL and provided in a new exhibit, as proposed? We are mindful of concerns about mandating technology that may one day become outdated. Is there anything we can do to address this problem in these rules?

79. Should we alter our approach to the exhibit and interactive data format requirements described above based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

80. In addition to the statutorily required tags, should we require electronic tagging to identify the type of resource, the method of extraction and the country and major subnational jurisdiction in which the project is located, as proposed? Would separate tags for these items be useful even if the information is required to be disclosed in the project description tag?

L. Alternative Reporting

As noted above, several countries have implemented resource extraction payment disclosure laws.[282] In light of these developments, and with a view towards limiting compliance costs, we are proposing a provision that would allow issuers to meet the requirements of the proposed rules, in certain circumstances, by providing disclosures that comply with a foreign jurisdiction's reporting regime. Specifically, this provision would apply if the Commission has determined that the alternate reporting regime requires disclosure that satisfies the transparency objectives of Section 13(q).[283] The Commission proposed a similar approach to alternative reporting in connection with the 2016 Rules and all of the commenters who addressed the issue supported this approach.[284]

The proposed provision would allow an issuer subject to resource extraction payment disclosure requirements in a foreign jurisdiction to submit the report it prepared under those foreign requirements in lieu of the report that would otherwise be required by our disclosure rules, subject to certain conditions. The proposed rules would permit compliance under this framework only after the Commission has determined that the foreign reporting regime requires disclosure that satisfies the transparency objectives of Section 13(q). This framework for alternative reporting would, at least in part, allow a resource extraction issuer to avoid the costs of having to prepare a separate report meeting the requirements of our proposed disclosure rules when it already submits a report pursuant to another jurisdiction's requirements deemed by the Commission to satisfy Section 13(q)'s transparency objectives.

An issuer would only be permitted to use an alternative report for an approved foreign jurisdiction or regime if the issuer was subject to the resource extraction payment disclosure requirements of that jurisdiction or regime and had made the report prepared in accordance with that jurisdiction's requirements publicly available prior to submitting it to the Commission.[285] An issuer choosing to avail itself of this accommodation must submit as an exhibit to Form SD the same report that it previously made publicly available in accordance with the approved alternative jurisdiction's requirements.[286] The issuer also would be required to state in the body of its Form SD that it is relying on this accommodation and identify the alternative reporting regime for which the report was prepared.[287]

In addition, under the proposed rules, the alternative reports must be tagged using XBRL.[288] We believe that requiring a consistent data format for all reports submitted to the Commission would enhance the ability of users to access the data and create their own compilations in a manner most useful to them. We also believe that requiring a consistent data format would better enable the Commission's staff to provide any additional compilations of Section 13(q) information.[289]

An issuer relying on the proposed alternative reporting accommodation must also provide a fair and accurate English translation of the entire report if prepared in a foreign language.[290] Given the specificity of the disclosure and the electronic tagging required under Rule 13q–1 and Form SD, we do not believe it would be appropriate to permit an English summary of a foreign language document that is being provided as an alternative report.[291]

Other than the XBRL and English translation requirements, an issuer that elects to use the alternative reporting option would not be required to meet a requirement under the proposed rules to the extent that the alternative reporting regime imposes a different requirement.

Similar to the 2016 Rules, a resource extraction issuer would be able to follow the submission deadline of an approved alternative jurisdiction if it

[280] *See* proposed Item 2.01(d)(1) of Form SD. The term ''reportable segment'' is defined in FASB ASC Topic 280, Segment Reporting, and IFRS 8, Operating Segments.

[281] *See* proposed Instruction 4 to Item 2.01 of Form SD.

[282] *See supra* Section I.B.

[283] *See* Proposed Item 2.01(c) of Form SD.

[284] *See, e.g.,* Letter from Africa Centre for Energy Policy (Feb. 16, 2016); Letter from API (Feb. 16, 2016); Letter from BHP Billiton (Jan. 25, 2016); Letter from BP (Feb. 16, 2016); Letter from Calvert Investments (Feb. 16, 2016); Letter from Cleary (Feb. 17, 2016); Letter from Encana Corporation (Jan. 25, 2016); Letter from Global Witness (Feb. 16, 2016); Letter from PWYP–US (Feb. 16, 2016); Letter from RDS (Feb. 5, 2016); Letter from Ropes & Gray (Feb. 16, 2017); and Letter from Total (Jan. 13, 2016).

[285] *See* proposed Item 2.01(c)(1) through (2) of Form SD.

[286] *See* proposed Item 2.01(c)(2) of Form SD. The format of the report could differ to the extent necessary to comply with the conditions placed by the Commission on the alternative reporting accommodation. *See id.* For example, the report may not have been originally submitted in the home jurisdiction in XBRL or may not have been in English.

[287] *See* proposed Item 2.01(c)(3) of Form SD.

[288] *See* proposed Item 2.01(c)(4) of Form SD.

[289] We believe that these considerations justify not following the recommendation of a commenter on the 2016 Rules Proposing Release that we not require issuers to convert data into a different interactive data format to qualify for alternative reporting. *See* letter from BHP Billiton (Jan. 25, 2016).

[290] *See* proposed Item 2.01(c)(5) of Form SD.

[291] Rule 306 of Regulation S–T (17 CFR 232.306) requires that all electronic filings and submissions be in the English language. If a filing or submission requires the inclusion of a foreign language document, Rule 306 requires that the document be translated into English in accordance with Securities Act Rule 403(c) (17 CFR 230.403(c)) or Exchange Act Rule 12b–12(d) (17 CFR 240.12b–12(d)). Both of these rules require the submission of a fair and accurate English translation of an entire foreign language document that is being submitted as an exhibit or attachment if the document consists of certain specified material. If the foreign language document does not consist of such material, and the form permits it, a fair and accurate English language summary could be provided in lieu of an English translation.

submits a notice on or before the due date of its Form SD indicating its intent to submit the alternative report using the alternative jurisdiction's deadline.[292] If a resource extraction issuer fails to submit such notice on a timely basis, or submits such a notice but fails to submit the alternative report within four business days of the alternative jurisdiction's deadline, as proposed, it would not be able to rely on the alternative reporting accommodation for the following fiscal year.[293]

We anticipate making determinations about whether a foreign jurisdiction's disclosure requirements satisfy Section 13(q)'s transparency objectives either on our own initiative or pursuant to an application submitted by an issuer or a jurisdiction. We would then publish the determinations in the form of a Commission order.[294]

We anticipate considering, among others, the following criteria in determining whether a foreign jurisdiction's reporting regime requires disclosure that satisfies Section 13(q)'s transparency objectives: (1) The types of activities that trigger disclosure; (2) the types of payments that are required to be disclosed; and (3) whether project-level disclosure is required and how ''project'' is defined. We also anticipate considering other factors as appropriate or necessary under the circumstances.

Applications could be submitted by issuers, governments, industry groups, and trade associations.[295] Applicants would follow the procedures set forth in Rule 0–13 of the Exchange Act to request recognition of other jurisdictions' reporting regimes as satisfying Section 13(q)'s transparency objectives.[296] Under the proposed rules, the application would have to include supporting documents, and it would be referred to the Commission's staff for review.[297] The Commission would publish a notice in the **Federal Register** that a complete application has been submitted and allow for public comment. The Commission could also, in its sole discretion, schedule a hearing before the Commission on the matter addressed by the application.

Request for Comment

81. Should we include a provision in the rules that would allow for issuers subject to reporting requirements in certain foreign jurisdictions to submit those reports in satisfaction of our requirements, as proposed? Are the conditions we have proposed for the use of the alternative reports, such as providing a fair and accurate English translation and requiring the information to be tagged using XBRL, appropriate? For example, should a resource extraction issuer be precluded from relying on the alternative reporting accommodation for the following fiscal year if it fails to submit notice on a timely basis that it intends to submit an alternative report using the alternative jurisdiction's deadline, as proposed? Should it be precluded from relying on the alternative reporting accommodation for the following fiscal year if it submits such notice but fails to submit the alternative report within four business days of the alternative jurisdiction's deadline, as proposed? Should we provide more than four days after the submission deadline of the approved alternative jurisdiction for a resource extraction issuer to submit the alternative report? If so, what should that time period be? Should we alter our approach based on any developments since the adoption of the 2016 Rules or in light of our other proposals in this release?

82. Are the criteria that we have proposed to determine whether another foreign jurisdiction's reporting regime requires disclosure that satisfies the transparency objectives of Section 13(q) appropriate? Are there certain criteria that we should eliminate or substitute for any of the criteria discussed in this proposing release? If so, which criteria and why?

83. Given the development of resource extraction payment disclosure rules in various jurisdictions, is there any reason why, when a final rule is adopted, we should not make a determination regarding whether certain foreign reporting regimes satisfy Section 13(q)'s transparency objectives? If we should decide to make such a determination, which jurisdictions should we consider? Would the proposed, broader definition of ''project'' allow for jurisdictions other than the European Union and Canada to be deemed alternative reporting regimes that satisfy the transparency objectives of Section 13(q)?

M. Treatment for Purposes of the Exchange Act and Securities Act

The proposed rules would consider the disclosure provided pursuant to Section 13q–1 on Form SD as furnished to, but not filed with, with the Commission.[298] The Commission originally proposed a similar approach in the 2012 Rules Proposing Release, but chose to require the disclosure to be filed in both of the subsequent adopting releases.[299] In previously determining that the information should be ''filed,'' the Commission noted that the statute defines ''resource extraction issuer'' in part to mean an issuer that is required to file an annual report with the Commission.[300] This could suggest that the annual report that includes the required payment information should be filed.[301] On the other hand, and as the Commission noted in the 2012 Rules Proposing Release, Section 13(q) does not specifically state how the information should be submitted, nor does it state that the disclosure be included in the annual reports that are customarily filed with the Commission, such as Form 10–K, Form 20–F, or Form 40–F.[302]

In previous releases the Commission also looked at the nature of the disclosure and its likely materiality to investors to determine whether it should be filed. In the 2012 Rules Proposing Release, the Commission explained its proposal that the information be deemed furnished by noting that the nature and purpose of the disclosure required by Section 13(q) is qualitatively different from the nature and purpose of existing disclosure that has historically been required under Section 13 of the Exchange Act. In subsequent releases, however, the Commission stated that because materiality is a fact specific inquiry, it

[292] *See* proposed Item 2.01(c)(6) of Form SD.

[293] *See id.*

[294] Concurrently with the 2016 Rules Adopting Release, the Commission issued an order stating that a resource extraction issuer that files a report complying with the reporting requirements of the EU Directives, ESTMA, and the USEITI would satisfy its disclosure obligations under Rule 13q–1. *See* Release No. 34–78169 (Jun. 16, 2016) [81 FR 49163] (July 27, 2016) (placing certain additional conditions on the use of USEITI reports because they are limited to disclosure of payments to the Federal Government and follow a different reporting schedule). *See also* 2016 Rules Adopting Release, Section II.J.3.b.

[295] *See* proposed Rule 13q–1(c).

[296] Rule 0–13 (17 CFR 240.0–13) permits an application to be filed with the Commission to request a ''substituted compliance order'' under the Exchange Act.

[297] *Id.*

[298] The proposed rules would use the term ''furnished'' when referring to the requirement to submit Form SD to provide Section 13(q) payment information to the Commission. *See also* proposed General Instruction B.3 to Form SD (stating that, for purposes of Rule 13q–1, the information and documents furnished on Form SD shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, unless a registrant specifically incorporates it by reference into such filing).

[299] *See* 2012 Rules Proposing Release, Section II.F.3; 2012 Rules Adopting Release, Section II.F.3; and 2016 Rules Adopting Release, Section II.L.3.

[300] 15 U.S.C. 78m(q)(1)(D)(i).

[301] *See* Letters from Global Witness (Feb. 25, 2011); Publish What You Pay U.S. (Feb. 25, 2011); and Senator Benjamin Cardin, Senator John Kerry, Senator Patrick Leahy, Senator Charles Schumer, and Representative Barney Frank (Mar. 1, 2011).

[302] *See* 2012 Proposing Release, Section II.F.3.

was not persuaded that the nature of this disclosure should be determinative that the information should not be deemed filed.[303]

We recognize that compelling arguments can be made on both sides of this policy choice.[304] Given the concerns expressed by commenters and members of Congress regarding the burdens and costs of the required disclosure, and the CRA's restriction on issuing rules in substantially the same form as the 2016 Rules, we are proposing to treat the disclosure provided on Form SD pursuant to Rule 13q–1 as furnished to, but not filed with, the Commission. This approach would eliminate the possibility of Section 18 liability for the disclosure. It would also eliminate the possibility that the disclosure would be incorporated by reference into a filing under the Securities Act of 1933 (the ''Securities Act'') and be potentially subject to strict liability under Section 11 of the Securities Act, unless the issuer expressly incorporated such information.[305]

Accordingly, we believe that deeming payment information provided on Form SD as not ''filed,'' along with the other proposed changes to the 2016 Rules, would serve to address the concerns expressed by commenters and members of Congress about the costs and burdens of disclosure under the disapproved rules. At the same time, we believe that this change would not significantly undermine the transparency objectives of Section 13(q), as it would limit the liability associated with the required disclosures but not the content of those disclosures. Moreover, we note that, under the proposed rules, Section 13(q) disclosures would continue to be subject to the Exchange Act's general antifraud provisions.[306]

Request for Comment

84. Should we deem the resource extraction payment disclosure as furnished to, but not filed with, the Commission, as proposed?

N. Compliance Date

Section 13(q) provides that, with respect to each resource extraction issuer, the final rules issued under that section shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the issuer's fiscal year that ends not earlier than one year after the date on which the Commission issues the final rules under Section 13(q).[307] The proposed rules would require a resource extraction issuer to comply with Rule 13q–1 and Form SD for fiscal years ending no earlier than two years after the effective date of the final rules.

The proposed two-year transition period is the same as the transition period in the 2016 Rules. While we believe that the proposed rules would meaningfully reduce the compliance costs and burdens for issuers compared to the 2016 Rules, issuers that have not previously been subject to an alternative reporting regime would likely have to modify their internal systems to track, record and report the required payment information. The proposed two-year transition period should provide all issuers with sufficient time to establish the necessary systems and procedures to capture and track all the required payment information before the fiscal year covered by their first Form SD. It also should afford issuers an opportunity to make any other necessary arrangements to comply with Section 13(q) and the proposed rules, such as consulting with counsel on conflicts with foreign law or contractual terms, or seeking exemptive relief in other situations.

We are also proposing to select a specific compliance date that corresponds to the end of the nearest calendar quarter following the effective date. For example, if the rules were adopted on December 18, 2019, the compliance date for an issuer with a December 31, 2019, fiscal year end would be Tuesday, May 31, 2022 (*i.e.,* 150 days after its fiscal year end of December 31, 2021, which falls on Monday, May 30, 2022, and taking account of the Memorial Day holiday).

Request for Comment

85. Is the proposed transition period and compliance date appropriate? Should we instead adopt a shorter or longer transition period? If so, what should that transition period be and why?

86. Should the rules provide for a longer transition period for certain categories of resource extraction issuers, such as foreign private issuers, so as to provide them additional time to prepare for the disclosure requirements and the benefit of observing how other companies comply?

O. General Request for Comment

We request and encourage any interested person to submit comments regarding:

• The proposed rules and amendments that are the subject of this release;

• Potential additions or changes to these proposals; or

• Other matters that may have an effect on the proposals, particularly any developments since Congress disapproved the 2016 Rules pursuant to the CRA.

We request comment from the points of view of all interested parties. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Economic Analysis

A. Introduction and Baseline

As discussed above, Section 13(q) mandates a new disclosure provision under the Exchange Act that requires resource extraction issuers to identify and report payments they make to foreign governments or the U.S. Federal Government relating to the commercial development of oil, natural gas, or minerals. It does so to help promote accountability and combat corruption within resource-rich countries.

We are sensitive to the costs and benefits of the rules we are proposing, and Exchange Act Section 23(a)(2) requires us to consider the impact that any new rule would have on

[303] *See, e.g.,* 2016 Rules Adopting Release, Section II.L.

[304] For example, commenters who believed that the Section 13(q) information should be deemed ''filed'' maintained that investors would benefit from the payment information being subject to Exchange Act Section 18 liability. Other commenters asserted that allowing the information to be furnished would diminish the importance of the information while requiring it to be filed would enhance the quality of the disclosure and ensure that it could be used reliably for investment analysis and other purposes. Commenters who favored treating the Section 13(q) disclosure as ''furnished'' emphasized that, in contrast to disclosure that is typically required to be filed under Section 13, the nature and purpose of the Section 13(q) disclosure requirements are not primarily for the protection of investors but, rather, to increase the accountability of governments for the proceeds they receive from their natural resources and to support international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals, and that users of the payment information did not need the level of protection associated with Section 18 liability. *See* 2012 Adopting Release, Section II.F.3.b.; and 2016 Adopting Release, Section II.L.2.

[305] For example, Form S–3 requires reports ''filed'' pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of the offering to be incorporated by reference into the prospectus. Although Form SD would be the form used for disclosures under Section 13(q), Section 15(d) of the Exchange Act refers generally to periodic information, documents, and reports required by Section 13 reports with respect to securities registered under Section 12, not simply Section 13(a) reports. Thus, if Form SD were deemed ''filed,'' it could raise concerns that the payment disclosure would be incorporated by reference into a Securities Act filing.

[306] *See, e.g.,* Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

[307] 15 U.S.C. 78m(q)(2)(F).

competition. In addition, Section 3(f) of the Exchange Act directs us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We have considered the costs and benefits that would result from the proposed rules, as well as the potential effects on efficiency, competition, and capital formation. Many of the potential economic effects of the proposed rules would stem from the statutory mandate, while others would stem from the discretion we are exercising in implementing the statutory mandate. As noted above, our discretionary choices have been informed, in part, by the disapproval of the 2016 Rules under the CRA, and in particular, the concerns expressed by members of Congress about the compliance costs and burdens of the 2016 Rules and the CRA's restriction on promulgating a substantially similar rule.[308] The discussion below addresses the costs and benefits that might result from both the statute and our discretionary choices, as well as the comments the Commission received about these matters in the 2016 rulemaking.[309]

The baseline the Commission uses to analyze the potential effects of the proposed rules is the current set of legal requirements and market practices.[310] To the extent not already encompassed by existing regulations and current market practices, the proposed rules likely would have a significant impact on the disclosure practices of, and compliance costs faced by, resource extraction issuers. The overall magnitude of the potential costs of the proposed disclosure requirements will depend on the number of affected issuers and individual issuers' costs of compliance. In addition, the proposed rules could impose burdens on competition, although as discussed elsewhere in this release, the changes we are making from the 2016 Rules are intended to mitigate those burdens. We expect that the proposed rules would affect both U.S. issuers and foreign issuers that meet the definition of ''resource extraction issuer'' in much the same way, except for those issuers already subject to requirements adopted in the EEA member countries or Canada, as discussed above in Section I.B. The discussion below describes the Commission's understanding of the markets and issuers that would be affected by the proposed rules.[311]

To estimate the number of potentially affected issuers, we use data from Exchange Act annual reports for the period January 1, 2018, through September 30, 2019. We consider all Forms 10–K, 20–F, and 40–F filed during this period by issuers with oil, natural gas, and mining Standard Industrial Classification (''SIC'') codes[312] and thus are most likely to be resource extraction issuers. We also consider filings by issuers that do not have the above-mentioned oil, natural gas, and mining SIC codes and add them to the list of potentially affected issuers if we determine that they might be affected by the proposed rules.[313] In addition, we attempt to remove issuers that use oil, natural gas, and mining SIC codes but appear to be more accurately classified under other SIC codes based on the disclosed nature of their business. Finally, we exclude royalty trusts from our analysis because we believe it is uncommon for such companies to make the types of payments that would be covered by the proposed rules.

From these filings, we estimate that the number of potentially affected issuers is 677. We note that this number does not reflect the number of issuers that actually made resource extraction payments to governments in the period under consideration but rather represents the estimated number of issuers that might make such payments. It is possible that some potentially affected issuers, as a response to the Section 13(q) rules, may decide it is necessary to delist from an exchange in the United States, deregister, and cease reporting with the Commission to avoid the potential compliance costs. We believe, however, that such a scenario is unlikely given the higher cost of capital and potentially limited access to capital in the future that issuers who deregister would incur.

In determining which issuers are likely to bear the full costs of compliance with the proposed rules, we make three adjustments to the list of affected issuers. First, we exclude issuers that are smaller reporting companies and emerging growth companies since the proposed rules provide an exemption for those issuers. Second, we exclude issuers that are subject to disclosure requirements in foreign jurisdictions that generally require more granular disclosure than the proposed rules and therefore likely already are bearing compliance costs for such disclosure. Third, we exclude small issuers that likely could not have made any payment above the de minimis amount of $750,000 to any government entity in the period January 1, 2018 through September 30, 2019.

First, among the 677 issuers that we estimate would be affected by the proposed rules, 211 reported being smaller reporting companies (SRCs) and 191 reported being emerging growth companies (EGCs) in the period January 1, 2018, through September 30, 2019. There are 84 issuers that reported both SRC and EGC status during this period. Subtracting the SRCs and EGCs (total of 318) from the sample of 677 potentially affected issuers results in 359 issuers that would be subject to the requirements of the proposed rules.

To address the second consideration, we searched the filed annual forms for issuers that have a business address, are incorporated, or are listed on markets in the EEA or Canada.[314] For purposes of our analysis, we assume that issuers in these jurisdictions already are providing more granular resource extraction payment disclosure than the disclosure that would be required by the proposed rules and thus that the additional costs to comply with the proposed rules would be much lower than costs for

[308] Members of Congress who supported the resolution of disapproval expressed the view that the 2016 Rules would impose undue compliance costs on companies, undermine job growth and burden the economy, and impose competitive harm to U.S. companies relative to foreign competition. *See* supra Section I.C.

[309] Because our discretionary choices are informed by the statutory mandate, our discussion of the benefits and costs of those choices necessarily involves the benefits and costs of the underlying statute.

[310] *See supra* Sections I.A. through C. for a discussion of the current legal requirements and significant international transparency promotion regimes that affect market practices.

[311] In addition to our analysis against the baseline, we have noted where the proposed rules differ in their economic effects from the 2016 Rules to illustrate why we think those choices address the concerns expressed by members of Congress about the 2016 Rules' costs and potential competitive harm. To be clear, however, our assessment of the proposed rules' economic effects is measured against the current state of the world in which issuers are not required by U.S. law to disclose resource extraction payments.

[312] Specifically, the oil, natural gas, and mining SIC codes considered are 1000, 1011, 1021, 1031, 1040, 1041, 1044, 1061, 1081, 1090, 1094, 1099, 1220, 1221, 1222, 1231, 1311, 1321, 1381, 1382, 1389, 1400, 2911, 3330, 3331, 3334, and 3339.

[313] These are issuers whose primary business is not necessarily resource extraction but which have some resource extraction operations, such as ownership of mines.

[314] We assume that an issuer is subject to the EEA or Canadian rules if it is listed on a stock exchange located in one of these jurisdictions or if it has a business address or is incorporated in the EEA or Canada and its total assets are greater than $50 million. The latter criterion is a proxy for multipronged eligibility criteria underlying both EEA and Canadian rules that include issuer assets, revenues, and the number of employees.

other issuers.[315] We identified 109 such issuers.

Third, among the remaining 250 issuers (*i.e.,* 359 minus 109) we searched for issuers that, in the most recent fiscal year as of the date of their Exchange Act annual report filing, reported that they are shell companies and thus have no or only nominal operations, or have both revenues and absolute value net cash flows from investing activities of less than the de minimis payment threshold of $750,000. Under these financial constraints, such issuers are unlikely to have made any non-de minimis and otherwise reportable payments to governments and therefore are unlikely to be subject to the proposed reporting requirements. We identified 14 such issuers.

Taking these estimates of the number of excluded issuers together, we estimate that approximately 236 issuers (*i.e.,* 677 minus 318 minus 109 minus 14) would bear the full costs of compliance with the proposed rules.[316]

In the following economic analysis, we discuss the potential benefits and costs and likely effects on efficiency, competition, and capital formation that might result from both the new reporting requirement mandated by Congress and from the specific implementation choices that we have made in formulating the proposed rules.[317] We analyze these potential economic effects through a qualitative discussion of the potential costs and benefits that might result from the payment reporting requirement (Sections III. B and III.C) and our specific implementation choices (Section III.D), respectively.

Although aspects of the proposed rules are similar to the 2016 Rules, we have proposed several changes that we believe would have a significant effect on the resulting compliance costs and burden. These proposed changes include: (1) The Modified Project Definition, which requires disclosure at the national and major subnational political jurisdiction, as opposed to the contract, level; (2) the addition of two new conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure; (3) revisions to the definition of ''control'' to exclude entities or operations in which an issuer has a proportionate interest; (4) limitations on liability for the required disclosure by deeming the payment information to be furnished to, but not filed with, the Commission; (5) the addition of an instruction in Form SD that would permit an issuer to aggregate payments by payment type made at a level below the major subnational government level; (6) revisions to the filing deadline; and (7) the addition of transitional relief for issuers that have recently completed their U.S. initial public offerings. As explained below, we preliminarily believe that these proposed changes would meaningfully reduce the compliance costs and burden for issuers compared to the compliance costs and burden estimated for the 2016 Rules.[318]

B. Potential Benefits Resulting From the Payment Reporting Requirement

Section 13(q) seeks to combat global corruption by improving transparency about the payments that companies in the extractive industries make to foreign governments and the Federal Government. While these statutory goals and intended benefits are of potential global significance, the potential positive economic effects that may result cannot be readily quantified with any precision. The current empirical evidence on the direct causal effect of increased transparency in the resource extraction sector on societal outcomes is inconclusive,[319] and several academic papers have noted the inherent difficulty in empirically validating a causal link between transparency interventions and governance improvements.[320] Additionally, some countries may change their behavior as a result of the adoption of the proposed rules in a way that diminishes the potential benefits of the rules. For example, some foreign jurisdictions may prefer to deal with companies that are not subject to the Section 13(q) disclosure requirements, or take steps to prohibit such disclosure.

In response to the 2016 Rules Proposing Release, we received several comments on quantifying the potential

[315] We are proposing an alternative reporting option for resource extraction issuers that are subject to foreign disclosure requirements that the Commission determines satisfy the transparency objectives of Section 13(q). *See infra* Section III.C.4. for a discussion concerning how this alternative reporting option could potentially reduce compliance costs to a negligible amount for eligible issuers.

[316] Because it may be uncertain at the beginning of a financial period as to whether payments from an issuer will exceed the de minimis threshold by the end of such period, an excluded issuer may incur costs to collect the information to be reported under the proposed rules even if that issuer is not subsequently required to file an annual report on Form SD. To the extent that excluded issuers incur such costs, our estimate may understate the aggregate compliance costs associated with the proposed rules.

[317] Our consideration of potential benefits and costs and likely effects on efficiency, competition, and capital formation also is reflected throughout the discussion in Section II above.

[318] We also are proposing two additional changes to the 2016 Rules, which should further help to reduce the proposed rules' compliance costs or their potential for competitive harm. One change would provide transitional relief for issuers that have recently completed their U.S. initial public offerings. The other change would define ''not de minimis'' to mean any payment made to each foreign government in a host country or the Federal Government that equals or exceeds $150,000, subject to the condition that payment disclosure for a project is only required if the total project payments equal or exceed $750,000.

[319] For positive findings, *see* Caitlin C. Corrigan, ''Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative,'' *Resources Policy,* 40 (2014), 17–30 (finding that the negative effect of resource abundance on GDP per capita, the capacity of the government to formulate and implement sound policies and the level of rule of law is mitigated in EITI countries but noting that the EITI has little effect on the level of democracy, political stability and corruption (the author also submitted a comment letter in the 2016 rulemaking attaching an updated version of the study*; see* Letter from Caitlin C. Corrigan (Feb. 16, 2016))); Liz David-Barrett and Ken Okamura, ''The Transparency Paradox: Why Do Corrupt Countries Join EITI?'', Working Paper No. 38, European Research Centre for Anti-Corruption and State-Building (Nov. 2013) (finding that EITI compliant countries gain access to increased aid the further they progress through the EITI implementation process and that EITI achieves results in terms of reducing corruption), *available at https://eiti.org/document/transparency-paradox-why-do-corrupt-countries-join-eiti,* Maya Schmaljohann, ''Enhancing Foreign Direct Investment via Transparency? Evaluating the Effects of the EITI on FDI,'' University of Heidelberg Discussion Paper Series No. 538 (Jan. 2013) (finding that joining the EITI increases the ratio of the net foreign direct investment inflow to GDP by two percentage points); Paul F. Villar and Elissaios Papyrakis, ''Evaluating the Impact of the Extractive Industries Transparency Initiative (EITI) on Corruption in Zambia. *The Extractive Industries and Society,* (2017), forthcoming (finding that EITI implementation reduced corruption in Zambia); Elissaios Papyrakis, Matthias Rieger, and Emma Gilberthorpe, ''Corruption and the Extractive Industries Transparency Initiative,'' Journal of Development Studies, 53 (2017), 295–309 (finding that EITI reduces corruption). For negative findings, *see* Ölcer, Dilan (2009): Extracting the Maximum from the EITI (Development Centre Working Papers No. 276): Organisation for Economic Cooperation and Development (finding that the EITI has not been able to significantly lower corruption levels); Benjamin J. Sovacool, Goetz Walter, Thijs Van De Graaf, and Nathan Andrews, ''Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI),'' *World Development,* 83 (2017), 179–192 (finding that the first 16 countries that attained EITI compliance do not perform better than other countries or their own past performance in terms of accountability, political stability, government effectiveness, regulatory quality, rule of law, corruption, foreign direct investment, and GDP growth); Kerem Oge, ''Which transparency matters? Compliance with anti-corruption efforts in extractive industries,'' *Resources Policy,* 49 (2016), 41–50 (finding that EITI disclosure had no significant effect on corruption in EITI countries).

[320] *See* Andrés Mejía Acosta, ''The Impact and Effectiveness of Accountability and Transparency Initiatives: The Governance of Natural Resources,'' *Development Policy Review,* 31–S1 (2013), s89–s105; Alexandra Gillies and Antoine Heuty, ''Does Transparency Work? The Challenges of Measurement and Effectiveness in Resource-Rich Countries,'' *Yale Journal of International Affairs,* Spring/Summer 2011, 25–42.

economic benefits of the rules that we discuss in detail below.[321] Although these comments presented studies that attempt to quantify those benefits, as discussed below, all have certain limitations that we believe prevent us from relying on them to quantify the proposed rules' potential to improve accountability and governance in resource-rich countries. Furthermore, no other commenters included reliable data that would allow us to quantify the potential economic benefits of the proposed rules or suggested a source of data or a methodology that we could readily look to in doing so.

It is important to note, however, that Congress has directed us to promulgate a rule requiring disclosure of resource extraction payments. Thus, in assessing the potential benefits resulting from the rule, we believe it reasonable to rely on Congress' determination that such a rule will produce the foreign policy and other benefits discussed above that Congress sought in imposing this mandate.[322] In that regard, we note that Congress did not repeal the mandate under Section 13(q), and in fact, some members of Congress who supported the joint resolution to disapprove the 2016 Rules also expressed their ''strong support'' for the transparency and anti-corruption objectives of the rules.

We further note that none of the industry commenters in the 2016 rulemaking expressed the view that the disclosures required by Section 13(q) would fail to help produce anti-corruption and accountability benefits. Indeed, several commenters expressly acknowledged that transparency produces such benefits (notwithstanding the inability to quantify those benefits reliably). For example, one industry commenter stated that ''[t]ransparency by governments and companies alike regarding revenue flows from the extraction of natural resources in a manner which is meaningful, practical and easily understood by stakeholders reduces the opportunity for corruption.'' [323] Another industry commenter expressed its view ''that the disclosure of revenues received by governments and payments made by the extractive-industry companies to governments could lead to improved governance in resource-rich countries.'' [324] Yet another industry commenter stated that resource-revenue transparency efforts ''are fundamental building blocks of good resource governance and are key to fostering better decision-making over public revenues.'' [325]

To the extent that the Section 13(q) disclosures increase transparency and reduce corruption, they could increase efficiency and capital formation either directly abroad or indirectly in the United States. While the objectives of Section 13(q) may not appear to be ones that would necessarily generate measurable, direct economic benefits to investors or issuers, investors and issuers might benefit from the proposed rules' indirect effects. In the following paragraphs, we discuss existing theoretical arguments and empirical evidence that reduced corruption and better governance could have longer term positive impacts on economic growth and investment in certain countries where the affected issuers operate, which could in turn benefit issuers and their shareholders.

Although the research and data available at this time do not allow us to draw any firm conclusions, we have considered several theoretical causal explanations for why reductions in corruption may increase economic growth and political stability, which in turn may reduce investor risk.[326] High levels of corruption could introduce inefficiencies in market prices as a result of increased political risks and the potential awarding of projects to companies for reasons other than the merit of their bids. This, in turn, could prop up inefficient companies and limit investment opportunities for others. These potential distortions could have a negative impact on the economies of countries with high corruption, particularly to the extent that potential revenue streams are diminished or diverted. Additionally, the cost of corrupt expenditures, direct or indirect, impacts profitability, and, if the cost is sufficiently high, some potentially economically efficient or productive investments may not be made. Thus, reducing corruption could increase the number of productive investments and the level of profitability of each investment and could lead to improved efficiency in the allocation of talent, technology, and capital. Insofar as these effects are realized, each of them could benefit issuers operating in countries with reduced corruption levels. These and other considerations form a basis for several dynamic general equilibrium models predicting a negative relationship between corruption and economic development.[327]

A number of empirical studies have also shown that reducing corruption might result in an increase in the level of GDP and a higher rate of economic growth through more private investments, better deployment of human capital, and political stability.[328] Other studies find that corruption reduces economic growth both directly and indirectly, through lower investments.[329] To the extent that increased transparency could lead to a reduction in corruption and, in turn, improved political stability and investment climate, some investors may consider such factors in their investment decisions, including when pricing resource extraction assets of affected issuers operating in these countries.[330] A commenter on the 2016 Rules cited its own study suggesting that high levels of corruption (measured by bribery) correspond to lower levels of economic development.[331] The study

[321] *See* Letter from Profs. Anthony Cannizzaro & Robert Weiner (Feb. 11, 2016) (''Cannizzaro & Weiner''). *See also* Letter from API (Feb. 16, 2016) and Letter from Publish What You Pay—US (third of three letters on Mar. 8, 2016) (both referring to a study by P. Healy and G. Serafeim). These letters and studies primarily focus on benefits to issuers and investors.

[322] We note that these intended benefits differ from the investor protection benefits that our disclosure rules typically strive to achieve.

[323] *See* Letter from BHP Billiton (Jan. 25, 2016).

[324] *See* Letter from Chevron (Feb. 16, 2016).

[325] *See* Letter from Eni SpA (Jan. 31, 2016).

[326] *See, e.g.,* reviews by P. Bardhan, ''Corruption and Development: A Review of Issues,'' *Journal of Economic Literature,* 35, no. 3, 1320–1346 (1997); J. Svensson, ''Eight Questions about Corruption,'' *Journal of Economic Perspectives,* 19, no. 3, 19–42 (2005) (''Svensson Study'').

[327] *See, e.g.,* I. Ehrlich and F. Lui ''Bureaucratic Corruption and Endogenous Economic Growth,'' *Journal of Political Economy,* 107 (6), 270–293 (1999); K. Blackburn, N. Bose, and E.M. Haque, ''The Incidence and Persistence of Corruption in Economic Development,'' *Journal of Economic Dynamics and Control* 30, 2447–2467 (2006); C. Leite and J. Weidmann, ''Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth,'' International Monetary Fund Working Paper No. 99/85 (July 1999).

[328] *See, e.g.,* P. Mauro, ''The effects of corruption on growth, investment and government expenditure: A cross country analysis,'' in K.A. Elliot (ed.) *Corruption and the Global Economy,* Washington, DC: Institute for International Economics, 83–107 (1997); H. Poirson, ''Economic Security, Private Investment, and Growth in Developing Countries,'' International Monetary Fund Working Paper No. 98/4 (Jan. 1998); Institute for Economics and Peace, Peace and Corruption Report (2015).

[329] *See* Pak Hung Mo, ''Corruption and Economic Growth,'' *Journal of Comparative Economics* 29, 66–79 (2001); K. Gyimah-Brempong, ''Corruption, economic growth, and income inequality in Africa,'' *Economics of Governance* 3, 183–209 (2002); Pierre-Guillaume Méon and Khalid Sekkat, ''Does corruption grease or sand the wheels of growth?'' *Public Choice* 122, 69–97 (2005).

[330] Several studies present evidence that reduction in corruption increases foreign direct investments. *See, e.g.,* S.J. Wei, ''How Taxing is Corruption on International Investors?'' *NBER Working Paper* 6030 (1997); G. Abed and H. Davoodi, ''Corruption, Structural Reforms, and Economic Performance in the Transition Economies,'' International Monetary Fund Working Paper No. 00/132 (July 2000).

[331] *See* Letter from Transparency International-USA (Feb. 16, 2016).

found that higher levels of bribery were associated with higher maternal mortality, lower youth literacy rate, and lower access to basic sanitation. The same commenter cited another study that suggested that even small improvements in a country's governance resulted in higher income and lower infant mortality rates in the long run.[332]

There also could be positive externalities from increased investor confidence to the extent that improved economic growth and investment climate could benefit other issuers working in those countries. Although we believe the evidence is presently too inconclusive to allow us to predict the likelihood that such a result would occur, we note that there is some empirical evidence suggesting that lower levels of corruption might reduce the cost of capital and improve valuations for some issuers.[333]

One prior commenter asserted that the studies cited above discuss primarily a single form of corruption—bribery—that in the commenter's view is not subject to the disclosures required under Section 13(q) and hence the commenter contended that these studies do not support our view that the required disclosures might achieve economic benefits resulting from reduced corruption.[334] We acknowledge that the specific studies that the commenter mentions do focus on bribery as a form of corruption. All the other studies that we cite, however, do discuss corruption in general and its effect on economic growth. In fact, some specifically discuss the type of corruption addressed by the statute and proposed rules.[335] Furthermore, to the extent that Section 13(q) disclosures are successful in reducing corruption in the form of misuse of funds, they could also reduce quid pro quo corruption. For example, if Section 13(q) and the related rules enable citizens and society to monitor the government and issuers more strictly, they may become less likely to engage in quid pro quo corruption. It is also possible that some of the payments that are reportable under Section 13(q) are an implicit form of bribery: For example, government officials could agree, instead of a bribe, to receive another type of payment from an issuer later, after the payment is made.

We also note that global transparency efforts such as the EITI and others are relatively new, which makes it difficult at this time to draw any firm empirical conclusions about the potential long-term benefits that such transparency regimes may produce for resource-rich countries. Many studies suggest a possible link between improvements in transparency, which they measure as a resource-rich country joining the EITI, and increases in GDP and net foreign direct investments, reduction in conflict and unrest, and effects on economic development.[336] The causal mechanisms involved, however, are complex (impacted by myriad factors) and it may take several decades before those mechanisms yield empirically verifiable social gains. While some of these studies provide useful insight into the potential benefits to be derived from resource payment transparency regimes, we believe that there are limitations associated with each of these studies that make it difficult for us to draw firm conclusions based on their findings. Additionally, other factors could affect both corruption and economic development (*e.g.,* a country's institutions), making it difficult to detect a causal relationship between the former and the latter.

Notwithstanding the foregoing views, we believe the direct incremental benefit to investors from the Section 13(q) disclosures may be limited. Most impacted issuers, other than smaller reporting companies, are already required to disclose their most significant operational and financial risks[337] as well as certain financial information related to the geographic areas in which they operate, in their Exchange Act annual reports.[338]

C. Potential Costs Resulting From the Payment Reporting Requirement

The disclosures required by Section 13(q) could result in direct and indirect compliance costs and competitive effects for affected issuers. The direct compliance costs would stem from the anticipated need to modify issuers' core enterprise resource planning systems and financial reporting systems to capture and report payment data at the project level, for each type of payment, government payee, and currency of payment, to the extent that such payments are not currently tracked by the issuers' reporting systems. Examples of modifications that may be necessary include establishing additional granularity in existing coding structures (*e.g.,* splitting accounts that contain both government and non-government payment amounts), developing a mechanism to appropriately capture data by ''project,'' building new collection tools within financial reporting systems, establishing a trading partner structure to identify and provide granularity around government entities, establishing transaction types to accommodate different types of payment (*e.g.,* royalties, taxes, or bonuses), and developing a systematic approach to handle ''in-kind'' payments.

In addition, we anticipate that the statutory reporting requirements could result in indirect costs and competitive effects. Issuers that have a reporting obligation under Section 13(q) could be at a competitive disadvantage compared to private companies and foreign companies that are not subject to payment reporting requirements under the U.S. Federal securities laws or analogous foreign disclosure regimes. For example, such competitive disadvantage could result from, among other things, any preference by the government of the host country to avoid disclosure of covered payment information, or any ability of market participants to use the information disclosed by reporting issuers to derive contract terms, reserve data, or other confidential information. Governments of host countries could try to avoid Section 13(q) payment disclosure by either prohibiting it outright, or by changing their preferences in favor of dealing with private and foreign companies that do not have such reporting obligations. We are unable to estimate how many governments of

[332] *See id.,* referring to Daniel Kaufmann, ''Governance Matters 2010: Worldwide Governance Indicators Highlight Governance Successes, Reversals and Failures,'' *available at http://www.brookings.edu/research/opinions/2010/09/24-wgi-kaufmann.*

[333] *See* D. Kaufmann and S.J. Wei ''Does 'Grease Money' Speed Up the Wheels of Commerce?'' NBER Working Paper 7093 (1999) (finding, based on survey evidence, that firms that pay fewer bribes have lower, not higher, cost of capital); C. Lee and D. Ng, ''Corruption and International Valuation: Does Virtue Pay?'' *Journal of Investing,* 18, no. 4, 23–41 (2009) (finding that firms from more corrupt countries trade at significantly lower market multiples).

[334] *See* Letter from API (Feb. 16, 2016).

[335] *See, e.g.,* Svensson Study at n.326 above, which defines corruption as misuse of public office for private gain. This study cites examples of corruption that are similar to the types of corruption the proposed rules seek to address.

[336] *See* Letter from C. Corrigan (Feb. 16, 2016) (referring to her earlier study: Corrigan, C. C. (2014), ''Breaking the Resource Curse: Transparency in the Natural Resource Sector and the Extractive Industries Transparency Initiative,'' *Resources Policy, 41*(1), 17–30); Letter from PWYP–US (Feb. 16, 2016) (referring to Fernando Londoño, ''Does Joining the Extractive Industries Transparency Initiative Have an Impact on Extractive and Non-Extractive FDI Inflows?'' (2014), *available at http://gppreview.com/wp-content/uploads/2014/02/Londono-F.pdf*) (''Londoño Study'') and Maya Schmaljohann, ''Enhancing Foreign Direct Investment via Transparency? Evaluating the Effects of the EITI on FDI'' (Jan. 2013), *available at http://archiv.ub.uni-heidelberg.de/volltextserver/14368/1/Schmaljohann_2013_dp538.pdf* (''Schmaljohann Study'')); Letter from ONE Campaign (Mar. 16, 2016).

[337] *See* Items 305 and 503 of Regulation S–K, (17 CFR 229.305 and 229.503).

[338] *See* Item 101(d) of Regulation S–K (17 CFR 229.101(d)).

resource-rich host countries would try to avoid Section 13(q) payment disclosure, and by what means.

Commenters in the 2016 rulemaking were split in their opinion on the competitive effect of payment information disclosure. Some commenters argued that confidential production and reserve data could be derived by competitors or other interested persons with industry knowledge by extrapolating from the payment information required to be disclosed.[339] Other commenters asserted, however, that such extrapolation is not possible or that such information is readily available from certain commercial databases. These commenters stated that information of the type required to be disclosed by Section 13(q) therefore would not confer a competitive advantage on industry participants not subject to such disclosure requirements.[340]

Whatever the effect, any competitive impact arising from Section 13(q)'s mandated disclosures should be substantially reduced to the extent that companies are required to disclose payment information in other jurisdictions, such as the European Union and Canada, which have adopted laws that require more granular disclosure than that required by Section 13(q) and the proposed rules.[341] In that regard, the proposed rules may provide competitive advantages to U.S. issuers that are subject to the proposed rules but not subject to the European Union and Canadian regimes. This is because companies are required to disclose more granular payment information under the European Union and Canadian disclosure regimes and those regimes cover a wider pool of affected issuers (*i.e.,* both registered issuers and large private issuers are subject to payment disclosure in these regimes). We note, however, that if industry commenters are accurate in their assessment of the competitive effects arising from such disclosure requirements, U.S. issuers that are subject to the proposed rules but not subject to the EU Directives or other international disclosure regimes might lose some of the competitive advantage they might enjoy but for the proposed rules.

Some commenters on the 2016 Rules suggested that we permit issuers to submit payment data confidentially to the Commission and make public only an aggregated compilation of the information.[342] These commenters stated that such an approach would address many of their concerns about the disclosure of commercially sensitive information or information that companies were legally or contractually prohibited from disclosing and would significantly mitigate the costs of the mandatory disclosure under Section 13(q). Although we are not proposing this approach, we consider the costs and benefits of this alternative means of implementation in Section III.D.4 below.

The proposed rules differ from the 2016 Rules in that they include a definition of project that is not contract-based and that would allow for greater aggregation of payment information than under the 2016 Rules. The proposed rules also include two new exemptions for conflicts with foreign law and contract prohibitions, in addition to the targeted exemption for payments made in connection with exploratory activities that was included in the 2016 Rules.[343] Furthermore, the proposed rules would permit an issuer to aggregate payments by payment type made at a level below the major subnational level (*e.g.,* at the county or municipality level) and disclose such payments without having to identify the particular subnational government payee. Together, we believe that these provisions would significantly alleviate, and in some cases could eliminate, the potential for competitive harm under the Section 13(q) rules. We also note that in situations involving more than one payment, the information would be aggregated by payment type, government, and/or project, which may further limit the ability of a company's competitors to use the publicly disclosed information to their advantage.

We discuss below the significant choices we have made to implement the statutory requirements that are the main drivers of the direct and indirect compliance costs and of the proposed rules' competitive effects. We then discuss the associated benefits and costs of those choices. In that regard, we are unable to quantify the impact of each of the choices discussed below with precision because reliable, empirical evidence about the effects is not readily available to the Commission. We are asking commenters to provide us with empirical evidence that will allow us to evaluate these various choices.

D. Discussion of Discretionary Choices

1. Definition of "Project"

Section 13(q) requires a resource extraction issuer to disclose information about the type and total amount of payments made to a foreign government or the Federal Government for each project relating to the commercial development of oil, natural gas, or minerals, but it does not define the term "project." The proposed rules define "project" using a three-pronged definition: (1) The type of resource being commercially developed; (2) the method of extraction; and (3) the major subnational political jurisdiction where the commercial development of the resource is taking place.

[339] *See* Letters from API (Feb. 16, 2016) and ExxonMobil (Feb. 16, 2016).

[340] *See* Letters from PWYP–US (Feb. 16, 2016) and Oxfam America (Feb. 16, 2016).

[341] One commenter suggested that if both the United States and European Union implement disclosure requirements regarding payments to governments "around 90% of the world's extractive companies will be covered by the rules." *See* Letter from Arlene McCarthy (Aug. 10, 2012) (Ms. McCarthy is a member of the European Parliament and the parliamentary draftsperson on the EU transparency rules for the extractive sector).

[342] *See, e.g.,* Letter from API (Feb. 16, 2016); Chevron (February 16, 2016); Exxon (February 16, 2018).

[343] As discussed below, the proposed rules also include transitional relief for newly acquired companies and newly public companies that should further limit the compliance burdens associated with the rules.

The definition of ''project'' appears to be a major determinant of issuers' costs resulting from the Section 13(q) rules. First, the definition can affect the extent of direct compliance costs imposed on affected issuers. The extent of this effect depends on the degree to which issuers' financial and reporting systems use a different definition of project (or no definition at all) compared to the one included in the proposed rules. A number of commenters pointed out that the more granular contract-based definition of ''project'' that was proposed in the 2016 Rules would require modifications to issuers' core enterprise resource planning systems and financial reporting systems to capture and report payment data for each type of payment, government payee, and currency of payment.[344] We also note that some commenters on the 2016 rulemaking questioned the assertion that the definition of ''project'' would increase compliance costs. They argued that most issuers already have internal systems in place for recording payments that would be required to be disclosed under Section 13(q), or that any adjustments to issuers existing reporting systems needed because of Section 13(q) could be done in a timely and cost-effective manner.[345]

Second, the definition of ''project'' could potentially create indirect costs in the form of competitive harm for affected issuers. Such competitive harm could occur if the definition of ''project'' reveals sensitive and proprietary commercial information to competitors. For example, several commenters in the 2016 rulemaking suggested that a contract-based definition of ''project'' would result in the loss of trade secrets and intellectual property more generally.[346] One commenter stated that trade secrets and intellectual property were especially valuable in the resource extraction industry because of the large sunk costs investments and uncertain, long-term payoffs.[347] According to some industry commenters, a contract-based definition of ''project'' would allow competitors to derive important information about the new areas under exploration for potential resource development, the value the company places on such resources, and the costs associated with acquiring the right to develop these new resources. This would in turn enable competitors to evaluate the new resources more precisely, and as a result, structure their bids for additional opportunities in the areas with new resources more effectively. Commenters on the 2016 rulemaking also stated that a contract-based definition of ''project'' would allow competitors to reverse-engineer proprietary commercial information: for example, to determine the commercial and fiscal terms of the agreements, get a better understanding of an issuer's strategic approach to bidding and contracting, and identify rate of return criteria.[348] In contrast with these views, we note that several commenters in the 2016 rulemaking disputed the assertion that the contract-based definition of ''project'' would create any competitive disadvantages to affected issuers.[349]

The Modified Project Definition represents a major change from the definition adopted by the 2016 Rules. We believe that it should significantly alleviate direct and indirect compliance costs, including potential competitive harm, for affected issuers. With respect to direct compliance costs, the proposed definition of ''project'' would allow an issuer to make the payment disclosure at a higher level of aggregation than under the 2016 Rules' contract-based definition. Instead of tracking, recording, and disclosing payment information at the single contract, license, or lease level, under the proposed definition, affected issuers would have to report this information at the resource type, extraction method, and the major subnational political jurisdiction level. This higher level of information aggregation should lower the cost of providing the required payment disclosure because there would be fewer individual data points to be electronically tagged and reported.[350] It should also make it easier for the issuer to report the payment information.

In addition, because as proposed the required payment information is at a higher level of aggregation than under the 2016 Rules, it is likely that an issuer already aggregates some of the required payment information for its own internal accounting or financial reporting purposes. In that event, requiring payment information at a higher level of aggregation may be less costly because the issuer may be able to modify its existing internal accounting systems to collect the required payment information rather than having to build a new system to collect the payment information on a contract-by-contract basis.

Additionally, the proposed definition of ''project'' lacks the granularity of a contract-based definition, making it less likely that competitors would be able to reverse-engineer contract terms or glean sensitive contract information from the disclosure. In this regard, we note that many of the concerns expressed in the 2016 rulemaking about revealing sensitive and proprietary commercial information to competitors derived from the fact that the required disclosure was at the contract, license or lease level. Thus, the proposed definition of ''project'' should also alleviate potential competitive harm concerns that affected issuers might have regarding the latter.

At the same time, the proposed definition of ''project'' would continue to provide a level of transparency that people could use to assess revenue flows from projects in their local communities. As we discuss above in Section III.B, this should have a number of potential benefits for information users seeking to prevent corruption and promote accountability.

We note that, even with the proposed modifications to the definition of ''project,'' affected issuers would incur significant compliance costs. Issuers would still be required to track each payment that they make to foreign governments and the Federal Government in furtherance of resource extraction activities and thus would likely need to modify their systems to some degree to collect data on each payment. In addition, they would be required to electronically tag a significant amount of information about each payment. Additional compliance

[344] *See* 2016 Rules Adopting Release, Section III.B.2., citing Letters from API (Jan. 28, 2011); ExxonMobil (Jan. 31, 2011); and RDS (Jan. 28, 2011).

[345] *See id.,* citing Letters from EarthRights International (Sept. 20, 2011); Global Witness (Feb. 25, 2011); and Publish What You Pay U.S. (Feb. 25, 2011).

[346] *See* Letters from API (Feb. 16, 2016) and ExxonMobil (Feb. 16, 2016).

[347] *See* Letter from API (Feb. 16, 2016).

[348] *See* Letters from API (Feb. 16, 2016) and ExxonMobil (Feb. 16, 2016).

[349] *See, e.g.,* letters from PWYP–US (Feb. 16, 2016) (stating that the required payment information would not disclose competitively sensitive information because such information would not include contractual relationships with downstream processors, the contribution of the project to the overall profitability of the reporting issuer, trade secrets, and techniques related to intellectual property; and denying both that payment transparency is a decisive factor in competitive bidding processes with host states to access resources, and that project payment disclosure can be used by competitors to reverse-engineer commercial terms and succeed in future bids); *see also* Global Witness (Mar. 8, 2016). *See also* letter from Global Witness (Mar. 8, 2016) (asserting that ''there is no merit to the claim that US companies would lose out to unlisted state companies as a result of this rule. In fact, most of the largest state-owned companies are listed on US and/or European stock exchanges and would therefore be subject to the same rules as other US and European issuers.'')

[350] *See* the letter from API (Nov. 7, 2013) (noting that ''an additional benefit of API's project recommendation is clarity and ease of use for all stakeholders,'' including ''for reporting companies in submitting data'').

costs could result from training local personnel on tracking and reporting, and developing guidance to ensure consistency across reporting units.

Finally, we acknowledge that the proposed definition of ''project'' may narrow the scope of the transparency benefits compared to the previous definition proposed in 2016. We believe, however, that the revised definition, because it considers the type of resource, the method of extraction, and the location, will provide substantial transparency about the overall revenue flows to national and subnational governments.

2. Exemptions From Disclosure

Absent potential exemptive relief, resource extraction issuers operating in countries that prohibit, or may in the future prohibit, the disclosure required under Section 13(q) could bear substantial costs. Such costs could arise if issuers are forced to cease operations in certain countries or otherwise violate local law. In addition, the country's laws could have the effect of preventing them from participating in future projects. Alternatively, the host country may prefer to engage in deals with companies that are not required to provide disclosure required under Section 13(q). If an issuer violates local law, it could suffer expropriation of its facilities in the host country, the imposition of fines or the withholding of permits. In connection with the 2016 Rules, some commenters asserted that at least two countries—Qatar and China—prohibit the required disclosures.[351]

To the extent that such prohibitions exist and are enforced without any type of waiver, affected issuers could be motivated to sell assets affected by such competitive disadvantage at a price that does not fully reflect the value of such assets absent such competitive impact. Thus, affected issuers could suffer substantial losses if they have to terminate their operations and redeploy or dispose of their assets in the particular foreign jurisdiction. These losses would be magnified if an issuer could not easily redeploy the assets in question or if it had to sell them at a steep discount (a fire sale). Even if the assets could be easily redeployed, an issuer could suffer opportunity costs if they were redeployed to projects with inferior rates of return. In the 2016 Rules, we estimated that such losses could amount to billions of dollars.[352]

These potentially large indirect costs should be generally eliminated under the proposed rules. We are proposing an exemption for situations in which an issuer is unable to provide the required disclosure without violating the laws of the jurisdiction where the project is located. The exemption would apply not only to pre-existing but also to future prohibitions on disclosure, in recognition of the fact that issuers do not have control over the laws of the jurisdiction where they are engaged in the commercial development of natural resources.

Some commenters in the 2016 rulemaking also suggested that issuers with existing contracts that prohibit the disclosure required under Section 13(q) may find themselves in breach of contract if they make the required disclosure. This, in turn, could result in termination of ongoing contracts and inability to participate in future projects.[353] While we do not have data on how often existing contracts contain such prohibitions, to address the concerns raised by commenters, we are proposing an exemption for situations in which a pre-existing contract prohibits the required disclosure. This exemption would differ from the conflict of law exemption in that, if adopted as proposed, it would only apply to written terms of contracts that were entered into prior to the date the Section 13(q) rules are effective. As explained above, we believe that this limitation is justified because issuers have control over the terms of their contracts and would be in a position to modify future contract terms accordingly.[354]

Neither of these proposed exemptions would require an issuer to apply to the Commission for exemptive relief. This approach should significantly decrease compliance and indirect costs for issuers that qualify for either exemption, potentially saving affected issuers millions of dollars. Compared to the approach taken in the 2016 Rules, in which affected issuers were required to seek individual relief on a case-by-case basis, the proposed exemptions would give such issuers more certainty about the availability of the exemptions. In addition, the corresponding relief would be available in a timelier manner.

We note, however, that in addition to reducing costs, the exemptions might have the unintended consequence of diminishing some of the benefits of enhanced transparency. For example, it could create a stronger incentive for host countries that want to prevent transparency to pass laws that prohibit such disclosure, potentially undermining the purpose of Section 13(q) to compel disclosure in jurisdictions that have failed to do so voluntarily. As mentioned above, we believe that the likelihood that jurisdictions will pass such laws is limited by the absence of a similar exemption under the EU Directives or Canada's ESTMA, which generally require disclosure at a more granular level, and by the growing global influence of the EITI.[355]

In addition to the exemptions for conflicts with foreign law and pre-existing contracts, similar to the 2016 Rules, the proposed rules would allow for delayed reporting for explorative activities and transitional relief for recently acquired companies not previously obliged to disclose resource extraction payment information. In a change from the 2016 Rules, the proposed rules would also provide transitional relief for companies that have completed their U.S. initial public offering in the last full fiscal year. These additional forms of exemptive relief should alleviate compliance costs for affected issuers. Finally, as in the 2016 Rules, the proposed rules would allow issuers to apply for exemptive relief on a case-by-case basis using the procedures set forth in Rule 0–12 of the Exchange Act for situations posing a significant threat of commercial harm that fall outside the scope of the other proposed exemptions. We cannot reliably estimate how frequently potential issuers would apply for exemptive relief on a case-by-case basis.

We believe that the exemptions provided under the proposed rules, subject to issuers meeting specified conditions, would substantially decrease any indirect costs and competitive effects that may result from conflicts with foreign law and pre-existing contracts, or from other situations where the required payment disclosure would pose a significant threat of commercial harm. However, we acknowledge that, if issuers cannot meet the conditions for the proposed exemptions, issuers could potentially incur costs associated with the conflict between the proposed requirements and those foreign law or pre-existing contract prohibitions. Similarly, issuers could potentially incur costs in situations where the Commission denies an issuer's claim for exemptive relief on a case-by-case basis. Due to lack of data, we cannot reliably estimate the number of affected issuers that may be unable to

[351] *See* Letters from API (Feb. 16, 2016) and ExxonMobil (Feb. 16, 2016).

[352] *See* 2016 Rules Adopting Release, Section III.C.

[353] *See* Letters from API (Feb. 16, 2016) and Chevron (Feb. 16, 2016).

[354] *See supra* Section II.J.2.

[355] *See* discussion in Section II.J.1.

meet the conditions for the proposed exemptions.

We are also proposing to provide an exemption from the disclosure requirements for smaller reporting companies and/or emerging growth companies, or to provide for different disclosure requirements for these entities. Because the proposed rules could result in significant fixed compliance costs for resource extraction issuers, smaller entities that are required to provide the payment disclosure mandated by Section 13(q) may face particular difficulties meeting those costs. As noted above, 211 issuers reported being SRCs, 191 issuers reported being EGCs and 84 issuers reported being both SRCs and EGCs in the period January 1, 2018, through September 30, 2019. This results in 318 issuers that would not bear compliance costs under the proposed rules because they reported being SRCs and/or EGCs. The proposed exemption for smaller reporting companies and emerging growth companies would avoid adding to the costs of being a public reporting company for these companies.

3. Annual Report Requirement

Section 13(q) provides that the resource extraction payment disclosure must be ''include[d] in an annual report.'' In a change from the 2016 Rules, the proposed rules require an issuer to furnish the payment disclosure in an annual report on Form SD instead of filing it. Requiring covered issuers to furnish, rather than file, the payment information in Form SD may limit the incremental risk of liability under Section 18 of the Exchange Act. This limit to the incremental risk of liability could decrease the quality of payment information reported to the extent that issuers are less attentive to collecting and submitting the information. We note, however, that Section 18 does not create strict liability for ''filed'' information.[356] In addition, issuers would still be subject to antifraud liability under the U.S. Federal securities laws for material misstatements, which should mitigate the risk of decreased quality of the reported payment information.

As under the 2016 Rules, the required payment information would be reported under the cover of Form SD. The Form SD would be due no later than March 31 in the calendar year following its most recent fiscal year for issuers with a fiscal year ending on or before June 30 and no later than March 31 in the second calendar year following its most recent fiscal year for issuers with a fiscal year ending after June 30. This should lessen the burden of compliance with Section 13(q) and the related rules because issuers generally would not have to incur the burden and cost of providing the payment disclosure at the same time that they must fulfill their disclosure obligations with respect to Exchange Act annual reports.[357] An additional benefit is that this requirement would provide payment information to users in a standardized manner for all issuers rather than in different annual report forms depending on whether a resource extraction issuer is a domestic or foreign filer. Moreover, requiring the disclosure in Form SD, rather than in issuers' Exchange Act annual reports, should alleviate any concerns and costs associated with the disclosure being subject to the officer certifications required by Exchange Act Rules 13a–14 and 15d–14. Finally, we also believe that the lengthened submission deadlines would also address the concerns that the public disclosure of the payment information could cause competitive harm.

Resource extraction issuers would incur costs associated with preparing and furnishing the required information on Form SD. We do not believe, however, that the costs associated with furnishing the information on Form SD instead of providing it in an existing Exchange Act form would be significant given that the existing form would have to be modified to accommodate the requirements of Section 13(q) disclosure.

4. Public Availability of Data

The proposed rules would require a resource extraction issuer to provide the required payment disclosure publicly, including the name of the issuer. As an alternative to requiring payment disclosure by individual issuers, we could have proposed implementing Section 13(q) by permitting resource extraction issuers to provide the information non-publicly and having the Commission publish, an aggregated and anonymized compilation of company-provided resource extraction payment information. Such an approach would mitigate concerns regarding the disclosure of potentially sensitive information that could create competitive harm. Additionally, such an alternative would still result in the disclosure of the type and amount of payments to governments, albeit on an aggregated basis. According to a commenter in the 2016 rulemaking, such an approach would yield the benefits intended by Congress and at the same time reduce potential competitive harm.[358]

Such anonymized public compilation, however, may not further transparency efforts to the same degree as company-specific disclosure. Public individual issuer information may help people monitor individual issuer's contributions to the public finances and ensure that firms are meeting their payment obligations and that governments are properly collecting and accounting for payments. Additionally, the public disclosure of company-specific, project-level data may help to reduce corruption to the extent that resource extraction issuers are unwilling to participate in deals where they believe the revenues may be corruptly diverted from the government coffers. Requiring issuers to disclose their payment information publicly would also provide users with more current and immediately available information than a separate compilation produced by the Commission. In contrast, under an approach that depends upon the Commission publishing a separate public compilation of previously submitted non-public information, users of the information would have to wait to access the information in an issuer's Form SD until the Commission publishes its periodic compilation. We do not believe that the proposed requirement for issuers to disclose the payment information publicly would increase an issuer's compliance burden compared to the alternative of issuers submitting the payment information non-publicly (and the Commission using the nonpublic submissions to produce a publicly available compilation). The compliance costs would be similar under each alternative because the issuer would have to provide the same payment information to the Commission. Regarding the potential increase in the risk of competitive harm that may result from public disclosure, we believe that such increase would be marginal because of the Modified Project Definition, which, as mentioned above, should significantly alleviate the likelihood of competitive harm from the disclosure, and because of the extended filing deadline.

[356] *See* Exchange Act Section 18 (15 U.S.C. 78r). A plaintiff asserting a claim under Section 18 would need to meet the elements of the statute to establish a claim, including purchasing or selling a security in reliance on the misstatement and incurring damages caused by that reliance.

[357] For example, a resource extraction issuer may potentially be able to save resources to the extent that the timing of its obligations with respect to its Exchange Act annual report and its obligations to provide payment disclosure allow for it to allocate its resources, in particular personnel, more efficiently.

[358] *See* Letter from API (Feb. 16, 2016).

We are considering, however, the alternative of publishing only an aggregated, anonymous compilation based on confidentially furnished Forms SD. This approach would both ensure the public availability of information about payments made in particular jurisdictions—which may be sufficient to meet the statute's objectives—without potentially subjecting affected issuers to competitive harm.

5. Alternative Reporting

The proposed rules would allow resource extraction issuers subject to a foreign jurisdiction's resource extraction payment disclosure requirements to meet their reporting obligations by submitting the report required by that foreign jurisdiction with the Commission subject to the condition that the Commission has determined that the foreign jurisdiction's reporting obligations satisfy the transparency objectives of Section 13(q). Concurrently with the 2016 Rules Adopting Release, the Commission issued an order designating the EU Directives and ESTMA as eligible substitute reporting regimes for purposes of the alternative reporting provision in those rules. To the extent that the Commission makes a similar determination upon or following adoption of the proposed rules, this approach would significantly decrease compliance costs for issuers that are cross-listed or incorporated in these jurisdictions. As noted above, we estimated that approximately 109 issuers are subject to other regulatory regimes that may allow them to utilize this provision.[359] For these issuers, the costs associated with preparing and furnishing a Form SD should be negligible, although they would be required to format the data in interactive (XBRL) format and potentially translate it into English before submitting it with the Commission.

As an alternative, we could have proposed not to include such a provision. Such an alternative may increase the compliance costs for issuers that are subject to foreign disclosure requirements that satisfy the transparency objectives of Section 13(q). These issuers would have to comply with multiple disclosure regimes and bear compliance costs for each regime, although it is possible that the marginal costs for complying with an additional disclosure regime would not be significant given the potential overlap that may exist between these reporting regimes and the proposed rules.

6. Definition of ''Control''

Section 13(q) requires resource extraction issuers to disclose payments made by a subsidiary or entity under the control of the issuer. As discussed in Section II.E above, we are proposing rules that define the term ''control'' based on accounting principles. Alternatively, we could have proposed a definition based on Exchange Act Rule 12b–2, as in the 2012 Rules.[360] We believe that the approach we are proposing would be less costly for issuers to comply with than such an alternative because issuers are currently required to apply the accounting concept of ''control'' on at least an annual basis for financial reporting purposes.

Using a definition based on Rule 12b–2 would require issuers to undertake additional steps beyond those currently required for financial reporting purposes. Specifically, a resource extraction issuer would be required to make a factual determination as to whether it has control of an entity based on a consideration of all relevant facts and circumstances. Thus, this alternative would require issuers to engage in a separate analysis of which entities are included within the scope of the required disclosures (apart from the consolidation determinations made for financial reporting purposes) and could increase the compliance costs for issuers compared to the approach we are proposing.

In addition, there are several other advantages of using a definition based on accounting principles. There will be audited financial statement disclosure of an issuer's significant consolidation of accounting policies in the footnotes to its audited financial statements contained in its Exchange Act annual reports. Also, an issuer's determination of control under the proposed rules would be subject to the audit process as well as subject to the internal accounting controls that issuers are required to have in place with respect to audited financial statements filed with the Commission.[361] All of these advantages may lead to more accurate, reliable, and consistent reporting of subsidiary payments, thereby enhancing the quality of the reported data.

In a change from the 2016 Rules, the proposed rules do not require disclosure of the proportionate amount of the payments made by a resource extraction issuer's proportionately consolidated entities or operations. Excluding proportionate interest entities or operations from the proposed definition of control would ameliorate concerns about the ability of an issuer to obtain sufficiently detailed payment information from proportionately consolidated entities or operations when it is not the operator of that venture, thereby limiting compliance costs for affected issuers. At the same time, this approach would exclude some joint ventures from the scope of the proposed rules, thereby limiting the transparency benefits of the Section 13(q) disclosures. It also could potentially provide an incentive for affected parties to structure their resource extraction operations in a manner to avoid disclosure. We note, however, that many other factors, other than Section 13(q) disclosure, likely would influence how parties structure their operations and agreements, and some of these factors may outweigh the disclosure consideration.

As an alternative, we could have proposed to require disclosure of payments made by a resource extraction issuer's proportionately consolidated entities or operations. This alternative would result in disclosure of payments made by some joint ventures that would not be covered by the scope of the proposed rules, which would increase the transparency benefits of the Section 13(q) disclosures compared to the proposed approach. However, it also would increase compliance costs for issuers by potentially compelling them to renegotiate their joint venture agreements or make other arrangements to obtain sufficiently detailed payment information to comply with the Section 13(q) rules. In this regard, we note that several commenters in the 2016 rulemaking expressed concern about the ability of an issuer to obtain sufficiently detailed payment information from proportionately consolidated entities or operations when it is not the operator of that venture.[362] Similar considerations would apply with respect to a definition of control that includes a ''significant influence'' test.

7. Definition of ''Commercial Development of Oil, Natural Gas, or Minerals''

The proposed rules define ''commercial development of oil, natural gas, or minerals'' to include exploration, extraction, processing, and export, or the acquisition of a license for any such activity. As described above, the proposed rules generally track the

[359] These are issuers that have a business address, are incorporated, or are listed on exchanges in the EEA or Canada.

[360] *See* 2012 Rules Proposing Release, Section II.D.4.

[361] *See supra* Section II.E.

[362] *See* Letters from API (Feb. 16, 2016); BP (Feb. 16, 2016); Chevron (Feb. 16, 2016) ; Encana (Jan. 25, 2016); ExxonMobil (Feb. 16, 2016); Petrobras (Feb. 16, 2016); and Royal Dutch Shell (Feb. 5, 2016).

language in the statute. We are sensitive to the fact that a broader definition of ''commercial development of oil, natural gas, or minerals'' could increase issuers' costs. We are also sensitive to the fact that expanding the definition in a way that is broader than other reporting regimes could potentially lead to a competitive disadvantage for those issuers covered only by our rules, provided that issuers subject to other disclosure regimes are exempt from the proposed rules under the alternative reporting provision. Further, we recognize that limiting the definition to these specified activities could adversely affect those using the payment information if disclosure about payments made for activities not included in the list of specified activities, such as refining, smelting, marketing, or stand-alone transportation services (*i.e.,* transportation that is not otherwise related to export), would be useful to users of the information.

8. Types of Payments

As under the 2016 Rules, the proposed rules include the specific types of payments identified in the statute, as well as CSR payments that are required by law or contract, payments of certain dividends, and payments for infrastructure. We propose to include payments of certain dividends and payments for infrastructure because, based on comments received in prior rulemakings, we believe they are part of the commonly recognized revenue stream for the commercial development of oil, natural gas and minerals. For example, payments for infrastructure improvements have been required under the EITI since 2011. Additionally, the EU Directives and ESTMA require these payment types to be disclosed. Thus, including dividends and payments for infrastructure improvements (*e.g.,* building a road) in the list of payment types required to be disclosed under the proposed rules would further the statutory objective of supporting the commitment of the Federal Government to international transparency promotion efforts.

As under the 2016 Rules, the proposed rules would include CSR payments that are required by law or contract in the list of covered payment types. Some commenters in the 2016 rulemaking argued that these payments are of material benefit in resource-dependent countries to both governments and local communities.[363] One commenter suggested that some resource extraction issuers already disclose such payments voluntarily and presented survey data indicating that such payments could be quite large.[364] We also note that the EITI requires the disclosure of CSR payments if required by law or contract.[365] Thus, the addition of CSR payments to the list of types of payments that must be disclosed should improve the quality of the disclosure required by the statute and would further the statutory objective of supporting the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas or minerals. Additionally, to the extent that it is difficult for certain resource extraction issuers to distinguish between CSR payments and infrastructure payments, requiring both types of payments when required by law or contract may lead to lower compliance costs for those issuers.[366]

As discussed earlier, under the proposed rules, resource extraction issuers would incur costs to provide the payment disclosure for the required payment types. For example, there would be costs to modify the issuers' core enterprise resource planning systems and financial reporting systems so that they can track and report payment data at the project level, for each type of payment, government payee, and currency of payment. Since some of the payments would be required to be disclosed only if they are required by law or contract (*e.g.,* CSR payments), resource extraction issuers presumably already track such payments and hence the costs of disclosing these payments may not be large. Nevertheless, the addition of dividends, payments for infrastructure improvements, and CSR payments to the list of payment types for which disclosure is required may marginally increase some issuers' costs of complying with the proposed rules. For example, issuers may need to add these types of payments to their tracking and reporting systems. We understand that these types of payments are more typical for mineral extraction issuers than for oil issuers,[367] and therefore only a subset of the issuers subject to the proposed rules might be affected.

To address previously expressed concerns about the difficulty of allocating payments that are made for obligations levied at the entity level, such as corporate income taxes, to the project level, the proposed rules would permit issuers to disclose those payments at the entity level rather than the project level. This accommodation also should help limit compliance costs for issuers without significantly interfering with the goal of achieving increased payment transparency.

Under the proposed rules, issuers must disclose payments made in-kind. The EU Directives and ESTMA also require disclosure of in-kind payments, as does the EITI. Consequently, this requirement should help further the goal of supporting international transparency promotion efforts relating to the commercial development of oil, natural gas or minerals and enhance the effectiveness of the payment disclosure. At the same time, this requirement could impose costs if issuers have not previously had to value their in-kind payments. To minimize the potential additional costs, the proposed rules provide issuers with the flexibility of reporting in-kind payments at cost, or if cost is not determinable, at fair market value. We believe this approach should help limit the overall compliance costs associated with our proposal to require the disclosure of in-kind payments.

9. Definition of ''Not De Minimis''

Section 13(q) requires the disclosure of payments that are ''not de minimis,'' leaving that term undefined. Under the proposed rule's definition of ''not de minimis,'' resource extraction issuers would be required to disclose payments made to each foreign government in a host country or the Federal Government that equal or exceed $150,000, or its equivalent in the issuer's reporting currency, whether made as a single payment or series of related payments, when the total of the individual payments related to that project equal or exceed $750,000. Thus, no payment disclosure is required for projects where the total of the individual payments related to that project is less than $750,000.[368] Even if the aggregate payments for a project are equal to or greater than $750,000, if no single payment or series of related payments of the same type exceeds $150,000, no

[363] *See* Letters from Africa Centre for Energy Policy (Feb. 16, 2016); Prof. Harry G. Broadman and Bruce H. Searby (Jan. 25, 2016); ExxonMobil (Feb. 16, 2016); Eugen Falik (Mar. 7, 2016); and PWYP–US (Feb. 16, 2016).

[364] *See* Letter from PWYP–US (Feb. 16, 2016).

[365] *See supra* Section II.C.5.

[366] *See* Letter from ExxonMobil (Feb. 16, 2016).

[367] *See, e.g.,* Letters from PWYP–US (Feb. 16, 2016) and Global Witness (Feb. 16, 2016). *See also* Chapter 19 ''Advancing the EITI in the Mining Sector: Implementation Issues'' by Sefton Darby and Kristian Lempa, in *Advancing the EITI in the Mining Sector: A Consultation with Stakeholders* (EITI 2009).

[368] In crafting this proposal, we also have relied on the Commission's general definitional and exemptive authority. See Exchange Act Sections 3(b) and 36.

payments disclosure would be required for that project.

We considered proposing a definition of ''not de minimis'' based on a qualitative standard or a relative quantitative standard rather than an absolute quantitative standard. We are proposing an absolute quantitative approach because an absolute quantitative approach would be easier for issuers to apply than a definition based on either a qualitative standard or relative quantitative standard. Thus, using an absolute dollar amount threshold for disclosure purposes should help limit compliance costs by reducing the work necessary to determine what payments must be disclosed.

We believe that this higher ''not de minimis'' threshold is necessary to take into account the proposed definition of project, which aggregates payments at a higher level, which would likely increase the value of the individual types of payments. As such, we believe that using the 2016 threshold of $100,000 would likely require more payment disclosure, thus increasing rather than decreasing the cost and disclosure burden on issuers, contrary to the guidance provided by Congress in its disapproval of the 2016 Rules. We further believe that, in light of the larger aggregations permitted under the revised definition of project, a quantitative standard based upon project level and individual payment information establishes a more appropriate threshold for determining ''not de minimis.'' In addition, we believe that $750,000 in total payments is the appropriate project threshold and $150,000 is the appropriate individual payment threshold because we are proposing to exempt smaller reporting companies and emerging growth companies from the Section 13(q) disclosure requirements,[369] thereby resulting in larger companies, with larger projects and larger individual payments, being primarily affected by the proposed rules.

We believe that this approach, presents a more accurate definition of ''not de minimis'' from both an issuer's and the host country's perspective. Although commenters in the previous rulemakings suggested various thresholds, no commenter provided data to assist us in determining an appropriate threshold amount.[370] One commenter criticized the proposed $100,000 threshold as too low, although the commenter did not suggest an alternative amount or provide data to support why the threshold was too low.[371] For issuers (or their subsidiaries) that are already providing payment information under other resource extraction disclosure regimes, our definition of ''not de minimis'' would likely help minimize compliance costs associated with determining which payments should be reported because these issuers could report under the proposed rule using the payment thresholds under their respective jurisdiction and be in compliance.

We also considered defining ''not de minimis'' either in terms of a materiality standard or by using a larger dollar threshold for individual payment disclosure, such as $1,000,000. Both of these alternatives might result in lower compliance costs and might lessen competitive concerns relative to the proposal. They also would result in less payment transparency, thereby reducing the intended benefits of the Section 13(q) disclosures.

10. Exhibit and Interactive Data Requirement

Section 13(q) requires the payment disclosure to be electronically formatted using an interactive data format. The proposed rules would require a resource extraction issuer to provide the required payment disclosure in an XBRL exhibit to Form SD that includes all of the electronic tags required by Section 13(q) and the proposed rules.[372] We believe that requiring the specified information to be presented in XBRL format would offer advantages to issuers and users of the information by promoting consistency and standardization of the information and increasing the usability of the payment disclosure. Providing the required disclosure elements in a machine-readable (electronically tagged) format would allow users to quickly examine, extract, aggregate, compare, and analyze the information in a manner that is most useful to them. This includes searching for specific information within a particular submission as well as performing large-scale statistical analysis using the disclosures of multiple issuers and across date ranges. The proposed rules also require issuers to tag the subnational geographic location of a project using ISO codes. Using ISO codes would standardize references to those subnational geographic locations and would benefit the users of this information by making it easier for them to sort and compare the data. It also would increase compliance costs for issuers to the extent that they do not currently use such codes in their reporting systems.

Specifying XBRL as the required interactive data format may increase compliance costs for some issuers. The electronic formatting costs would vary depending upon a variety of factors, including the amount of payment data disclosed and an issuer's prior experience with XBRL. We expect that most issuers are already familiar with XBRL as they use it to tag financial information in their annual and quarterly reports filed with the Commission. Thus, we do not expect most affected issuers to incur start-up costs associated with the format. Additionally, we do not believe that the ongoing costs associated with this formatting requirement would be significantly greater than filing the data in XML.[373]

Consistent with the statute, the proposed rules require a resource extraction issuer to include an electronic tag that identifies the currency used to make the payments. Under the proposed rules, if multiple currencies are used to make payments for a specific project or to a government, a resource extraction issuer may choose to provide the amount of payments made for each payment type and the total amount per project or per government in either U.S. dollars or the issuer's reporting currency.[374] We recognize that a resource extraction issuer could incur costs associated with converting payments made in multiple currencies to U.S. dollars or its reporting currency. Nevertheless, given the statute's tagging requirements and the requirement to disclose total amounts, we believe reporting in one currency is necessary.[375] The proposed rules provide flexibility to issuers in how to perform the currency conversion, which may help to limit compliance costs by allowing issuers to choose the option that works best for them.

11. Quantitative Estimates of Costs Resulting From the Proposed Rulemaking

In the 2016 Rules Adopting Release, the Commission quantified the direct compliance costs of the 2016 Rules based on information provided by commenters. The Commission estimated initial compliance costs to be in the

[369] See supra Section II.J.3.

[370] *See, e.g.,* 2012 Rules Adopting Release, n.235 and n.243 and accompanying text.

[371] *See* Letter from Nouveau (Feb. 16, 2016).

[372] Users of this information should be able to render the information by using software available on the Commission's website at no cost.

[373] *See* 2016 Rules Adopting Release, Section II.C.9.

[374] *See* Instruction 2 to Item 2.01 of Form SD.

[375] *See supra* Section II.K.

range of $54.7 to $574.4 million assuming no fixed costs and in the range of $238.8 to $700.2 million assuming the rule requirements would generate fixed costs for affected issuers. The Commission estimated the ongoing compliance costs to be in the range of $21.9 to $547.3 million assuming no fixed costs and in the range of $95.5 to $590.7 million assuming fixed costs.

In the 2016 Rules Adopting Release, the Commission also attempted to quantify some of the indirect costs resulting from the rule and specifically quantified the costs arising from a foreign law prohibition against Section 13(q) disclosure. For eight potentially affected issuers domiciled in the United States that had assets in China or Qatar, the estimated total loss range was between $1.7 million and $3.1 billion, with a median loss of $291.4 million. The aggregate fraction of total assets that might be affected was 2.7 percent. We note that these estimates applied only to issuers that had assets in one of the host countries. The Commission also estimated the fire sale prices at which affected issuers could dispose of their assets in countries with laws prohibiting disclosure, should such need arise. The analysis suggested that a discount of 69 percent was warranted. For U.S.-based issuers, applying the highest discount of 69 percent to the market value of the issuers' assets in these host countries suggested a range of losses between $1.2 million and $2.1 billion, with a median loss of $201.1 million.

Given the substantial changes introduced into the proposed rules compared to the 2016 Rules, we believe that the estimates from the 2016 Rules are no longer accurate. At present, we do not have data that will allow us to quantify reliably the costs (either direct compliance costs or indirect competitive harm) resulting from the proposed rules. For example, we lack data on the main components of initial and ongoing compliance costs, the fraction of compliance costs that are fixed, and how the various statutory and similar foreign law requirements affect compliance costs. Since issuers currently are not required to disclose such costs in their SEC filings, and since such costs generally are not otherwise made publicly available, we do not have information about them.

A 2018 study by the UK Department for Business, Energy & Industrial Strategy (the ''UK study'') is another source of potential cost estimates.[376] We reviewed that data but found it is of limited use for the following reasons. First, we are unable to use the data to determine the cost estimates for the rules we are proposing in this release because the Modified Project Definition in the proposed rules is different from the definition in the UK rules. Specifically, the payment disclosure would be provided at a greater level of aggregation under the proposed rules than under the UK contract-level definition.

Second, the small sample size in the UK study makes it difficult for us to assess with any confidence the actual costs of the UK's regime (which, broadly speaking, is very similar to the 2016 Rules that were rejected by Congress under the Congressional Review Act). The majority of companies (84%) surveyed in the UK study indicated that they do not track compliance costs. As such, the study relied on actual or estimated compliance cost data from 15 companies that may or may not be representative of the broader population. In any event, the estimates of total compliance costs (initial and ongoing) in the UK report are broadly consistent with the range we estimated in the 2016 Rules, which like the UK regime had a contract-level definition of project. Based on the data provided by the 15 companies that responded, the total compliance costs under the UK rules ranged from approximately $24,547 per company for small companies to approximately $2,260,263 per company for large companies. The range that we estimated in connection with the 2016 rules was $180,302 per company to $2,937,319 per company.

Request for Comments

We request comment on the potential costs and benefits of the proposed rules and whether the rules, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. In particular, we request comments on the potential effect on efficiency, competition, and capital formation should the Commission not adopt certain exceptions or accommodations. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates. Our specific questions follow.

87. Are there any additional benefits from the proposed rules than the ones mentioned discussed above? Is there information that could help us quantify any benefits of the proposed rules?

88. What are the lessons about the benefits from the resource extraction payment disclosure regimes that already exist in other jurisdictions? Is there empirical evidence on benefits from the disclosure regimes that are already in place?

89. We seek information that would help us quantify compliance costs (both initial and ongoing) more precisely. In particular, we invite issuers and other commenters that have experience with the costs associated with reporting under the EU Directives or ESTMA to provide us with information about those costs. What are the actual compliance costs for issuers that have started to comply with the disclosure requirements imposed under the EU Directives or ESTMA?

90. What is the breakdown of various compliance costs, such as legal fees, direct administrative costs, information technology/consulting costs, training costs, and travel costs? What are the main drivers of compliance costs?

91. What is the proportion of fixed costs in the direct compliance costs structure of potentially affected resource extraction issuers? Would smaller resource extraction issuers incur proportionally lower compliance costs than larger resource extraction issuers? Would affiliated issuers be able to save on fixed costs of developing compliance systems through sharing such costs? If so, what is the estimate of such savings?

92. Are there additional costs and benefits from the proposed definition of ''project''? How do issuers typically define ''project'' in their reporting systems? How costly would it be for issuers to switch from the definition of ''project'' that they currently use to the one being proposed in these rules? Would our proposed definition of project reduce compliance costs for issuers compared to a contract-based definition of project?

93. Are there any additional effects on efficiency, competition, and capital formation that we have not considered? Are there any additional indirect costs or competitive harm that we have not considered?

94. Is our approach to identify small issuers that likely do not make any payments above the proposed de minimis amount reasonable? Are annual revenues and net cash flows from investing activities taken together an appropriate measure for such purpose?

95. What are the costs of converting a resource extraction payment report in the format required by the EU Directives or ESTMA (*e.g.,* XLS or PDF) to the report format required by the proposed rules (*i.e.,* XBRL)?

96. What are the costs and benefits arising from confidential submission of the payment information? What are the costs and benefits arising from public disclosure of the payment information? How do the potential costs of public

[376] *See supra* n. 67 and accompanying text.

disclosure to issuers compare to its potential benefits of the information?

97. Are there studies on the potential effects of the proposed rules, the disclosure rules under the EU Directives or ESTMA, or EITI compliance on efficiency, competition, and capital formation? What are the potential competitive effects of the proposed rules and how might they be impacted by regulations promulgated pursuant to the EU Directives and ESTMA? What fraction of international extractive companies would be affected by at least one of the U.S., EU, or Canadian rules?

98. What are the benefits and costs of an alternative reporting option for issuers that are subject to a foreign jurisdiction's resource extraction payment disclosure requirements that are determined to satisfy the transparency objectives of Section 13(q)? How much would such issuers save in compliance costs if they have the option to satisfy their filing obligations by filing the report required by that foreign jurisdiction with the Commission?

IV. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[377] The Commission is submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[378] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for the collection of information is:

- ''Form SD'' (OMB Control No. 3235–0697).[379]

Form SD is currently used to file Conflict Minerals Reports pursuant to Rule 13p–1 of the Exchange Act. We are proposing amendments to Form SD to accommodate disclosures required by proposed Rule 13q–1. It would require resource extraction issuers to disclose information about payments made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer to foreign governments or the U.S. Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Form SD would be submitted to the Commission on EDGAR.

The proposed rules and amendment to the form would implement Section 13(q) of the Exchange Act, which was added to the Exchange Act by Section 1504 of the Dodd-Frank Act. As described in detail above,[380] Section 13(q) directs the Commission to issue rules requiring resource extraction issuers to include in an annual report certain specified information relating to payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. In addition, Section 13(q) requires a resource extraction issuer to provide information about those payments in an interactive data format. We are proposing to require that the mandated payment information be provided in an XBRL exhibit to Form SD. The disclosure requirements would apply equally to U.S. issuers and foreign issuers meeting the definition of ''resource extraction issuer.''

Compliance with the rules by affected issuers would be mandatory. Responses to the information collections would not be kept confidential and there would be no mandatory retention period for the collection of information.

B. Estimate of Issuers

The number, type, and size of the issuers that would be required to file the payment information required in Form SD, as proposed to be amended, is uncertain, but, as discussed in the economic analysis above, we estimate that the number of potentially affected issuers is 677.[381] Of these issuers, we excluded 318 issuers that reported being either smaller reporting companies, emerging growth companies, or both, because the proposed rules would exempt both types of issuers from the Section 13(q) requirements. In addition, we excluded 109 issuers that are subject to resource extraction payment disclosure rules in other jurisdictions that require more granular payment disclosure than would be required by the proposed rules, and 14 issuers with no or only nominal operations, or that are unlikely to make any payments that would be subject to the proposed disclosure requirements.[382] For the 109 issuers subject to those alternative reporting regimes, the additional costs to comply with the proposed rules would likely be much lower than costs for other issuers.[383] For the 14 issuers that are unlikely to make payments subject to the proposed rules, we believe there would be no additional costs associated with the proposed rules.[384] Accordingly, we estimate that 236 issuers would bear the full costs of compliance with the proposed rules[385] and 109 would bear significantly lower costs.

C. Estimate of Issuer Burdens

We derive our burden estimates by estimating the average number of hours it would take an issuer to prepare and furnish the required disclosure. In deriving our estimates, we recognize that the burdens would likely vary among individual issuers based on a number of factors, including the size and complexity of their operations and whether they are subject to similar disclosure requirements in other jurisdictions.

When determining the estimates described below, we have assumed that 75 percent of the burden of preparation is carried by the issuer internally and 25 percent of the burden of preparation is carried by outside professionals retained

[377] 44 U.S.C. 3501 *et seq.*

[378] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[379] As discussed above, proposed Rule 13q–1 requires a resource extraction issuer to submit the payment information specified in Form SD. The collection of information requirements associated with the proposed rules would be reflected in the burden hours estimated for Form SD. Therefore, there is no separate burden estimate for Rule 13q–1.

[380] *See supra* Section I.A.

[381] *See supra* Section III.A. (explaining how we use data from Exchange Act annual reports for the period January 1, 2018 through September 30, 2019 to estimate the number of issuers that might make payments covered by the proposed rules). As noted in that section, this number does not reflect the number of issuers that actually made resource extraction payments to governments.

[382] *See id.* (describing how we identify issuers that may be subject to those alternative reporting regimes and how we use shell company status and revenues and net cash flows from investing activities to identify issuers that would be unlikely to make payments exceeding the proposed ''not de minimis'' threshold).

[383] Issuers subject to the alternative reporting regimes described above would already be gathering, or have systems in place to gather, resource extraction payment data, which should reduce their compliance burden. In addition, under the proposed rules, a resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime, deemed by the Commission to require disclosure that satisfies Section 13(q)'s transparency objectives, may satisfy its payment disclosure obligations by including, as an exhibit to Form SD, a report complying with the reporting requirements of the alternative jurisdiction. *See* proposed Item 2.01(c) of Form SD. When adopting its Section 13(q) rules in 2016, in a concurrent order, the Commission determined that an issuer could substitute a report prepared pursuant to the EU Directives or Canada's ESTMA to satisfy its disclosure obligations under the 2016 Rules. If the Commission were to make a similar determination in respect of the proposed rules, the 109 issuers subject to those foreign laws would incur relatively small compliance burdens and costs associated with the proposed rules. We have nevertheless included them in our estimate of affected issuers for PRA purposes because under the proposed rules they would still have an obligation to furnish a report on Form SD in XBRL, although with a significantly lower associated burden.

[384] *See supra* Section III.A.

[385] 677 minus 318 minus 109 minus 14 = 236.

by the issuer at an average cost of $400 per hour.[386]

The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. We expect that the proposed rules' burden would be greatest during the first year of their effectiveness and diminish in subsequent years. To account for this expected diminishing burden, we use a three-year average of the expected implementation burden during the first year and the expected ongoing compliance burden during the next two years.

We believe that the burden associated with this collection of information would be greatest during the initial compliance period in order to account for initial set up costs, including initial adjustments to an issuer's internal books and records, plus costs associated with the collection, verification and review of the payment information for the first year. We believe that ongoing compliance costs would be less because an issuer would have already made any necessary modifications to its internal systems to capture and report the information required by the proposed rules.

When conducting the PRA analysis in connection with the 2016 Rules, the Commission used an estimate for compliance costs and burden provided by a commenter on the 2012 Rules Proposing Release.[387] That commenter estimated that, for an issuer bearing the full costs and burden, compliance with those rules would require 500 hours to make initial changes to the issuer's internal books and records and another 500 hours a year on an ongoing basis to review and verify the payment information.[388] Based on the commenter's estimates, the Commission estimated that the 2016 Rules would result in 217,408.65 total incremental company burden hours and $71,487,820 total outside professional costs.[389]

The Commission's PRA burden estimates for the 2016 Rules were based on a version of Section 13(q) rules that would have been more onerous than the proposed rules.[390] As discussed more fully in Section III above, we believe that the proposed changes to the 2016 Rules, in particular the proposed definition of project and the proposed exemptions for conflicts with foreign law and pre-existing contracts, would meaningfully reduce the compliance burden and costs for issuers compared to the 2016 Rules. Because of these proposed changes, we believe that it would be appropriate to adjust the 2016 PRA burden estimates to account for this reduction in burden and costs.

For PRA purposes, we estimate that the incremental burden of the proposed rules would be at least 25 percent less than the incremental burden of the 2016 Rules. We believe that this reduction in the burden estimate is reasonable because of the proposed changes to the definition of project, which should generally simplify and reduce the collection and reporting of payment information for a resource extraction issuer.[391] We note that this reduction in the burden estimate does not take into account the two new proposed exemptions for conflicts with foreign law and pre-existing contracts.[392] While we expect these proposed exemptions would result in a reduced PRA burden compared to the 2016 Rules,[393] because it is more difficult to estimate the effects of the proposed exemptions, and to avoid underestimating the proposed rules' burden and costs, we have not factored them into the current PRA estimates. We have relied on a prior commenter's estimates for the limited purpose of this PRA analysis, and, as indicated above, we request commenters to provide us with more accurate estimates of the compliance costs and burden of the proposed rules.[394]

Thus, for an issuer bearing the full costs and burden of the proposed rules, we estimate that compliance with the proposed rules would require 375 hours to make initial changes to the issuer's internal books and records and another 375 hours a year on an ongoing basis to review and verify the payment information,[395] resulting in 750 hours per respondent for the initial incremental PRA burden. Using the three-year average of the expected burden during the first year and the expected ongoing burden during the next two years, we estimate that the incremental PRA burden would be 500 hours per fully affected respondent (750 + 375 + 375 hours/3 years).

The following table shows the estimated internal burden hours and professional and other external costs for the 236 issuers bearing the full costs and burden of the proposed rules and for the 109 issuers subject to more granular resource extraction payment disclosure requirements in foreign jurisdictions when preparing and submitting Form SD. These total burden hours and total external costs would be in addition to the existing estimated hour and cost burdens applicable to Form SD because of compliance with Exchange Act Rule 13p–1.

386 We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This is the rate we typically estimate for outside legal services used in connection with public company reporting. We note that in the 2016 rulemaking, one commenter used $150 per hour in its analysis of the costs associated with the proposed rules. *See* letter from Claigan Environmental (Feb. 16, 2016). The Commission disagreed with that estimate, however, because the rate did not factor in the outside professional costs associated with preparing a document under applicable securities laws. We believe a resource extraction issuer would likely seek the advice of an attorney to help it comply with the rule and form requirements under U.S. Federal securities laws. Accordingly, we continue to use the $400 per hour estimate when considering the applicable costs and burdens of this collection of information.

387 *See* the 2016 Rules Adopting Release, Section IV.C., citing the letter from Barrick Gold (Feb. 28, 2011). When presenting its own cost estimates for the 2016 Rules, one commenter stated that ''the Barrick costing model seems to be the most valid and accurate costing model submitted to SEC and should be attributed more weight by the SEC when calculating expected industry costs.'' Letter from Claigan Environmental (Feb. 16, 2016).

388 Barrick Gold also estimated that its initial compliance with the rules would require $100,000 for IT consulting, training and travel costs. *See id.*

389 These total burden and cost estimates were based on the Commission's estimates that 425 issuers would bear the full burden and costs of the 2016 Rules and 192 issuers would bear a significantly reduced burden and costs because they were already subject to similar payment disclosure requirements in foreign jurisdictions. *See id.*

390 For example, neither the 2012 Rules nor the 2016 Rules provided for exemptions for conflicts with foreign law or pre-existing contracts, which we are proposing in this rulemaking. *See supra* Section II.J. Moreover, the Commission adopted a contract-based definition of ''project'' in 2016 and, although the Commission left ''project'' undefined in 2012, it provided guidance in that rulemaking suggesting that project was to be determined based on the underlying contract. *See* 2012 Rules Adopting Release, Section II.D.3. In contrast, among other changes, the proposed rules include a broader definition of project and would permit greater aggregation of payment information at the major subnational jurisdiction level. *See supra* Sections II.F. and II.G.

391 *See supra* Section II.F.2.

392 *See supra* Section III.C.

393 For example, issuers may spend fewer internal hours and/or incur fewer professional costs to prepare case-specific exemptive relief requests in connection with the required disclosures.

394 *See* discussion of quantitative estimate of costs in Section III.C.11., above.

395 500 hours × .25 = 125 hours. 500 hours − 125 = 375 hours.

Whether issuer is subject to similar foreign disclosure regime	Number of estimated affected responses (A)	Burden hours per current affected response (B)	Total burden hours for current affected responses (C) = (A) × (B)	Internal burden hours for current affected responses (D) = (C) × .75	Professional (external) hours for current affected responses (E) = (C) × .25	Professional (external) costs for current affected responses (F) = (E) × $400	Additional (external) IT costs[2] per current affected response (G)	Total additional IT costs (H) = (A) × (G)	Total external costs (I) = (F) + (H)
No	236	500	118,000	88,500	29,500	$11,800,000	$75,000	$17,700,000	$29,772,500
Yes	109	25	[1] 2,725	2,044	681.25	272,500	0	0	272,500
Total	345			90,544		12,072,500		17,700,000	30,045,000

[1] As we did in the 2016 rulemaking, we estimate that an issuer that is already subject to a qualifying alternative reporting regime would incur an internal burden that is five percent of the burden incurred by a fully affected issuer. 500 hours × .05 = 25 hours. 25 hours × 109 = 2,725 hours.

[2] We estimate that an issuer bearing the full costs of the proposed rules would incur additional initial compliance costs for IT consulting, training and travel of $75,000. We do not, however, believe that these initial IT costs would apply to the issuers that are already subject to a qualifying alternative reporting regime since those issuers should already have IT systems in place to comply with the foreign regime. Similar to our estimate of the incremental PRA burden of the proposed rules, we estimate that the additional initial compliance costs for IT consulting, training and travel would be at least 25 percent less than the estimate for those costs ($100,000 per respondent) that was factored into the PRA estimate of total professional costs for the 2016 Rules. $100,000 × .25 = $25,000. $100,000 − 25,000 = $75,000.

D. Request for Comment

We request comment in order to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility;

• Evaluate the accuracy of our estimate of the burden of the proposed collection of information;

• Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• Evaluate whether there are ways to 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; and

• Evaluate whether the proposed amendments would have any effects on any other collections of information not previously identified in this section.[396]

Any member of the public may direct to us any comments about the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–24–19. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–24–19, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

[396] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[397] a rule is ''major'' if it has resulted, or is likely to result in:

• An annual effect on the U.S. economy of $100 million or more;

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

• The potential effect on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries; and

• Any potential effect on competition, investment, or innovation.

VI. Regulatory Flexibility Act Certification

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (''RFA'') [398] requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (''IRFA'') that will describe the impact of the proposed rule on small entities.[399] Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.[400]

[397] 5 U.S.C. 801 *et seq.*

[398] 5 U.S.C. 601 *et seq.*

The proposed rules would exempt smaller reporting companies and emerging growth companies from the requirements of Section 13(q) and proposed Rule 13q–1. Most small entities [401] would fall within the scope of this exemption and, therefore, would not be subject to the proposed rules. Accordingly, the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rules, including proposed Rule 13q–1 and the amendments to Form SD, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

Request for Comment

We request comment on this certification. In particular, we solicit comment on the following: Do commenters agree with the certification? If not, please describe the nature of any impact of the proposed amendments on small entities and provide empirical data to illustrate the extent of the impact. Such comments will be considered in the preparation of the

[399] 5 U.S.C. 603(a).

[400] 5 U.S.C. 605(b).

[401] For purposes of the RFA, Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)] defines an issuer (other than an investment company) to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. Because Exchange Act Rule 12b–2 defines a smaller reporting company as an issuer (that is not an investment company) with either a public float of less than $250 million, or annual revenues of less than $100 million for the previous year and either no public float or a public float of less than $700 million, most small entities would likely fall within the definition of smaller reporting company and, therefore, would be exempt from the proposed rules.

final rules (and in a Final Regulatory Flexibility Analysis if one is needed) and, if the proposed rules are adopted, will be placed in the same public file as comments on the proposed rules themselves.

VII. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249b

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, secs. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Section 240.13q–1 is revised to read as follows:

§ 240.13q–1 Disclosure of payments made by resource extraction issuers.

(a) *Resource extraction issuers.* Every issuer that is required to file an annual report with the Commission on Form 10–K (17 CFR 249.310), Form 20–F (17 CFR 249.220f), or Form 40–F (17 CFR 249.240f) pursuant to Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78*o*(d)) and engages in the commercial development of oil, natural gas, or minerals must furnish a report on Form SD (17 CFR 249b.400) within the period specified in that Form disclosing the information required by the applicable items of Form SD as specified in that Form.

(b) *Anti-evasion.* Disclosure is required under this section in circumstances in which an activity related to the commercial development of oil, natural gas, or minerals, or a payment or series of payments made by a resource extraction issuer to a foreign government or the Federal Government for the purpose of commercial development of oil, natural gas, or minerals, is not, in form or characterization, within one of the categories of activities or payments specified in Form SD, but is part of a plan or scheme to evade the disclosure required under this section.

(c) *Alternative reporting.* An application for recognition by the Commission that an alternative reporting regime requires disclosure that satisfies the transparency objectives of Section 13(q) (15 U.S.C. 78m(q)), for purposes of alternative reporting pursuant to Item 2.01(c) of Form SD, must be filed in accordance with the procedures set forth in § 240.0–13, except that, for purposes of this paragraph (c), applications may be submitted by resource extraction issuers, governments, industry groups, or trade associations.

(d) *Exemptions*—(1) *Conflicts of law.* A resource extraction issuer that is prohibited by the law of the jurisdiction where the project is located from providing the payment information required by Form SD may exclude such disclosure, subject to the following conditions:

(i) The issuer has taken all reasonable steps to seek and use any exemptions or other relief under the applicable law of the foreign jurisdiction, and has been unable to obtain or use such an exemption or other relief;

(ii) The issuer must disclose on Form SD:

(A) The foreign jurisdiction for which it is omitting the disclosure pursuant to this paragraph (d)(1);

(B) The particular law of that jurisdiction that prevents the issuer from providing such disclosure; and

(C) The efforts the issuer has undertaken to seek and use exemptions or other relief under the applicable law of that jurisdiction, and the results of those efforts; and

(iii) The issuer must furnish as an exhibit to Form SD a legal opinion from counsel that opines on the issuer's inability to provide such disclosure without violating the foreign jurisdiction's law.

(2) *Conflicts with pre-existing contracts.* A resource extraction issuer that is unable to provide the payment information required by Form SD without violating one or more contract terms that were in effect prior to the effective date of this section may exclude such disclosure, subject to the following conditions:

(i) The issuer has taken all reasonable steps to obtain the consent of the relevant contractual parties, or to seek and use another contractual exception or relief, to disclose the payment information, and has been unable to obtain such consent or other contractual exception or relief;

(ii) The issuer must disclose on Form SD:

(A) The jurisdiction for which it is omitting the disclosure pursuant to this paragraph (d)(2);

(B) The particular contract terms that prohibit the issuer from providing such disclosure; and

(C) The efforts the issuer has undertaken to obtain the consent of the contracting parties, or to seek and use another contractual exception or relief, to disclose the payment information, and the results of those efforts; and

(iii) The issuer must furnish as an exhibit to Form SD a legal opinion from counsel that opines on the issuer's inability to provide such disclosure without violating the contractual terms.

(3) *Exemption for emerging growth companies and smaller reporting companies.* An issuer that is an emerging growth company or a smaller reporting company, each as defined under § 240.12b–2, is exempt from, and need not comply with, the requirements of this section.

(4) *Case-by-case exemption.* A resource extraction issuer may file an application for exemptive relief under this section in accordance with the procedures set forth in § 240.0–12.

(e) *Compilation.* To the extent practicable, the staff will periodically make a compilation of the information required to be submitted under this section publicly available online. The staff may determine the form, manner and timing of the compilation, except that no information included therein may be anonymized (whether by redacting the names of the resource extraction issuers or otherwise).

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 249b continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.,* unless otherwise noted.

* * * * *

Section 249b.400 is also issued under secs. 1502 and 1504, Pub. L. 111–203, 124 Stat. 2213 and 2220.

■ 4. Amend Form SD (referenced in § 249b.400) by:

■ a. Adding a check box for Rule 13q–1;

■ b. Revising instruction A. under ''General Instructions'';

■ c. Redesignating instruction B.2. as B.3 and adding new instructions B.2.

and B.4. under the ''General Instructions''; and

■ d. Redesignating Section 2 as Section 3, adding new Section 2, and revising newly redesignated Section 3 under the ''Information to be Included in the Report''.

The addition and revision read as follows:

Note: The text of Form SD does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
FORM SD
Specialized Disclosure Report

(Exact name of the registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification No.)

(Full mailing address of principal executive offices)

(Name and telephone number, including area code, of the person to contact in connection with this report.)

Check the appropriate box to indicate the rule pursuant to which this Form is being submitted, and provide the period to which the information in this Form applies:

____Rule 13p–1 under the Securities Exchange Act (17 CFR 240.13p–1) for the reporting period from January 1 to December 31, ________.
____Rule 13q–1 under the Securities Exchange Act (17 CFR 240.13q–1) for the fiscal year ended ________.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form SD

This Form shall be used for a report pursuant to Rule 13p–1 (17 CFR 240.13p–1) and Rule 13q–1 (17 CFR 240.13q–1) under the Securities Exchange Act of 1934 (the ''Exchange Act'').

B. Information To Be Reported and Time for Furnishing Reports

1. * * *

2. *Form furnished under Rule 13q–1.* If your fiscal year ends on or before June 30, furnish the information required by Section 2 of this form on EDGAR no later than March 31 in the calendar year following your most recent fiscal year. If your fiscal year ends after June 30, furnish this required information no later than March 31 in the second calendar year following your most recent fiscal year.

3. If the deadline for furnishing this Form occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the deadline shall be the next business day.

4. The information and documents furnished in this report shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, unless a registrant specifically incorporates it by reference into such filing.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Section 2—Resource Extraction Issuer Disclosure

Item 2.01 Resource Extraction Issuer Disclosure and Report

(a) *Required Disclosure.* (1) A resource extraction issuer must furnish an annual report on Form SD with the Commission, and include as an exhibit to this Form SD, the information specified in Item 2.01(a)(5) of this Form, relating to any payment made during the fiscal year covered by the annual report by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer, to a foreign government or the Federal Government, for the purpose of the commercial development of oil, natural gas, or minerals.

(2) The resource extraction issuer is not required to have the information audited. The payment information must be provided on a cash basis and not an accrual basis.

(3) The resource extraction issuer must provide a statement in the body of the Form SD, under the caption ''Disclosure of Payments by Resource Extraction Issuers,'' that the specified payment disclosure required by this Form is included in an exhibit to the Form SD.

(4) A resource extraction issuer that is claiming an exemption under Rule 13q–1(d)(1) or (2) (17 CFR 240.13q–1(d)(1) or (2)) must provide the disclosure required by those rules, as applicable, in the body of the Form SD. If applicable, a resource extraction issuer must disclose in the body of Form SD that it has filed an application for exemptive relief pursuant to Rule 13q–1(d)(4) (17 CFR 240.13q–1(d)(4)).

(5) The resource extraction issuer must include the following information in the exhibit to Form SD, which must present the information in the eXtensible Business Reporting Language (XBRL) electronic format:

(i) The type and total amount of such payments, by payment type listed in paragraph (d)(9)(iii) of this Item, made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(ii) The type and total amount of such payments, by payment type listed in paragraph (d)(9)(iii) of this Item, for all projects made to each government;

(iii) The total amounts of the payments, by payment type listed in paragraph (d)(9)(iii) of this Item;

(iv) The currency used to make the payments;

(v) The fiscal year in which the payments were made;

(vi) The business segment of the resource extraction issuer that made the payments;

(vii) The governments (including any foreign government or the Federal Government) that received the payments and the country in which each such government is located;

(viii) The project of the resource extraction issuer to which the payments relate;

(ix) The particular resource that is the subject of commercial development;

(x) The method of extraction used in the project; and

(xi) The major subnational political jurisdiction of the project.

(b) *Delayed Reporting.* (1) A resource extraction issuer may delay disclosing payment information related to exploratory activities until the Form SD submitted for the fiscal year immediately following the fiscal year in which the payment was made. For purposes of this paragraph, payment information related to exploratory activities includes all payments made as part of the process of (i) identifying areas that may warrant examination, (ii) examining specific areas that are considered to have prospects of containing oil and gas reserves, or (iii) as part of a mineral exploration program, in each case limited to exploratory activities that were commenced prior to the commercial development (other than exploration) of the oil, natural gas, or minerals on the property, any adjacent property, or any property that is part of the same project.

(2) A resource extraction issuer that has acquired (or otherwise obtains control over) an entity that has not been obligated to provide disclosure pursuant to Rule 13q–1, or pursuant to another alternative reporting regime deemed by the Commission to require disclosure that satisfies the transparency objectives of Section 13(q) (15 U.S.C. 78m(q)), in such entity's last full fiscal year is not required to commence reporting payment information for such acquired entity until the Form SD submitted for the fiscal year immediately following the effective date of the acquisition. A resource extraction issuer must disclose that it is relying on this accommodation in the body of its Form SD submission.

(3) A resource extraction issuer that has completed its initial public offering in the United States in its last full fiscal year is not required to commence reporting payment information pursuant to Rule 13q–1 until the Form SD submitted for the fiscal year immediately following the fiscal year in which the registration statement for its U.S. initial public offering became effective.

(c) *Alternative Reporting.* (1) A resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime, which has been deemed by the Commission to require disclosure that satisfies the transparency objectives of Section 13(q) (15 U.S.C. 78m(q)), may satisfy its disclosure obligations under paragraph (a) of this Item 2.01 by including, as an exhibit to this Form SD, a report complying with the reporting requirements of the alternative jurisdiction.

(2) The alternative report must be the same as the one prepared and made publicly available pursuant to the requirements of the approved alternative reporting regime, subject to changes necessary to comply with any conditions to alternative reporting set forth by the Commission.

(3) The resource extraction issuer must: (i) State in the body of the Form SD that it is relying on the alternative reporting provision; (ii) identify the alternative reporting regime for which the report was prepared; (iii) describe how to access the publicly submitted report in the alternative jurisdiction; and (iv) specify that the payment disclosure required by this Form is included in an exhibit to this Form SD.

(4) The alternative report must be provided in XBRL format.

(5) A fair and accurate English translation of the entire report must be submitted if the report is in a foreign language. Project names may be presented in their original language, in addition to the English translation of the project name, if the resource extraction issuer believes that such an approach would facilitate identification of the project by users of the disclosure.

(6) A resource extraction issuer may follow the submission deadline of an approved alternative jurisdiction if it submits a notice on Form SD–N on or before the due date of its Form SD indicating its intent to submit the alternative report using the alternative jurisdiction's deadline. If a resource extraction issuer fails to submit such notice on a timely basis, or submits such a notice but fails to submit the alternative report within four business days of the alternative jurisdiction's deadline, it may not rely on this Item 2.01(c) for the following fiscal year.

(7) Resource extraction issuers must also comply with any additional requirements that are provided by the Commission upon granting an alternative reporting accommodation, as well as subsequent changes in such requirements.

(d) *Definitions.* For purposes of this item, the following definitions apply:

(1) *Business segment* means a business segment consistent with the reportable segments used by the resource extraction issuer for purposes of financial reporting.

(2) *Commercial development of oil, natural gas, or minerals* means exploration, extraction, processing, and export of oil, natural gas, or minerals, or the acquisition of a license for any such activity.

(3) *Control* means that the resource extraction issuer consolidates the entity under the accounting principles applicable to the financial statements included in the resource extraction issuer's periodic reports filed pursuant to the Exchange Act (*i.e.,* under generally accepted accounting principles in the United States (U.S. GAAP) or International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS)). A foreign private issuer that prepares financial statements according to a comprehensive set of accounting principles, other than U.S. GAAP, and files with the Commission a reconciliation to U.S. GAAP must determine control using U.S. GAAP.

(4) *Export* means the movement of a resource across an international border from the host country to another country by a company with an ownership interest in the resource. Export does not include the movement of a resource across an international border by a company that (i) is not engaged in the exploration, extraction, or processing of oil, natural gas, or minerals and (ii) acquired its ownership interest in the resource directly or indirectly from a foreign government or the Federal Government. Export also does not include cross-border transportation activities by an entity that is functioning solely as a service provider, with no ownership interest in the resource being transported.

(5) *Extraction* means the production of oil and natural gas as well as the extraction of minerals.

(6) *Federal Government* means the Federal Government of the United States.

(7) *Foreign Government* means a foreign government, a department, agency, or instrumentality of a foreign government, or a company at least majority owned by a foreign government. As used in this Item 2.01, foreign government includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.

(8) *Not de minimis* means any Payment made to each Foreign Government in a host country or the Federal Government that equals or

exceeds $150,000, or its equivalent in the issuer's reporting currency, whether made as a single payment or series of related payments, subject to the condition that single payment (or a series of related payments) disclosure for a Project is only required if the total Payments for a Project equal or exceed $750,000. In the case of any arrangement providing for periodic payments or installments, a resource extraction issuer must use the aggregate amount of the related periodic payments or installments of the related payments in determining whether the payment threshold has been met for that series of payments, and accordingly, whether disclosure is required.

(9) *Payment* means an amount paid that:

(i) Is made to further the commercial development of oil, natural gas, or minerals;

(ii) Is not de minimis; and

(iii) Is one or more of the following:

(A) Taxes;

(B) Royalties;

(C) Fees;

(D) Production entitlements;

(E) Bonuses;

(F) Dividends;

(G) Payments for infrastructure improvements; and

(H) Community and social responsibility payments that are required by law or contract.

(10) *Project* is defined by using the following three criteria:

(i) The type of resource being commercially developed;

(ii) The method of extraction; and

(iii) The major subnational political jurisdiction where the commercial development of the resource is taking place.

(11) *Resource extraction issuer* means an issuer that:

(i) Is required to file an annual report with the Commission on Form 10–K (17 CFR 249.310), Form 20–F (18 CFR 249.220f), or Form 40–F (17 CFR 249.240f) pursuant to Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)); and

(ii) Engages in the commercial development of oil, natural gas, or minerals.

(12) *Subsidiary* means an entity controlled directly or indirectly through one or more intermediaries.

Instructions to Item 2.01

Disclosure by Subsidiaries and Other Controlled Entities

(1) If a resource extraction issuer is controlled by another resource extraction issuer that has submitted a Form SD disclosing the information required by Item 2.01 for the controlled entity, then such controlled entity is not required to provide the disclosure required by Item 2.01 separately. In such circumstances, the controlled entity must submit a notice on Form SD indicating that the required disclosure was submitted on Form SD by the controlling entity, identifying the controlling entity and the date it submitted the disclosure. The reporting controlling entity must note that it is submitting the required disclosure for a controlled entity and must identify the controlled entity on its Form SD submission.

Currency Disclosure and Conversion

(2) A resource extraction issuer must report the amount of payments made for each payment type, and the total amount of payments made for each project and to each government, during the reporting period in either U.S. dollars or the resource extraction issuer's reporting currency. If a resource extraction issuer has made payments in currencies other than U.S. dollars or its reporting currency, it may choose to calculate the currency conversion between the currency in which the payment was made and U.S. dollars or the resource extraction issuer's reporting currency, as applicable, in one of three ways: (a) By translating the expenses at the exchange rate existing at the time the payment is made; (b) using a weighted average of the exchange rates during the period; or (c) based on the exchange rate as of the resource extraction issuer's fiscal year end. When calculating whether the de minimis threshold has been exceeded, a resource extraction issuer may be required to convert the payment to U.S. dollars, even though it is not required to disclose those payments in U.S. dollars. For example, this may occur when the resource extraction issuer is using a non-U.S. dollar reporting currency. In these instances, the resource extraction issuer may use any of the three methods described above for calculating the currency conversion. In all cases a resource extraction issuer must disclose the method used to calculate the currency conversion and must choose a consistent method for all such currency conversions within a particular Form SD submission.

Location Tagging

(3) When identifying the country and major subnational political jurisdiction where the commercial development of the resource is taking place, a resource extraction issuer must use the combined country and subdivision code provided in ISO 3166, if available. When identifying the country in which a government is located, a resource extraction issuer must use the two letter country code provided in ISO 3166, if available.

Entity Level Disclosure and Tagging

(4) If a government levies a payment obligation, such as a tax or a requirement to pay a dividend, at the entity level rather than on a particular project, a resource extraction issuer may disclose that payment at the entity level. To the extent that payments, such as corporate income taxes and dividends, are made for obligations levied at the entity level, a resource extraction issuer may omit certain tags that may be inapplicable (*e.g.,* project tag, business segment tag) for those payment types as long as it provides all other electronic tags, including the tag identifying the recipient government.

Project Disclosure

(5)(i) When identifying the type of resource that is being commercially developed for purposes of identifying a project, the resource extraction issuer must identify whether the resource is oil, natural gas, or a type of mineral. A resource extraction issuer should identify synthetic oil obtained through processing tar sands, bitumen, or oil shales as ''oil'' and should identify gas obtained from methane hydrates as ''natural gas.'' Synthetic oil or gas obtained through processing of coal should be identified as ''coal.'' Minerals must be identified by type, such as gold, copper, coal, sand, or gravel, but additional detail is not required. For information on which materials are covered by the term ''minerals,'' refer to Instruction 13 below.

(ii) When identifying the method of extraction for purposes of identifying a project, the resource extraction issuer must choose from the following three parameters: well, open pit, or underground mining.

(iii) When identifying the national and major subnational political jurisdiction for purposes of identifying a project, refer to Instruction 3 to Item 2.01. Onshore and offshore development of resources may not be treated as a single project. A resource extraction issuer must identify when a project is offshore and identify the nearest major subnational political jurisdiction pursuant to Instruction 3 of Item 2.01.

(iv) A resource extraction issuer may treat all the activities within a major subnational political jurisdiction as a single project, but must describe each type of resource being commercially developed and each method of extraction used in the description of the project. A resource extraction issuer may not combine as one project activities that cross the borders of a major subnational political jurisdiction.

Payment Disclosure

(6) When a resource extraction issuer proportionately consolidates an entity or operation under U.S. GAAP or IFRS, as applicable, the resource extraction issuer must disclose its proportionate amount of the payments made by such entity or operation pursuant to this Item and must indicate the proportionate interest.

(7) Although an entity providing only services to a resource extraction issuer to assist with exploration, extraction, processing or export would generally not be considered a resource extraction issuer, where such a service provider makes a payment that falls within the definition of ''payment'' to a government on behalf of a resource extraction issuer, the resource extraction issuer must disclose such payment.

(8) ''Processing,'' as used in Item 2.01, includes, but is not limited to, midstream activities such as removing liquid hydrocarbons from gas, removing impurities from natural gas prior to its transport through a pipeline, and upgrading bitumen or heavy oil, through the earlier of the point at which oil, gas, or gas liquids (natural or synthetic) are either sold to an unrelated third party or delivered to a main pipeline, a common carrier, or a marine terminal. It also includes the crushing or preparing of raw ore prior to the smelting phase. It would not include the downstream activities of refining or smelting.

(9) A resource extraction issuer must disclose payments made for taxes on corporate profits, corporate income, and production. Disclosure of payments made for taxes levied on consumption, such as value added taxes, personal income taxes, or sales taxes, is not required.

(10) Royalties include unit-based, value-based, and profit-based royalties. Fees include license fees, rental fees, entry fees, and other considerations for licenses or concessions. Bonuses include signature, discovery, and production bonuses.

(11) Dividends paid to a government as a common or ordinary shareholder of the resource extraction issuer that are paid to the government under the same terms as other shareholders need not be disclosed. The resource extraction issuer, however, must disclose any dividends paid in lieu of production entitlements or royalties.

(12) If a resource extraction issuer makes an in-kind payment of the types of payments required to be disclosed, the resource extraction issuer must disclose the payment. When reporting an in-kind payment, a resource extraction issuer must determine the monetary value of the in-kind payment and tag the information as ''in-kind'' for purposes of the currency. For purposes of the disclosure, a resource extraction issuer must report the payment at cost, or if cost is not determinable, fair market value and must provide a brief description of how the monetary value was calculated. If a resource extraction issuer makes an in-kind production entitlement payment under the rules and then repurchases the resources associated with the production entitlement within the same fiscal year, the resource extraction issuer must report the payment using the purchase price (rather than at cost, or if cost is not determinable, fair market value). If the in-kind production entitlement payment and the subsequent repurchase are made in different fiscal years and the purchase price is greater than the previously reported value of the in-kind payment, the resource extraction issuer must report the difference in values in the latter fiscal year (assuming the amount of that difference exceeds the de minimis threshold). In other situations, such as when the purchase price in a subsequent fiscal year is less than the in-kind value already reported, no disclosure relating to the purchase price is required.

(13) ''Minerals,'' as used in Item 2.01, includes any material for which an issuer with mining operations would provide disclosure under the Commission's existing disclosure requirements and policies, including Industry Guide 7 or any successor requirements or policies (*see* subpart 1300 of Regulation S–K (17 CFR 229.1300). It does not include oil and gas resources (as defined in 17 CFR 210.4–10(a)(16)(D) or any successor provision).

(14) For payments made at a level below the major subnational government level, such as a county, district, or municipality, an issuer may aggregate all of its payments of a particular payment type made to such subnational governments and disclose the aggregate amount without having to identify the particular subnational government payee. The issuer should instead generically identify the subnational government payee (*e.g.,* as ''county,'' ''municipality,'' or some combination of subnational governments).

Section 3—Exhibits

Item 3.01 Exhibits

List below the following exhibits submitted as part of this report:

Exhibit 1.01—Conflict Minerals Report as required by Items 1.01 and 1.02 of this Form.

Exhibit 2.01—Resource Extraction Payment Report as required by Item 2.01 of this Form.

Exhibit 3.01—Opinion of Counsel as required by Rule 13q–1(d)(1) or (2) (17 CFR 240.13q–1(d)(1) or (2)).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the duly authorized undersigned.

____

(Registrant)

____

By (Signature and Title) *

____

(Date)

* Print name and title of the registrant's signing executive officer under his or her signature.

* * * * *

By the Commission.

Dated: December 18, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–28407 Filed 1–14–20; 8:45 am]

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Part IV

Securities and Exchange Commission

17 CFR Parts 230 and 240

Amending the ''Accredited Investor'' Definition; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230 and 240

[Release Nos. 33–10734; 34–87784; File No. S7–25–19]

RIN 3235–AM19

Amending the "Accredited Investor" Definition

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the definition of "accredited investor" in our rules to add new categories of qualifying natural persons and entities and to make certain other modifications to the existing definition. The proposed amendments are intended to update and improve the definition in order to identify more effectively institutional and individual investors that have the knowledge and expertise to participate in our private capital markets and therefore do not need the additional protections of registration under the Securities Act of 1933. We are also proposing amendments to the qualified institutional buyer definition in Rule 144A under the Securities Act that would expand the list of entities that are eligible to qualify as qualified institutional buyers.

DATES: Comments should be received on or before 60 days after publication in the **Federal Register**.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–25–19 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–25–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Charles Kwon, Senior Counsel, Office of Rulemaking, or Charlie Guidry, Special Counsel, Office of Small Business Policy, at (202) 551–3460, Division of Corporation Finance; Jennifer Songer, Branch Chief, or Lawrence Pace, Senior Counsel, at (202) 551–6999, Investment Adviser Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to 17 CFR 230.144A ("Rule 144A"), 17 CFR 230.163B ("Rule 163B"), 17 CFR 230.215 ("Rule 215"), and 17 CFR 230.501 ("Rule 501") of 17 CFR 230.500 through 230.508 ("Regulation D") under the Securities Act of 1933 ("Securities Act");[1] and 17 CFR 240.15g–1 ("Rule 15g–1") under the Securities Exchange Act of 1934 ("Exchange Act").[2]

Table of Contents

I. Introduction

On June 18, 2019, the Commission issued a concept release that solicited public comment on possible ways to simplify, harmonize, and improve the exempt offering framework under the Securities Act of 1933 to promote capital formation and expand investment opportunities while maintaining appropriate investor protections.[3] In the Concept Release, the Commission requested comments on possible approaches to amending the definition of "accredited investor" in Rule 501(a) of Regulation D. This definition is a central component of several exemptions from registration such as Rules 506(b) and 506(c) of Regulation D, and plays an important role in other federal and state securities law contexts. Qualifying as an accredited investor is significant because accredited investors may, under Commission rules, participate in investment opportunities that are

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] Concept Release on Harmonization of Securities Offering Exemptions, Release No. 33–10649 (June 18, 2019) [84 FR 30460 (June 26, 2019)] ("Concept Release").

generally not available to non-accredited investors, such as investments in private companies and offerings by certain hedge funds, private equity funds, and venture capital funds.

In view of the significance of the accredited investor definition in the exempt offering framework, we are proposing to amend the accredited investor definition as an initial step in a broader effort to consider ways to harmonize and improve this framework. We believe that this proposal to update the accredited investor definition would provide a foundation for our ongoing efforts to assess whether our exempt offering framework, as a whole, is consistent, accessible, and effective for both issuers and investors. In addition to these proposed rule amendments, we are continuing to evaluate the comments received on the Concept Release in connection with possible future rulemaking proposals relating to the exemptions from registration under the Securities Act.

The Concept Release was preceded by a staff report [4] on the accredited investor definition issued in December 2015. The 2015 Staff Report examined the background and history of the definition and considered comments and recommendations from the public, the Commission's Investor Advisory Committee,[5] the Commission's Advisory Committee on Small and Emerging Companies,[6] and the 2014 SEC Government-Business Forum on Small Business Capital Formation.[7] The 2015 Staff Report also presented staff recommendations on amending the definition and analyzed the impact of potential approaches to amending the definition on the pool of accredited investors. The Commission staff prepared the report pursuant to Section 413(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[8] which directs the Commission to review the accredited investor definition as the term relates to natural persons at least once every four years to determine whether the definition ''should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.'' [9] The Commission received over 50 comment letters on the 2015 Staff Report and subsequently received recommendations on possible revisions to the accredited investor definition from the Advisory Committee on Small and Emerging Companies [10] and the annual SEC Government-Business Forum on Small Business Capital Formation.[11]

Many of the comments submitted in response to the Concept Release [12] urged the Commission to expand the accredited investor definition.[13] Other commenters opposed changing the definition or stated that the Commission should narrow the definition,[14] while a few commenters recommended that the Commission eliminate the definition altogether.[15] Commenters expressed a range of views on whether the Commission should amend the financial thresholds currently in the accredited investor definition,[16] and a number of commenters urged the Commission to maintain objective standards in the

[4] *See* Report on the Review of the Definition of ''Accredited Investor'' (Dec. 18, 2015) (''2015 Staff Report''), *available at https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf.*

[5] *See* Recommendation of the Investor as Purchaser Subcommittee and the Investor Education Subcommittee of the Investor Advisory Committee: Accredited Investor Definition (Oct. 9, 2014), (the ''2014 Investor Advisory Committee Recommendation''), *available at http://www.sec.gov/spotlight/investor-advisory-committee-2012/accredited-investor-definition-recommendation.pdf.*

[6] *See* Advisory Committee on Small and Emerging Companies: Recommendations Regarding the Accredited Investor Definition (March 9, 2015) (the ''2015 ACSEC Recommendations''), *available at http://www.sec.gov/info/smallbus/acsec/acsecaccredited-investor-definition-recommendation-030415.pdf.*

[7] *See* Final Report of the 2014 SEC Government-Business Forum on Small Business Capital Formation (May 2015), *available at http://www.sec.gov/info/smallbus/gbfor33.pdf.*

[8] Public Law 111–203, 124 Stat. 1376 (2010).

[9] Section 413(b)(2)(A) states that this Commission review must be conducted not earlier than four years after the enactment of the Dodd-Frank Act and not less frequently than once every four years afterward.

[10] *See* Advisory Committee on Small and Emerging Companies: Recommendations Regarding the Accredited Investor Definition (July 20, 2016) (the ''2016 ACSEC Recommendations''), *available at https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-accredited-investor.pdf.*

[11] Each of the Final Reports of the 2016, 2017, and 2018 SEC Government-Business Forums on Small Business Capital Formation included a recommendation that the Commission maintain the monetary thresholds for accredited investors and expand the categories of qualification for accredited investor status based on various types of sophistication such as education, experience, and training. *See* Final Report of the 2016 SEC Government-Business Forum on Small Business Capital Formation (March 2017) (the ''2016 Small Business Forum Report''), *available at https://www.sec.gov/info/smallbus/gbfor35.pdf;* Final Report of the 2017 SEC Government-Business Forum on Small Business Capital Formation (March 2018) (the ''2017 Small Business Forum Report''), *available at https://www.sec.gov/files/gbfor36.pdf;* and Final Report of the 2018 SEC Government-Business Forum on Small Business Capital Formation (June 2019) (the ''2018 Small Business Forum Report''), *available at https://www.sec.gov/info/smallbus/gbfor37.pdf.*

The Final Report of the 2019 SEC Government-Business Forum on Small Business Capital Formation included a recommendation that the Commission should revise the accredited investor definition as follows: (1) For natural persons, in addition to the income and net worth thresholds in the definition, add a sophistication test as an additional way to qualify; (2) provide tribal governments parity with state governments; and (3) revise the dollar amounts to scale for geography, lowering the thresholds in states/regions with a lower cost of living. See Final Report of the 2019 SEC Government-Business Forum on Small Business Capital Formation (December 2019) (the ''2019 Small Business Forum Report''), *available at https://www.sec.gov/files/small-business-forum-report-2019.pdf.*

[12] Unless otherwise indicated, comments cited in this release are to comment letters received in response to the Concept Release, which are *available at https://www.sec.gov/comments/s7-08-19/s70819.htm.*

[13] *See, e.g.,* letters from Federal Regulation of Securities Committee, Business Law Section of the American Bar Association dated October 16, 2019 (''ABA FR of Sec. Comm. Letter''); Island Mountain Development Group dated September 24, 2019 (''IMDG Letter''); Association for Corporate Growth dated September 24, 2019 (''ACG Letter''); Investments and Wealth Institute dated September 12, 2019 (''IWI Letter''); Securities Regulation Committee, Business Law Section of the New York State Bar Association dated October 18, 2019 (''Sec. Reg. Comm. of NY St. B.A. Letter''); Small Business Investor Alliance dated September 25, 2019 (''2019 SBIA Letter''); BlackRock, Inc. dated September 24, 2019 (''BlackRock Letter''); Artivest Holdings, Inc. dated October 8, 2019 (''Artivest Letter''); EquityZen Inc. dated September 30, 2019 (''EquityZen Letter''); Alfonso Ceja dated October 15, 2019 (''A. Ceja Letter''); CoinList dated September 26, 2019 (''CoinList Letter''); H. Konings et al. dated September 24, 2019 (''H. Konings et al. Letter''); Institute for Portfolio Alternatives dated September 24, 2019 (''IPA Letter''); Jeff Thomas dated September 24, 2019 (''J. Thomas Letter''); McCarter & English LLP dated September 24, 2019 (''McCarter & English Letter''); Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce dated September 24, 2019 (''CCMC Letter''); CFA Institute dated September 24, 2019 (''CFA Institute Letter''); Marketplace Lending Association dated September 23, 2019 (''MLA Letter''); Funding Circle dated September 23, 2019 (''Funding Circle Letter''); Bridgeport Financial Technology dated September 20, 2019 (''Bridgeport Letter''); Jor Law dated July 6, 2019; Kyle Sonlin dated June 26, 2019 (''K. Sonlin Letter''); John Tapp dated June 19, 2019 (''J. Tapp Letter''); Private Investor Coalition dated September 24, 2019 (''2019 PIC Letter''); California Municipal Treasurers Association dated September 20, 2019 (''CMTA Letter''); Native American Finance Officers Association dated September 12, 2019 (''NAFOA Letter''); Investment Adviser Association dated October 18, 2019 (''IAA Letter''); Managed Funds Association and Alternative Investment Management Association dated September 24, 2019 (''MFA and AIMA Letter''); Crowdfunding Professionals Association, Legislative & Regulatory Affairs Division, dated October 15, 2019 (''CfPA Letter''); Joseph L. Schocken dated September 24, 2019 (''J. Schocken Letter''); Alternative & Direct Investment Securities Association dated September 24, 2019 (''ADISA Letter''); Jeff LaBerge dated September 6, 2019 (''J. LaBerge Letter''); and Association of Online Investment Platforms dated July 5, 2019 (''AOIP Letter'').

[14] *See, e.g.,* letters from Consumer Federation of America dated October 1, 2019 (''Consumer Federation Letter'') and Forum for U.S. Securities Lawyers in London dated September 24, 2019.

[15] *See, e.g.,* letters from Nathan Eames dated September 1, 2019 and Andrew Deville dated June 19, 2019.

[16] *See infra* Section III.

definition.[17] Some commenters suggested that the Commission harmonize the accredited investor definition with the definitions of ''qualified purchaser'' under the Investment Company Act of 1940 (the ''Investment Company Act''), ''qualified client'' under the Investment Advisers Act of 1940 (the ''Advisers Act''), and/or ''qualified institutional buyer'' as defined in Rule 144A under the Securities Act.[18]

Commenters on the Concept Release offered a number of suggestions for expanding the accredited investor definition to provide natural persons and entities with additional means of qualifying for accredited investor status. Some commenters suggested that the Commission amend the definition to deem natural persons with additional measures of financial sophistication, other than annual income or net worth, eligible for accredited investor status, such as professional certifications,[19] prior experience in investing in securities,[20] status as a ''knowledgeable employee'' as defined in 17 CFR 270.3c–5 under the Investment Company Act (''Rule 3c–5''),[21] or an accredited investor examination.[22] Several commenters urged the Commission to amend the accredited investor definition to include natural persons or entities that are advised by a financial professional, such as a registered investment adviser that acts as a fiduciary in making the investment,[23] while other commenters opposed this view.[24] Commenters also recommended that the Commission expand the accredited investor definition to include family offices and clients of family offices, as defined in 17 CFR 275.202(a)(11)(G)–1 under the Advisers Act (''Rule 202(a)(11)(G)–1''),[25] registered investment advisers,[26] entities with investments over a certain threshold (*e.g.,* $5 million),[27] Indian tribes,[28] and certain state and local governments.[29]

After considering these comments and recommendations, we are proposing to amend the accredited investor definition in Rule 501(a) of Regulation D by modifying a number of the definition's existing categories and by adding new categories to the definition.[30] Specifically, we are proposing to:

- Add new categories to the definition that would permit natural persons to qualify as accredited investors based on certain professional certifications or designations or credentials from an accredited educational institution or, with respect to investments in a private fund, based on the person's status as a ''knowledgeable employee'' of the fund;[31]
- Add certain entity types to the current list of entities that may qualify as accredited investors, as well as add a new category for any entity owning ''investments,'' as defined in 17 CFR 270.2a51–1(b) under the Investment Company Act (''Rule 2a51–1(b)''), in excess of $5 million and that was not formed for the specific purpose of investing in the securities offered;
- Add ''family offices'' with at least $5 million in assets under management and their ''family clients,'' as each term is defined under the Advisers Act;
- Add the term ''spousal equivalent'' to the accredited investor definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors; and
- Codify certain staff interpretive positions that relate to the accredited investor definition.[32]

In addition, we are proposing to amend the definition of ''qualified institutional buyer'' in Rule 144A(a)(1)[33] to include additional entity types that meet the $100 million threshold to avoid inconsistencies between the types of entities that are eligible for accredited investor status and those that are eligible for qualified institutional buyer status under Rule 144A.

The amendments we propose today are the product of many years of efforts by the Commission and its staff to consider and analyze possible approaches to revising the accredited investor definition. A number of the proposed amendments are consistent with those recommended by the Commission staff in the 2015 Staff Report, while some of the proposed amendments are substantially similar to those the Commission proposed in 2007.[34] Many of the proposed amendments have been recommended in the past, in one form or another, by the Advisory Committee on Small and Emerging Companies, the Investor Advisory Committee, and a wide array of public commenters.

Unregistered offerings conducted under Regulation D, particularly those under Rule 506(b), play a significant role in capital formation in the United States. In 2018, the estimated amount of capital (including both equity and debt) reported as being raised in Rule 506 offerings was $1.7 trillion,[35] compared to $1.4 trillion raised in registered offerings.[36] Of the $1.7 trillion, $1.5

[17] *See, e.g.,* ABA Fed. of Sec. Reg. Comm. Letter; letter from Securities Industry and Financial Markets Association dated September 24, 2019 (''SIFMA Letter''); BlackRock Letter; and MFA and AIMA Letter.

[18] *See, e.g.,* ABA FR of Sec. Comm. Letter; IAA Letter; Sec. Reg. Comm. of NY St. B.A. Letter; SIFMA Letter; BlackRock Letter; and letter from Shartsis Friese LLP dated September 24, 2019 (''Shartsis Friese Letter'').

[19] *See infra* Section II.B.1.

[20] *See, e.g.,* CCMC Letter; letter from Institutional Capital Network dated September 24, 2019 (''iCapital Network Letter''); CFA Institute Letter; and letter from Charlie Uchill dated August 9, 2019 (''C. Uchill Letter'').

[21] *See infra* Section II.B.2.

[22] *See, e.g.,* ACG Letter; J. Thomas Letter; CCMC Letter; MLA Letter; Funding Circle Letter; letter from Hedge Fund Association dated September 23, 2019 (''HFA Letter''); and letter from Wefunder dated September 13, 2019 (''Wefunder Letter'').

[23] *See, e.g.,* IAA Letter; Artivest Letter; letter from MarketPlus Capital Company dated October 8, 2019; EquityZen Letter; 2019 SBIA Letter; IPA Letter; BlackRock Letter; iCapital Network Letter; letter from Davis Polk & Wardwell LLP dated September 24, 2019 (''Davis Polk Letter''); letter from Iownit Capital and Markets, Inc. dated September 24, 2019 (''Iownit Letter''); and Wefunder Letter.

[24] *See, e.g.,* letters from Public Investors Advocate Bar Association dated September 24, 2019 (''PIABA Letter''); Investment Company Institute dated September 24, 2019 (''ICI Letter''); and Angel Capital Association dated September 23, 2019 (''ACA Letter'').

[25] *See infra* Section II.C.6.

[26] *See infra* Section II.C.1.

[27] *See infra* Section II.C.4.

[28] *See, e.g.,* letter from Rosebud Economic Development Corporation dated September 24, 2019 (''REDCO Letter''); IMDG Letter; letter from Gavin Clarkson dated September 22, 2019 (''G. Clarkson Letter''); and NAFOA Letter.

[29] *See, e.g.,* CMTA Letter.

[30] We are also proposing conforming amendments to the accredited investor definition in Rule 215 under the Securities Act. The Rule 215 and Rule 501(a) definitions of accredited investor historically have been substantially consistent but not identical. *See* discussion in Section II.E.

[31] A private fund is an issuer that would be an investment company, as defined in Section 3 of the Investment Company Act, but for Sections 3(c)(1) or 3(c)(7) of that Act. *See* Section 202(a)(29) of the Advisers Act.

[32] *See infra* Sections II.B.3, II.C.3, and II.C.5.

[33] 17 CFR 230.144A(a)(1).

[34] Revisions of Limited Offering Exemptions in Regulation D, Release No. 33–8828 (Aug. 3, 2007) [72 FR 45116 (Aug. 10, 2007)] (''2007 Proposing Release'').

[35] *See* Concept Release at 30466.

[36] *See* Concept Release at 30465. Unless otherwise indicated, information in this release on Regulation D offerings is based on analysis by staff in the Commission's Division of Economic and Risk Analysis (''DERA'') of data collected from Form D filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') from January 2009 through December 2018. DERA staff determined the amount raised based on the amounts reported as ''Total amount sold'' in all Form D filings (new filings and amendments) on EDGAR. Subsequent amendments to a new filing were treated as incremental fundraising and recorded in the calendar year in which the amendment was filed. It is likely that the reported data on Regulation D offerings underestimates the actual amount raised through these offerings for two reasons. First, 17 CFR 230.503 (''Rule 503'') of Regulation D requires issuers to file a Form D no later than 15 days after the first sale of securities, but a failure to file the

trillion was raised by pooled investment funds, and $228 billion was raised by non-fund issuers. As noted in the 2015 Staff Report, and as discussed further in Section VII below, accredited investors are critical to providing capital for the Regulation D market. There may be investment opportunities, particularly with respect to early stage and high growth firms, in the Regulation D market that are not available to investors in registered securities offerings.[37] At the same time, investors in the Regulation D market can be subject to investment risks not associated with registered offerings because, for example, issuers in this market generally are not required to provide information comparable to that included in a registration statement.

Accordingly, in proposing changes to the definition, and in particular changes in the types of natural persons that would qualify as an ''accredited investor'' under these amendments, we have considered investor protection concerns, including concerns about an investor's ability to participate in and supply capital to the Regulation D market. As discussed below, the accredited investor definition is a central component of Regulation D. We are mindful that an overly broad definition could potentially undermine important investor protections and reduce public confidence in this vital market. At the same time, an unnecessarily narrow definition could limit investor access to investment opportunities where there may be adequate investor protection given factors such as that investor's financial sophistication, net worth, knowledge and experience in financial matters, or amount of assets under management.[38] The amendments to the accredited investor definition we propose in this release reflect a balancing of these considerations and, along with the Commission's periodic reviews of the definition pursuant to the Dodd-Frank Act,[39] are part of an ongoing effort to update and enhance this definition.

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Proposed Amendments to the Accredited Investor Definition

A. Background

The current exemptions from Securities Act registration include a variety of requirements, investor protections, and other conditions, including, in many cases, restrictions on the types of investors that are permitted to participate in the offering. *SEC* v. *Ralston Purina,*[40] the leading case interpreting the Section 4(a)(2) exemption, addressed the characteristics of the investors involved in an offering exempt from registration.[41] That decision set forth the position that the availability of the Section 4(a)(2) exemption should turn on whether the particular class of persons affected needs the protection of the Securities Act. The Commission has over the years adopted rules to provide greater certainty about exempt offerings that are consistent with the basic criteria set forth in *Ralston Purina.* For example, Rule 146—a predecessor to Regulation D adopted in 1974—permitted offers and sales only to persons the issuer reasonably believed had the requisite knowledge and experience in financial matters to evaluate the risks and merits of the prospective investment or who could bear the economic risks of the investment.[42] Later, Rule 242 introduced the accredited investor concept into the federal securities laws, providing a limited offering exemption up to $2 million with various conditions and defining an ''accredited person'' as a person purchasing $100,000 or more of the issuer's securities, a director or executive officer of the issuer, or a specified type of entity.[43]

Congress subsequently enacted the Small Business Investment Incentive Act of 1980,[44] which exempted from Securities Act registration non-public offers and sales of securities up to $5 million made solely to accredited investors [45] and added the accredited investor definition to Section 2(a)(15) of the Securities Act. Section 2(a)(15)(i) defines accredited investor to mean certain enumerated entities, and Section 2(a)(15)(ii) authorizes the Commission to adopt additional categories based on ''such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management.'' The Commission has used this authority to expand the types of persons that qualify as accredited investors, as described below.

Historically, the Commission has stated that the accredited investor definition is ''intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the protections of the Securities Act's registration process unnecessary.'' [46] The characteristics of an investor encompassed within this standard can be demonstrated in a variety of ways. These include the ability to assess an investment opportunity—which includes the ability to analyze the risks and rewards, the capacity to allocate investments in such a way as to mitigate or avoid risks of unsustainable loss, or the ability to gain access to information about an issuer or about an investment opportunity—or the ability to bear the risk of a loss.[47]

notice does not invalidate the exemption. Accordingly, despite the filing requirement, it is possible that some issuers do not file Forms D for offerings relying on Regulation D. Second, underreporting could also occur because a Form D may be filed prior to completion of the offering, and our rules do not require issuers to amend a Form D to report the total amount sold on completion of the offering or to reflect additional amounts offered if the aggregate offering amount does not exceed the original offering size by more than 10%.

[37] For example, according to Ritter (2019), the median age of a firm that went public in 1999 was 5 years, while in 2018 the median age was 10 years, *see https://site.warrington.ufl.edu/ritter/files/2019/03/IPOs2018Age.pdf.*

[38] *See* 15 U.S.C. 77b(a)(15)(i) and (ii) (establishing several categories of accredited investors and authorizing the Commission to adopt additional categories based on ''such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management'').

[39] *See supra* note 9.

[40] 346 U.S. 119, 125 (1953).

[41] Section 4(a)(2) [15 U.S.C. 77(d)(a)(2)] exempts transactions by an issuer ''not involving any public offering'' from the Securities Act's registration requirements.

[42] *See* Transactions By an Issuer Deemed Not To Involve Any Public Offering, Release No. 33–5487 (Apr. 23, 1974) [39 FR 15261 (May 2, 1974)]. If all the conditions of Rule 146 were met, the offer and sale of securities were deemed to not involve any public offering within the meaning of Section 4(a)(2). The Commission rescinded Rule 146 in 1982 in connection with the adoption of Regulation D.

[43] *See* Exemption of Limited Offers and Sales by Qualified Issuers, Release No. 33–6180 (Jan. 17, 1980) [45 FR 6362 (Jan. 28, 1980)] (''Rule 242 Adopting Release''). The Commission rescinded Rule 242 in 1982 in connection with the adoption of Regulation D.

[44] Public Law 96–477, 94 Stat. 2275 (1980).

[45] Securities Act Section 4(a)(5) [15 U.S.C. 77(d)(a)(5)].

[46] Regulation D Revisions; Exemption for Certain Employee Benefit Plans, Release No. 33–6683 (Jan. 16, 1987) [52 FR 3015 (Jan. 30, 1987)]. *See also SEC* v. *Ralston Purina Co.,* 346 U.S. 119, 125 (1953) (taking the position that the availability of the Section 4(a)(2) exemption ''should turn on whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering.' '').

[47] The accredited investor standard is similar to, but distinct from, other regulatory standards in Commission rules that are used to identify persons who are not in need of certain investor protection features of the federal securities laws. For example, Section 3(c)(7) of the Investment Company Act excepts from the definition of investment company any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of

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Regulation D, adopted in 1982,[48] is a series of rules that sets forth exemptions and a safe harbor from the registration requirements of the Securities Act.[49] Rule 506(b) of Regulation D is a non-exclusive safe harbor under Section 4(a)(2) of the Securities Act pursuant to which an issuer may offer and sell an unlimited amount of securities, provided that offers are made without the use of general solicitation or general advertising and sales are made only to accredited investors and up to 35 non-accredited investors who meet an investment sophistication standard.[50] Rule 506(c) of Regulation D provides an exemption without any limitation on offering amount pursuant to which offers may be made through general solicitation or general advertising, so long as the purchasers in the offering are limited to accredited investors and the issuer takes reasonable steps to verify their accredited investor status.[51] The accredited investor definition, which is found in Rule 501(a), is a cornerstone of Regulation D. It also plays an important role in other federal and state securities law contexts.[52]

The current accredited investor definition provides that natural persons and entities that come within, or that the issuer reasonably believes comes within, any of eight enumerated categories at the time of the sale of the securities is an accredited investor. Natural persons may qualify as accredited investors based on the following criteria:

• Individuals who have a net worth exceeding $1 million (excluding the value of the individual's primary residence), either alone or with their spouses; [53]

• Individuals who had an income in excess of $200,000 in each of the two most recent years, or joint income with the individual's spouse in excess of $300,000 in each of those years, and have a reasonable expectation of reaching the same income level in the current year; [54] and

• Directors, executive officers, and general partners of the issuer or of a general partner of the issuer.[55]

Some entities may qualify as accredited investors based on their status alone. These entities include:

• Banks, savings and loan associations, brokers or dealers registered pursuant to Section 15 of the Exchange Act, insurance companies, small business investment companies, investment companies registered under the Investment Company Act, or business development companies as defined in Section 2(a)(48) of that Act; [56]

• Private business development companies as defined in Section 202(a)(22) of the Advisers Act; [57] and

• Entities in which all of the equity owners are accredited investors.[58]

Other entities may qualify as accredited investors based on a combination of their status and the amount of their total assets. These entities include:

• Tax exempt charitable organizations, corporations, Massachusetts or similar business trusts, or partnerships, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million; [59]

• Plans established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5 million; [60]

• Employee benefit plans (within the meaning of the Employee Retirement Income Security Act) if a bank, savings and loan association, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of $5 million; [61] and

• Trusts with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered, the purchases of which are directed by a person who meets the legal standard of having sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment.[62]

The Commission has amended the accredited investor definition on three occasions since the adoption of Regulation D in 1982.[63] First, in 1988, the Commission expanded the definition to include additional types of entities,[64] added a joint income test for natural persons, and eliminated a standard under which a person could qualify as an accredited investor based on the purchase of $150,000 of the securities being offered when the purchase price did not exceed 20% of the person's net worth.[65] Second, in 1989, the Commission amended the definition to include plans established and maintained by state governments and their political subdivisions, as well as their agencies and instrumentalities, for the benefit of their employees if the plans have total assets in excess of $5

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acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of securities. Congress defined qualified purchasers as: (i) Natural persons who own not less than $5 million in investments; (ii) family-owned companies that own not less than $5 million in investments; (iii) certain trusts; and (iv) persons, acting for their own accounts or the accounts of other qualified purchasers, who in the aggregate own and invest on a discretionary basis, not less than $25 million in investments (*e.g.,* institutional investors). These other regulatory standards each serve a different regulatory purpose. Accordingly, an accredited investor will not necessarily meet these other standards and these other regulatory standards are not designed to capture the same investor characteristics as the accredited investor standard. *See also* 2015 Staff Report, *supra* note 4, at section III.

[48] Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers and Sales, Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251 (Mar. 16, 1982)] (''Regulation D 1982 Adopting Release'').

[49] Rules 500 through 503 of Regulation D contain the notes, definitions, terms, and conditions that apply generally throughout Regulation D. The exemptions and safe harbor of Regulation D are set forth in Rule 504, Rule 506(b), and Rule 506(c). Rule 507 of Regulation D is a provision that disqualifies issuers under certain circumstances from relying on Regulation D for failure to file a notice of sales on Form D. Rule 508 of Regulation D provides that certain insignificant deviations from a term, condition, or requirement of Regulation D will not necessarily result in the loss of a Regulation D exemption.

[50] *See* 17 CFR 230.506(b)(2)(ii) (''Each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.'').

[51] 17 CFR 230.506(c). The Commission adopted Rule 506(c) in 2013 to implement Section 201(a) of the Jumpstart Our Business Startups Act (''JOBS Act''). Public Law No. 112–106, 126 Stat. 306 (2012). *See* Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33–9415 (Jul. 10, 2013) [78 FR 44771 (Jul. 24, 2013)].

[52] *See* Section V for a discussion of certain implications of the accredited investor definition under federal and state securities laws.

[53] Rule 501(a)(5).

[54] Rule 501(a)(6).

[55] Rule 501(a)(4).

[56] Rule 501(a)(1).

[57] Rule 501(a)(2).

[58] Rule 501(a)(8).

[59] Rule 501(a)(3).

[60] Rule 501(a)(1).

[61] Rule 501(a)(1).

[62] Rule 501(a)(7).

[63] In addition, in 2007, the Commission proposed but did not adopt a number of changes to the accredited investor definition, which would have, among other things, added an alternative ''investments-owned'' standard, established a mechanism to adjust the dollar-amount thresholds to reflect inflation, and added several categories of permitted entities to the list of accredited investors. *See* 2007 Proposing Release. In 2013, the Commission requested comment on the accredited investor definition in connection with proposed amendments to Regulation D and Form D. Amendments to Regulation D, Form D and Rule 156, Release No. 33–9416 (July 10, 2013) [78 FR 44806 (July 24, 2013)].

[64] The types of institutional investors added were savings and loan associations and other institutions specified in Section 3(a)(5)(A) of the Securities Act (including credit unions), broker-dealers, certain trusts, partnerships, and corporations.

[65] Regulation D Revisions, Release No. 33–6758 (Mar. 3, 1988) [53 FR 7866 (Mar. 10, 1988)] (''Regulation D 1988 Adopting Release'').

million.[66] Third, in 2011, to implement the requirements of Section 413(a) of the Dodd-Frank Act, the Commission amended the $1 million net worth standard for natural persons to exclude the value of the investor's primary residence.[67]

Although the current accredited investor definition uses wealth—in the form of a certain level of income, net worth, or assets—as a proxy for financial sophistication, we do not believe wealth should be the sole means of establishing financial sophistication for purposes of the accredited investor definition. Accordingly, the proposed amendments would create new categories of individuals and entities that would qualify as accredited investors irrespective of their wealth, on the basis that such investors have the requisite ability to assess an investment opportunity. We discuss these and other proposed amendments to the accredited investor definition in detail below.

B. Adding Categories of Natural Persons Who Qualify as Accredited Investors

We are proposing to add two new categories in the accredited investor definition for natural persons (1) who hold certain professional certifications or designations or other credentials, or (2) who are ''knowledgeable employees'' of a private fund and are investing in the private fund. With the exception of directors, executive officers, and general partners of the issuer, the current accredited investor definition uses only the financial measures of income and net worth as proxies for a natural person's financial sophistication. The proposed new categories would apply additional markers of financial sophistication for natural persons based on professional knowledge and experience.

1. Professional Certifications and Designations and Other Credentials

We propose to add a category for natural persons to qualify as accredited investors based on certain professional certifications and designations or other credentials that demonstrate an individual's background and understanding in the areas of securities and investing.[68] We believe that this approach would provide appropriate alternative means of assessing an investor's need for the protections of registration under the Securities Act. We recognize that investors holding such certifications, designations and credentials may not meet the current financial thresholds in the accredited investor definition, and therefore the impact of investment losses on such investors could be significant. Nevertheless, we believe that the concept of financial sophistication encompasses not only an ability to analyze the risks and rewards of an investment but also the capacity to allocate investments in a way to mitigate or avoid risks of unsustainable loss. Adding this new category of individual accredited investors may potentially expand the pool of investors eligible to participate in, and provide capital to, the Regulation D market. As discussed below, we also believe that this standard in some cases could reduce compliance burdens for issuers by providing an alternative basis for qualification that issuers may be able to assess more easily than the current net worth or annual income standards.

The 2015 Staff Report included a staff recommendation that the Commission permit individuals with certain professional credentials to qualify as accredited investors. Commenters who expressed a view about this recommendation generally supported the recommendation.[69] Several commenters stated that qualifying credentials should include one or more of the following: Passing the Series 7, Series 65, Series 66, or Series 82 examinations, being a certified public accountant (CPA), certified financial analyst (CFA), certified management accountant (CMA), investment adviser representative or registered representative (RR); having a Masters of Business Administration degree (MBA) from an accredited educational institution or having a certified investment management analyst (CIMA) certification; or having been in the securities industry as a broker, lawyer, or accountant.[70] Other commenters expressed more general views about the sophistication necessary to qualify as an accredited investor.[71]

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[66] Regulation D, Release No. 33–6825 (Mar. 15, 1989) [54 FR 11369 (Mar. 20, 1989)] (''Regulation D 1989 Adopting Release'').

[67] Net Worth Standard for Accredited Investors, Release No. 33–9287 (Dec. 21, 2011) [76 FR .81793 (Dec. 29, 2011)] (''Regulation D 2011 Adopting Release'').

[68] This proposal is limited to natural persons seeking to qualify as accredited investors on their own behalf, and any discussion in the release of professional certifications, designations, and other credentials has no applicability in the context of that individual making investment recommendations to others as a financial professional.

[69] *See, e.g.,* letter from Consumer Federation of America and Americans for Financial Reform dated April 27, 2016 (''CFA/AFR Letter''); letter from Dar'shun Kendrick, Kendrick Law Practice dated May 1, 2016 (''D. Kendrick Letter''); letter from National Small Business Association dated March 29, 2016 (''NSBA Letter''); letter from North American Securities Administrators Association (''NASAA'') dated May 25, 2016 (''2016 NASAA Letter''); letter from Kyle Beagle dated January 13, 2016 (''K. Beagle Letter''); letter from Ava Badiee dated May 10, 2016; letter from Chase R. Morello dated January 13, 2016; letter from Keith J. Johnson dated Mar. 6, 2016; letter from Cornell Securities Law Clinic dated April 30, 2016 (''Cornell Law Clinic Letter''); letter from Investment Management Consultants Association dated March 29, 2016 (''IMCA Letter''); letter from Anonymous Investment Banker dated April 13, 2016; letter from Leonard A. Grover, dated June 13, 2016 (''2016 L. Grover Letter''); letter from The TAN2000 International Regulatory Corporation dated December 10, 2016 (''TAN2000 Letter''); letter from Jeff Carlsen dated January 17, 2017 (''J. Carlsen Letter''); letter from Managed Funds Association dated June 16, 2016 (''MFA–1 Letter''); letter from Managed Funds Association dated May 18, 2017 (''MFA–2 Letter''); letter from Mark R. Maisonneuve dated April 26, 2017 (''M. Maisonneuve Letter''); and letter from Crowdfund Intermediary Regulatory Advocates dated January 14, 2016 (''CFIRA Letter''). Some of these commenters supported the recommendation with additional limitations and conditions such as a minimum amount of professional experience or investment limits. *See, e.g.,* Beagle Letter; D. Kendrick Letter; Cornell Law Clinic Letter; 2016 NASAA Letter; and TAN2000 Letter.

[70] *See, e.g.,* CFA/AFR Letter (''. . . the Series 7, Series 65, and Series 82 examinations likely 'provide demonstrable evidence of relevant investor sophistication because of the subject matter their examinations cover' ''); 2016 NASAA Letter (recommending qualifying credentials to include passing the Series 7, Series 65, or Series 66, provided that there is also a requisite minimum amount of professional experience); MFA–1 Letter and MFA–2 Letter (recommending qualifying credentials would include being a CPA or CFA or having a MBA from an accredited educational institution); M. Maisonneuve Letter (recommending qualifying credentials would include being a CFA); IMCA Letter (recommending qualifying credentials would include having a CIMA certification); CFIRA Letter (recommending qualifying credentials would include being a CPA, CFA, CMA, registered investment adviser, RR or securities attorney); and D. Kendrick Letter (recommending qualifying credentials would include having been in the securities industry as a broker, lawyer, or accountant).

[71] *See, e.g.,* NSBA Letter (''. . . if someone is sophisticated enough to advise others on investing in these types of offerings, for example, they should themselves be qualified to invest in them''); Cornell Law Clinic Letter (credentials required should be substantially high to cause financial sophistication to make up for the loss in ability to sustain financial losses); 2016 L. Grover Letter (experts in industries historically passed over by angel investors should be allowed to qualify as accredited investors); and J. Carlsen Letter (individuals with business-related college degrees).

Several recent advisory committee recommendations similarly have supported expanding the criteria for natural persons to qualify as accredited investors. In 2014, the Investor Advisory Committee recommended that the Commission revise the accredited investor definition to enable individuals to qualify as accredited investors based on their ''financial sophistication.'' [72] In 2015, the Advisory Committee on Small and Emerging Companies recommended including in the accredited investor definition those investors who meet a ''sophistication test,'' regardless of income or net worth.[73] In 2016, the Advisory Committee on Small and Emerging Companies recommended, among other things, that the Commission expand the pool of accredited investors to include individuals who have passed examinations that test their knowledge and understanding in the areas of securities and investing, including the Series 7, Series 65, Series 82, and CFA Examinations and equivalent examinations.[74] In October 2017, the U.S. Department of the Treasury issued a report that includes recommendations on amending the accredited investor definition with the objective of expanding the eligible pool of sophisticated investors to financial professionals, such as registered representatives and investment adviser representatives, who generally are considered qualified to recommend Regulation D investments to others.[75] In addition, the 2016, 2017, and 2018 Small Business Forum Reports included a recommendation that the Commission expand the categories of qualification for accredited investor status based on various types of sophistication, such as education, experience, or training, including, among other things, persons holding FINRA licenses or CPA or CFA designations. The 2019 Small Business Forum Report included a recommendation that the Commission revise the accredited investor definition for natural persons to add a sophistication test as a way to qualify in addition to the income and net worth thresholds in the definition.[76]

The Concept Release requested comment on the use of additional sophistication measures other than income or net worth to permit natural persons to qualify as accredited investors. Table 1 below provides an overview of the feedback provided by Concept Release commenters on this topic.

TABLE 1—RESPONSES TO REQUESTS FOR COMMENT ON ADDITIONAL SOPHISTICATION TESTS IN THE ACCREDITED INVESTOR DEFINITION

Responses from commenters
—Many commenters supported adding a sophistication-based category to the accredited investor definition.[77] Of those commenters:
—Several commenters supported a sophistication category based on passing certain FINRA-administered examinations.[78]
—Several commenters supported a sophistication category based on obtaining a Chartered Financial Analyst certification.[79]
—Two commenters supported a sophistication category based on obtaining a Certified Financial Planner certification.[80]
—Several commenters supported the use of an accredited investor examination.[81]
—One commenter believed insufficient demand existed for an accredited investor examination.[82]
—Several commenters supported the use of educational experience more generally.[83]
—A few other commenters expressed concern about adding sophistication-based categories to the definition.[84]

[72] 2014 Investor Advisory Committee Recommendation.

[73] 2015 ACSEC Recommendations.

[74] 2016 ACSEC Recommendations.

[75] A Financial System That Creates Economic Opportunities Capital Markets, U.S. Dept. of the Treasury (Oct. 2017) (''2017 Treasury Report''), *available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL–FINALpdf,* at p. 44. Some registered representatives may hold limited licenses that preclude them from recommending Regulation D investments to others.

[76] *See* the 2019 Small Business Forum Report at 8.

[77] *See* K. Sonlin Letter; AOIP Letter; letter from Jor Law Dated July 10, 2019 (''J. Law Letter''); letter from Leonard A. Grover dated July 10, 2019 (''2019 L. Grover Letter''); letter from Broadmark Capital LLC dated July 29, 2019 (''Broadmark Capital Letter''); C. Uchill Letter; letter from Steven Marshall dated August 18, 2019 (''S. Marshall Letter''); J. LaBerge Letter; IWI Letter; Wefunder Letter; HFA Letter; ACA Letter; Funding Circle Letter; letter from Joe Wallin et al. dated September 23, 2019 (''J. Wallin Letter''); letter from G. Philip Rutledge dated September 24, 2019 (''P. Rutledge Letter''); letter from SeedInvest dated September 24, 2019 (''SeedInvest Letter''); letter from Republic dated September 24, 2019 (''Republic Letter''); CFA Institute Letter; EquityZen Letter; Iownit Letter; letter from David R. Burton dated September 24, 2019 (''D. Burton Letter''); CoinList Letter; 2019 SBIA Letter; letter from AngelList Advisors, LLC dated September 25, 2019 (''AngelList Letter''); letter from William F. Galvin, Secretary of the Commonwealth of Massachusetts dated September 24, 2019 (''MA Secretary Letter''); Davis Polk Letter; letter from Crystal World Holdings and New Sports Economy Institute dated September 24, 2019 (''CWH and NSEI Letter''); H. Konings et al. Letter; letter from Crowdfund Capital Advisors dated September 24, 2019 (''CCA Letter''); SIFMA Letter; CCMC Letter; ACG Letter; IPA Letter; ADISA Letter; letter from Carta dated September 24, 2019 (''Carta Letter''); McCarter & English Letter; letter from Jade Barker dated September 24, 2019 (''J. Barker Letter''); J. Schocken Letter; Artivest Letter; J. Tapp Letter; letter from Cody Snyder dated September 11, 2019 (''C. Snyder Letter''); Bridgeport Letter; MLA Letter; J. Thomas Letter; letter from Kirk McGregor and Samarth Sandeep dated September 24, 2019 (''McGregor and Sandeep Letter''); CfPA Letter; A. Ceja Letter; ABA FR of Sec. Comm. Letter; Sec. Reg. Comm. of N.Y.St. B.A. Letter; letter from Leyline Corporation dated October 18, 2019 (''Leyline Letter''); letter from Joey Jones dated October 29, 2019 (''J. Jones Letter''); letter from CrowdCheck dated October 30, 2019 (''CrowdCheck Letter''); and Recommendation of the SEC Small Business Capital Formation Advisory Committee regarding the accredited investor definition (Dec. 11, 2019), (the ''2019 Advisory Committee Recommendation''), *available at https://www.sec.gov/spotlight/sbcfac/recommendation-accredited-investor.pdf.*.

[78] *See* 2019 L. Grover Letter; C. Uchill Letter; Wefunder Letter; ACA Letter; P. Rutledge Letter; SeedInvest Letter; Republic Letter; EquityZen Letter; D. Burton Letter; CoinList Letter; Davis Polk Letter; H. Konings et al. Letter; ACG Letter; IPA Letter; ADISA Letter; McCarter & English Letter; Artivest Letter; CfPA Letter; Sec. Reg. Comm. of N.Y.St. B.A. Letter; Leyline Letter; J. Jones Letter; and CrowdCheck Letter.

[79] *See* J. Law Letter; SeedInvest Letter; Republic Letter; EquityZen Letter; D. Burton Letter; CoinList Letter; Davis Polk Letter; CWH and NSEI Letter; SIFMA Letter; ACG Letter; IPA Letter; Artivest Letter; CfPA Letter; and CrowdCheck Letter.

[80] *See* D. Burton Letter and CoinList Letter.

[81] *See* J. Tapp Letter; J. Law Letter; 2019 L. Grover Letter; C. Uchill Letter; C. Snyder Letter; IWI Letter; Bridgeport Letter; HFA Letter; ACA Letter; Funding Circle Letter; MLA Letter; J. Wallin Letter; P. Rutledge Letter; SeedInvest Letter; Republic Letter; D. Burton Letter; 2019 SBIA Letter; CWH and NSEI Letter; CCMC Letter; ACG Letter; J. Thomas Letter; Carta Letter; McGregor and Sandeep Letter; CfPA Letter; ABA FR of Sec. Comm. Letter; J. Jones Letter; CrowdCheck Letter; and the 2019 Advisory Committee Recommendation.

[82] *See* Consumer Federation Letter.

[83] *See* K. Sonlin Letter; Broadmark Capital Letter; C. Uchill Letter; S. Marshall Letter; J. LaBerge Letter; Wefunder Letter; HFA Letter; ACA Letter; SeedInvest Letter; Republic Letter; EquityZen Letter; D. Burton Letter; CoinList Letter; CWH and NSEI Letter; H. Konings et al. Letter; CCA Letter; SIFMA Letter; CCMC Letter; IPA Letter; ADISA Letter; McCarter & English Letter; J. Barker Letter; Artivest Letter; CfPA Letter; A. Ceja Letter; ABA FR of Sec. Comm. Letter; and the 2019 Advisory Committee Recommendation.

[84] *See, e.g.,* Consumer Federation Letter and PIABA Letter.

Having considered this feedback, we believe that certain professional certifications and designations or other credentials can indicate an appropriate level of financial sophistication that renders these investors less in need of the protections of registration under the Securities Act. Indeed, relying solely upon financial thresholds may unduly restrict access to investment opportunities for individuals whose knowledge and experience render them capable of evaluating the merits and risks of a prospective investment—and therefore fending for themselves—in a private offering, irrespective of their personal wealth. Accordingly, and consistent with suggestions from a broad range of commenters, we are proposing to amend the rule to include natural persons holding one or more professional certifications or designations or other credentials issued by an accredited educational institution that the Commission designates from time to time as meeting specified criteria. In addition, where applicable, an investor would need to maintain these certifications, designations, or credentials in good standing in order to qualify for accredited investor status.

The Commission's designation of certifications, designations, or credentials would be based upon its consideration of all the facts pertaining to a particular certification, designation, or credential. The proposed amendment would provide the following non-exclusive list of attributes that the Commission would consider in determining which professional certifications and designations or other credentials qualify for accredited investor status:

- The certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;
- The examination or series of examinations is designed to reliably and validly demonstrate an individual's comprehension and sophistication in the areas of securities and investing;
- Persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and
- An indication that an individual holds the certification or designation is made publicly available by the relevant self-regulatory organization or other industry body.

Professional certifications and designations or other credentials meeting these proposed criteria would be designated as qualifying for accredited investor status by means of a Commission order. We anticipate that the Commission generally would provide public notice and an opportunity for public comment before issuance of such an order. To assist members of the public, the professional certifications and designations or other credentials recognized by the Commission as satisfying the above criteria would be posted on the Commission's website.

We recognize that professional certifications and designations or credentials may evolve with changes in the market and industry practices. The proposed approach would provide the Commission with flexibility to reevaluate previously designated certifications, designations, or credentials if they change over time, and also to designate other certifications, designations, or credentials if new certifications, designations or credentials develop that meet the specified criteria.

We preliminarily expect that the following certifications or designations would be included in an initial Commission order accompanying the final rule, if adopted:

- *Licensed General Securities Representative (Series 7).* The Series 7 license qualifies a candidate ''for the solicitation, purchase, and/or sale of all securities products, including corporate securities, municipal securities, municipal fund securities, options, direct participation programs, investment company products, and variable contracts.'' [85] FINRA developed and administers the Series 7 examination. An individual must be associated with a FINRA member firm or other applicable self-regulatory organization member firm to be eligible to take the exam and be granted a license.[86]
- *Licensed Investment Adviser Representative (Series 65).* The Series 65 Uniform Investment Adviser Law Examination is designed to qualify candidates as investment adviser representatives and covers topics necessary for adviser representatives to understand to provide investment advice to retail advisory clients.[87] NASAA developed the Series 65 examination, and FINRA administers it. An individual does not need to be sponsored by a member firm to take the exam, and successful completion of the exam does not convey the right to transact business prior to being granted a license or registration by a state.[88]
- *Licensed Private Securities Offerings Representative (Series 82).* The Series 82 license qualifies individuals seeking to effect the sales of private securities offerings.[89] The examination focuses on private transactions and is more limited in scope than the Series 7 examination. FINRA developed and administers the Series 82 examination. An individual must be associated with and sponsored by a FINRA member firm or other applicable self-regulatory organization member firm to be eligible to take the exam.[90]

The proposed amendments would enable persons holding designated certifications, designations, or credentials to qualify as accredited investors even when they do not meet the income or net worth standards in the accredited investor definition. We preliminarily believe that individuals who have passed the necessary examinations and received their certifications or designations described above have demonstrated a level of sophistication in the areas of securities and investing such that they may not need the protections of registration under the Securities Act. In this regard, we note that these certifications and designations are required in order to represent or advise others in connection with securities market transactions. One commenter stated that, if an individual is ''sophisticated enough to advise others on investing in these types of offerings . . . they should themselves be qualified to invest in them.'' [91]

The following table sets out an estimate of the number of individuals that may hold the certifications and designations described above:

[85] *https://www.finra.org/registration-exams-ce/qualification-exams/series7.*

[86] FINRA Rule 1210.03. Candidates must also pass the Securities Industry Essentials (SIE) examination to obtain the General Securities Representative designation.

[87] *https://www.nasaa.org/exams/study-guides/series-65-study-guide/.*

[88] *https://www.nasaa.org/exams/exam-faqs/.*

[89] *https://www.finra.org/registration-exams-ce/qualification-exams/series82.* Candidates must also pass the SIE examination to obtain the Private Securities Offerings Representative designation.

[90] FINRA Rule 1210.03.

[91] *See* NSBA Letter.

TABLE 2—ESTIMATED NUMBER OF INDIVIDUALS HOLDING SPECIFIED CERTIFICATIONS AND DESIGNATIONS

Certification/designation	Number of individuals
Registered Securities Representative	[92] 691,041
State Registered Investment Adviser Representative	[93] 17,543

As Table 2 illustrates, if we were to adopt the amendments to the accredited investor definition as proposed and designate professional certifications and designations as qualifying credentials, it may result in a significant increase in the number of individuals that qualify as accredited investors. However, we note that we cannot estimate how many individuals that hold the relevant certifications and designations may already qualify as accredited investors under the current financial thresholds, and therefore we are unable to state with certainty how many individuals would be newly eligible under the proposals. Moreover, for purposes of updating the accredited investor definition, we believe it is less relevant to focus on the number of individuals that would qualify and more relevant to consider whether the proposed criteria adequately capture the attributes of financial sophistication that is a touchstone of the definition.

We acknowledge that there may be individuals that hold other professional or academic credentials that can demonstrate similar comprehension and sophistication; however, we believe that it is appropriate at this time to tailor this category of credentials and designations to certain ones that directly relate to securities and investing. For example, while commenters have suggested criteria such as college degrees and advanced degrees generally for the accredited investor definition, we are concerned that such a broad approach might not provide a consistent measure of financial sophistication for a variety of reasons, including the range of degrees, the different types of institutions that grant degrees, and the various career paths that degree holders can take.

As proposed, where applicable, an individual would be required to maintain an active certification, designation, or credential [94] to qualify as an accredited investor on this basis but would not be required to practice in fields related to the certification, designation, or credential, except to the extent that continued affiliation with a firm is required to maintain the certification, designation, or credential.[95] We believe that passing the requisite examinations and maintaining an active certification, designation, or license would be sufficient to demonstrate the individual's financial sophistication to invest in Regulation D offerings, even when the individual is not practicing in an area related to the certification or designation. Conversely, an inactive certification, designation, or license, particularly when the certification or designation has been inactive for an extended period of time, could lessen the validity of the certification or designation as a measure of financial sophistication.

In addition, because issuers must take reasonable steps to verify whether an investor in a Rule 506(c) offering is an accredited investor,[96] readily available information on whether an individual actively holds a particular certification or designation would be useful. For example, issuers and other market participants may obtain registration and licensing information about registered representatives and investment adviser representatives through FINRA's BrokerCheck [97] or the Commission's Investment Adviser Public Disclosure database.[98] For this reason, we are proposing to include, as one of the criteria to be considered by the Commission in recognizing qualifying professional credentials, the public availability of information listing the individuals who hold the relevant certifications or designations.

Request for Comment

1. Are professional certifications and designations or other credentials an appropriate standard for determining whether a natural person is an accredited investor? Do the types of certifications and designations that the Commission is considering indicate that an investor has the requisite level of financial sophistication and abilities to render the protections of the Securities Act unnecessary?

2. Are the professional certifications and designations we preliminarily expect to designate as qualifying credentials in an initial Commission order accompanying the final rule appropriate to recognize for this purpose? Should we include a credential from an accredited educational institution, such as an MBA, in such initial order?

3. Should we consider other certifications, designations, or credentials as a means for individuals to qualify as accredited investors? If so, which ones should we consider? For example, there are several FINRA Representative-level and Principal-level exams, as well as FINRA-administered NASAA exams, Municipal Securities Rulemaking Body exams, and National Futures Association exams, that cover a broad range of subjects relating to the markets, the securities industry and its regulatory structure.[99] Should we consider any other FINRA-developed examinations or FINRA-administered examinations not discussed in this release? Should we consider designating any professional certifications or designations or credentials issued outside of the United States? Should we consider other certifications and designations administered by private organizations, such as the CFA Institute and the Certified Financial Planner Board of Standards? Does the fact that these private organizations are not subject to Commission oversight or regulation raise concerns with respect to the inclusion of certifications or designations such as the CFA Charter or the CFP Certification as a means of accredited investor qualification?

4. A FINRA introductory-level examination, the "Securities Industry

[92] As of December 2018. Of this number, 334,860 individuals were registered only as broker-dealers, 294,684 were dually registered as broker-dealers and investment advisers, and 61,497 were registered only as investment advisers.

Because FINRA-registered representatives can be required to hold multiple professional certifications, this aggregation likely overstates the actual number of individuals that hold a Series 7 or Series 82, and we have no method of estimating the extent of overlap.

[93] As of December 2018.

[94] To maintain their certifications and designations in good standing, General Securities Representatives and Private Securities Offerings Representatives are subject to continuing education requirements under FINRA rules.

[95] For example, an individual's registration as a general securities representative will lapse two years after the date that his or her employment with a FINRA member has been terminated. *See* FINRA Rule 1210.08.

[96] *See supra* note 51.

[97] *https://brokercheck.finra.org/.*

[98] *https://www.adviserinfo.sec.gov/IAPD/Default.aspx.*

[99] *See https://www.finra.org/registration-exams-ce/qualification-exams.*

Essentials'' (SIE) examination, is a co-requisite to the Series 7 and Series 82 examinations and assesses a candidate's knowledge of basic securities industry information.[100] The SIE examination is open to any individual aged 18 or over, and association with a firm is not required. Passing the SIE examination alone does not qualify an individual for registration with a FINRA member firm or to engage in securities business. We have not included the SIE examination among those we expect initially to designate as qualifying credentials because the SIE examination is relatively new and evaluates introductory-level comprehension of the securities industry. Should we consider the SIE examination as a means for individuals to qualify as accredited investors? Should we consider the SIE examination, in addition to the completion of an investing-related course at an accredited college or university, as a means for individuals to qualify as accredited investors?

5. FINRA's Series 86 and 87 examinations assess the ability of an entry-level registered representative to perform their job as a research analyst.[101] As with the Series 7 and Series 82 examinations, an individual must be associated with and sponsored by a FINRA member firm or other applicable self-regulatory organization member firm to be eligible to take the Series 86 and 87 examinations. The SIE examination is also co-requisite to the Series 86 and 87 examinations. Should we consider the Series 86 and 87 examinations as a means for individuals to qualify as accredited investors?

6. The Series 66 NASAA Uniform Combined State Law Examination (Series 66) is designed to qualify candidates as investment adviser representatives and as broker-dealer representatives.[102] NASAA developed the Series 66 examination, and FINRA administers it. An individual does not need to be sponsored by a member firm to take the exam,[103] and successful completion of the exam does not convey the right to transact business prior to being granted a license or registration by a state. Should we consider the Series 66 examination and registration as an investment adviser representative as a means for individuals to qualify as accredited investors?

7. Several types of certifications and designations, including the Series 7, Series 82, Series 86, and 87 licenses, require that an individual be sponsored by a FINRA member firm to take the exam. Other certifications and designations, including the Series 65, Series 66, and the SIE, do not have such a requirement. With respect to certifications and designations for which an individual does not need to be sponsored by a member firm, should we consider imposing a waiting period following an individual's attainment of the credential or designation before the individual can invest in an offering as an accredited investor? If so, would a 30-day waiting period, or some other period of time be appropriate?

8. Should we, as proposed, designate certain certifications, designations, or credentials as qualifying credentials by order, or should we instead include specific certifications, designations, or credentials in the rule itself? The proposed provision specifies various attributes that the Commission would consider in making this determination. Is the proposed list of attributes appropriate or are there other criteria that we should consider in determining whether certain professional certifications or designations or other credentials should be recognized as qualifying for accredited investor status? One proposed attribute that may be considered is that an indication that an individual holds the certification or designation is made publicly available by the relevant self-regulatory organization or other industry body. Would such a publicly available indication be necessary if the individual can demonstrate to the issuer that he or she has actually obtained the certification, or designation?

9. Should the individuals who obtain the designated professional credentials be required to maintain these certifications or designations in good standing in order to qualify as accredited investors, as proposed? Should they also be required to practice in the fields related to the certifications or designations, or to have practiced for a minimum number of years? Certain of the professional certifications or designations we are considering require an individual to be associated with a FINRA member firm or other applicable self-regulatory organization member firm, or require a certain amount of work experience in order to qualify for the certification or designation, while others do not. Is it appropriate to recognize professional certifications or designations that require employment at certain firms, state registration or licensure, or a minimum amount of work experience, as proposed? If work experience is a requirement for a certification but not a prerequisite to taking the relevant exam, should successful completion of the exam be sufficient to qualify for accredited investor status, instead of requiring certification?

10. Under the proposed approach, individuals with certain certifications, designations, or credentials would qualify as accredited investors regardless of their net worth or income. While having such a certification, designation, or credential may be a measure of financial sophistication, which should encompass the investor's capacity to allocate their investments in a way to mitigate or avoid risks of unsustainable loss, the impact of an investment loss on an investor that does not meet the current net worth or income thresholds may be significant. Should we consider additional conditions, such as investment limits, for individuals with these certifications, designations, or credentials who do not meet the income test or net worth test, in order to qualify as accredited investors? If so, what types of investment limits or other conditions should we consider?

11. Should we consider educational backgrounds more generally, such as advanced degrees in certain areas such as law, accounting, business, or finance, as a means for qualifying as an accredited investor? If so, which degrees would be appropriate? Should the individual also be required to demonstrate professional experience in such areas?

12. Should we consider professional experience in areas such as finance and investing, apart from professional certifications and designations, as another means for qualifying for accredited investor status? If so, what factors should we consider in evaluating whether an individual has the capability of evaluating the merits and risks of a prospective investment based on his or her professional experience? For example, should the focus be on specific types and levels of job experience? Should we consider only professional experience related to the securities industry? If so, would it be appropriate to include only those actively involved in the buying and selling of securities, or should we consider other professionals whose work experience may demonstrate an understanding of the investment process? How should the Commission determine the appropriate level of experience needed in order to

[100] *https://www.finra.org/registration-exams-ce/qualification-exams/securities-industry-essentials-exam.*

[101] *https://www.finra.org/registration-exams-ce/qualification-exams/series86-87.*

[102] *https://www.finra.org/registration-exams-ce/qualification-exams/series66.*

[103] Though the Series 66 examination has no pre-requisites, in order to register as an investment adviser representative based on passing the Series 66 examination, an individual must also have passed the FINRA Series 7 examination.

qualify as an accredited investor under such a test?

13. Should we consider developing an accredited investor examination as another means for determining investor sophistication? What are the advantages and disadvantages of such an approach? What should be considered in developing and designing such an examination?

14. Should we consider permitting individuals to self-certify that they have the requisite financial sophistication to be an accredited investor as another means for determining investor sophistication?

2. Knowledgeable Employees of Private Funds

We propose to add a category to the accredited investor definition that would enable ''knowledgeable employees'' of a private fund to qualify as accredited investors for investments in the fund.[104] Private funds, such as hedge funds, venture capital funds, and private equity funds, are issuers that would be an investment company, as defined in Section 3 of the Investment Company Act, but for the exclusion from the definition of ''investment company'' in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.[105] Private funds generally rely on Section 4(a)(2) and Rule 506 to offer and sell their interests without registration under the Securities Act.

Section 3(c)(1) of the Investment Company Act excludes from the definition of ''investment company'' any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and which is not making and does not presently propose to make a public offering of its securities. As discussed above, Section 3(c)(7) of the Investment Company Act excludes from the definition of ''investment company'' any issuer whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are ''qualified purchasers,'' and which is not making and does not at that time propose to make a public offering of its securities.[106]

Pursuant to Rule 3c–5, ''knowledgeable employees'' of a private fund may acquire securities issued by the fund without being counted for purposes of Section 3(c)(1)'s 100-investor limit and may invest in a Section 3(c)(7) fund even though they do not meet the definition of ''qualified purchaser.'' [107] This provision permits individuals who participate in a fund's management to invest in the fund as a benefit of employment.[108] However, even though a knowledgeable employee is permitted to invest in a Section 3(c)(7) fund (along with other natural persons that have a high degree of financial sophistication),[109] a knowledgeable employee may not meet the financial thresholds in the accredited investor definition. Therefore, a knowledgeable employee who does not meet the accredited investor definition may be excluded from participating in an offering of the private fund under Rule 506 if the offering is limited to accredited investors.

The 2015 Staff Report included a recommendation that the Commission revise the accredited investor definition to permit knowledgeable employees of sponsors of private funds to qualify as accredited investors for investments in the funds sponsored by their employers, using the definition of the term ''knowledgeable employee'' in Rule 3c–5(a)(4). In response to the 2015 Staff Report, several commenters expressed support for the recommendation,[110] while one commenter opposed this recommendation.[111] In July 2016, the Advisory Committee on Small and Emerging Companies, though not specifically referencing knowledgeable employees, recommended that the Commission explore more generally different ways to permit participation by potential investors with specific industry or issuer knowledge or expertise who would otherwise not qualify for accredited investor status.[112] The 2016, 2017, and 2018 Small Business Forum Reports included a recommendation that the Commission expand the categories of qualification to include, among other things, status as managerial or key employees affiliated with the issuer. In addition, a number of commenters on the Concept Release supported permitting a private fund's knowledgeable employees to invest in the private fund.[113]

We are not able to estimate the number of individuals that would qualify as accredited investors under this proposed amendment to the definition. Using data on private fund statistics compiled by the Commission's Division of Investment Management, we estimate that there were 32,202 private funds as of fourth quarter 2018.[114] However, we lack data on the number of knowledgeable employees per fund. We also cannot estimate how many individuals that meet the definition of ''knowledgeable employee'' may already qualify as accredited investors under the current financial thresholds.

The proposed new category of accredited investor would be the same in scope as the definition of ''knowledgeable employee'' in Rule 3c–5(a)(4).[115] It would include, among other persons, trustees and advisory board members, or persons serving in a

[104] Rule 3c–5(a)(4) under the Investment Company Act defines a ''knowledgeable employee'' with respect to a private fund as: (i) An executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the private fund or an affiliated management person (as defined in Rule 3c–5(a)(1)) of the private fund; and (ii) an employee of the private fund or an affiliated management person of the private fund (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such private fund, other private funds, or investment companies the investment activities of which are managed by such affiliated management person of the private fund, provided that such employee has been performing such functions and duties for or on behalf of the private fund or the affiliated management person of the private fund, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

[105] 15 U.S.C. 80a–3(c)(1) and (c)(7).

[106] Issuers that rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act are a subset of pooled investment funds. The definition of ''qualified purchaser'' in Section 2(a)(51) of the Investment Company Act includes any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under Section 3(c)(7) of the Investment Company Act with that person's qualified purchaser spouse) who owns not less than $5 million in investments (as defined by the Commission).

[107] Rule 3c–5(b).

[108] 2015 Staff Report.

[109] Such an employee would be considered a qualified client under Rule 205–3(d)(1)(iii) under the Advisers Act (allowing such funds to offer performance fees).

[110] *See, e.g.,* CFA/AFR Letter (''. . . such individuals 'likely have significant investing experience and sufficient access to the information necessary to make informed decisions about investments in their employer's funds' ''); NSBA Letter; Cornell Law Clinic Letter (''Knowledgeable employees of private funds are likely some of the highest levels of financial sophistication among potential investors.''); MFA–1 Letter; and MFA–2 Letter (''. . . such knowledgeable employees have meaningful investing experience and sufficient access to information necessary to make informed investment decisions about the private fund's offerings. In addition, investments by knowledgeable employees are beneficial for private fund investors in that they further align investor interests of adviser employees and fund investors.'').

[111] *See* 2016 NASAA Letter (''Such an approach could raise suitability issues, may be difficult to verify, and ultimately has a negligible impact in improving capital formation efforts.'').

[112] *See* 2016 ACSEC Recommendations.

[113] *See* ACA Letter; Funding Circle Letter; MLA Letter; J. Wallin Letter; P. Rutledge Letter; MFA and AIMA Letter; EquityZen Letter; 2019 SBIA Letter; BlackRock Letter; ACG Letter; letter from Dechert LLP dated September 24, 2019; Artivest Letter; and Sec. Reg. Comm. of N.Y.St. B.A. Letter.

[114] *See https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2018-q4.pdf.*

[115] *See* proposed Rule 501(a)(11).

similar capacity, of a Section 3(c)(1) or 3(c)(7) fund or an affiliated person of the fund that oversees the fund's investments, as well as employees of the private fund or the affiliated person of the fund (other than employees performing solely clerical, secretarial, or administrative functions) who, in connection with the employees' regular functions or duties, have participated in the investment activities of such private fund for at least 12 months.[116] This new category would be similar to the existing category for directors, executive officers, or general partners of the issuer (or directors, executive officers, or general partners of a general partner of the issuer).[117] We believe that such employees, through their knowledge and active participation of the investment activities of the private fund, are likely to be financially sophisticated and capable of fending for themselves in evaluating investments in such private funds.[118] These employees, by virtue of their position with the fund, are presumed to have meaningful investing experience and sufficient access to the information necessary to make informed investment decisions about the fund's offerings. Allowing these employees to invest in the funds for which they work also may help to align their interests with those of other investors in the fund.

The inclusion of knowledgeable employees in the definition of ''accredited investor'' would also allow these employees to invest in the private fund without the fund itself losing accredited investor status when the funds have assets of $5 million or less. Under Rule 501(a)(8), private funds with assets of $5 million or less may qualify as accredited investors if all of the fund's equity owners are accredited investors.[119] Unless they qualify as accredited investors, these small private funds could otherwise be excluded from participating in some offerings under Rule 506 that are limited to accredited investors. Amending the accredited investor definition in this manner would allow knowledgeable employees to invest in these small private funds as accredited investors, while permitting the funds to remain eligible to qualify as accredited investors under Rule 501(a)(8).

Request for Comment

15. Should knowledgeable employees of private funds be added to the definition of accredited investor as proposed?

16. Would adding ''knowledgeable employees'' as a category in the accredited investor definition raise concerns that small private funds could qualify as accredited investors under Rule 501(a)(8) when all or most of its equity owners consist of knowledgeable employees? Do small private funds raise different concerns than pooled investment funds such as registered investment companies, business development companies, and small business investment companies that qualify as accredited investors without satisfying any quantitative criteria such as a total assets or investments threshold?

17. Under the proposed definition of ''accredited investor,'' should a knowledgeable employee's accredited investor status be attributed to his or her spouse and/or dependents when making joint investments in private funds? Is the answer to this question the same for a family corporation or similar estate planning vehicle for which the knowledgeable employee is responsible for investment decisions and the source of the funds invested?

18. Should the Commission consider including certain types of employees of a non-fund issuer in the accredited investor definition for purposes of a securities offering by that issuer? If so, what are the job types or categories of employees that should be considered to have the appropriate level of financial sophistication and access to the information necessary to make informed investment decisions about the issuer's offerings? For example, would it be appropriate to consider including officers of an issuer, or employees that serve a particular function such as employees who oversee the issuer's financial reporting or business operations? Similarly, should the Commission consider including other individuals with a familial or similar relationship to an issuer in the definition for purposes of such an issuer's securities offering? If so, how should we determine the appropriate individuals and types of relationships that would be covered by such a provision?

3. Proposed Note to Rule 501(a)(5)

We are proposing to add a note to Rule 501 to clarify that the calculation of ''joint net worth'' for purposes of Rule 501(a)(5) can be the aggregate net worth of an investor and his or her spouse (or spousal equivalent if ''spousal equivalent'' is included in Rule 501(a)(5), as proposed), and that the securities being purchased by an investor relying on the joint net worth test of Rule 501(a)(5) need not be purchased jointly.[120]

It does not appear to be necessary, in the accredited investor context, to limit how an investor takes title to securities or how spouses own assets. Owning assets separately may be preferable for estate planning purposes, while owning assets jointly offers a different set of advantages.[121] Moreover, nothing in previous Regulation D releases indicates that the Commission intended the term ''joint'' in Rule 501(a)(5) to require (1) joint ownership of assets when calculating the net worth of the spouses, or (2) that an investor relying on the joint net worth test acquire the security jointly instead of separately. Furthermore, allowing spouses to own assets in various forms for the purposes of the net worth test is consistent with how the Commission treats spousal ownership of assets in other contexts.[122]

Request for Comment

19. Should we add a note to clarify the calculation of ''joint net worth'' for purposes of Rule 501(a)(5), as proposed?

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[116] The scope of the term ''knowledgeable employee'' in Rule 3c–5(a)(4) also includes executive officers, directors, and general partners, or persons servings in a similar capacity, of a Section 3(c)(1) or 3(c)(7) fund or an affiliated person of the fund that oversees the fund's investments. For these persons, the proposed new category for ''knowledgeable employees'' in the definition of ''accredited investor'' would overlap with the existing category in Rule 501(a)(4), which encompasses directors, executive officers, and general partners of the issuer, as well as directors, executive officers, and general partners of a general partner of the issuer. A person is determined to be a knowledgeable employee at the time of investment. *See* Rule 3c–5(b)(1).

[117] Rule 501(a)(4).

[118] As is the case under Rule 3c–5(a)(4), the scope of ''knowledgeable employees'' under this proposed amendment would not include employees who simply obtain information but do not participate in the investment activities of the fund.

[119] A private fund may qualify as an accredited investor if it holds total assets in excess of $5 million and is a corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered. A private fund may also be able to qualify as an accredited investor if it is a trust with total assets in excess of $5 million that was not formed for the specific purpose of acquiring the securities offered, and the purchase is directed by a sophisticated person.

[120] This proposed note is consistent with an existing staff interpretation. *See* question number 255.11 of Securities Act Rules Compliance and Disclosure Interpretations, *available at https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.*

[121] *See* Andrea Coombes, *Separate Assets, Joint Problems* Wall St. J., (Nov. 10, 2013), *available at https://www.wsj.com/articles/separate-assets-joint-problems-1383947655* (noting that separate ownership may provide certain estate planning advantages and joint ownership may provide certain creditor protections and administrative conveniences).

[122] *See* Investment Company Act Rule 2a51–1, which permits separate ownership, joint ownership, and community property ownership.

C. Adding Categories of Entities That Qualify as Accredited Investors

The accredited investor definition includes enumerated categories of entities in paragraphs (1) through (3), (7), and (8) of Rule 501(a).[123] Any entity not covered specifically by one of the enumerated categories is not an accredited investor under the rule. This has resulted in some degree of uncertainty for legal entities of a type similar to, but not precisely the same as, those entities specifically enumerated in Rule 501(a). In addition, federal and state law developments since the adoption of Regulation D have expanded the types of business entities that exist, and relatively recent concepts, such as limited liability companies, suggest that developments in this area are ongoing. Moreover, there are some entities—such as registered investment advisers—that are not currently enumerated in Rule 501(a) but that may exhibit attributes of financial sophistication and an ability to fend for themselves or sustain losses that are similar to those of enumerated entities. In light of these considerations, we believe that an expansion of the types of entities that qualify as accredited investors may reduce uncertainty and legal costs and promote more efficient private capital formation.

1. Registered Investment Advisers

We propose to include in Rule 501(a)(1) investment advisers registered under Section 203 of the Advisers Act[124] and investment advisers registered under the laws of the various states. Though these entities have not previously been included as accredited investors, we believe it is appropriate to propose including them at this time.

As discussed above, the definition of ''accredited person'' in former Rule 242 is the antecedent to the current accredited investor definition. Adopted in 1980, Rule 242 was an exemption from registration for sales to an unlimited number of ''accredited persons'' and to 35 other purchasers.[125] Included as accredited persons were certain institutional investors: Banks, insurance companies, certain employee benefit plans, investment companies, and small business investment companies (''SBICs''). Regarding which institutions were to be included in this list, the Commission noted that ''[t]he definition of accredited person is similar to provisions found in state securities laws, in the ALI Federal Securities Code, and in proposed legislation,''[126] none of which included registered investment advisers. In adopting Regulation D, the Commission used Rule 242's list of institutional investors, adding only business development companies.[127]

When the Commission amended the definition of accredited investor in 1988 to include savings and loan associations, credit unions, and registered broker-dealers, the Commission stated that there did not appear to be a compelling reason to distinguish these newly included institutions from those that were already treated as accredited investors, noting that most states already treated these new entities as institutional investors.[128]

The Uniform Securities Act[129] was amended in 2002, and the definition of institutional investor therein was expanded to include, among others, SEC-registered investment advisers acting for their own accounts.[130] Twenty states have adopted a version of the 2002 Uniform Securities Act.[131] As registered investment advisers are now generally considered to be institutional investors under state law, following the rationale the Commission applied in 1988, we see no compelling reason to distinguish SEC- and state-registered investment advisers from those institutional investors already treated as accredited investors.

We estimate that there are currently approximately 13,400 SEC-registered investment advisers and approximately 17,500 state-registered investment advisers that would be covered by the proposed rule change. We are not able to estimate how many of those SEC- or state-registered investment advisers may meet the $5 million assets test under Rule 501(a)(3) and therefore currently qualify as accredited investors. Because registered investment advisers, like the other entity types listed in Rule 501(a)(1), appear to have the requisite financial sophistication needed to conduct meaningful investment analysis, we believe it is appropriate to extend accredited investor status to all SEC- and state-registered investment advisers.

Request for Comment

20. Should SEC- and state-registered investment advisers be added to the list of entities specified in Rule 501(a)(1) and qualify as accredited investors, as proposed? Alternatively, should only SEC-registered investment advisers qualify as accredited investors? If so, why? Should we allow exempt reporting advisers to qualify as accredited investors?[132] If so, should exempt reporting advisers be subject to additional conditions?

2. Rural Business Investment Companies

A rural business investment company (''RBIC'') is defined in Section 384A of the Consolidated Farm and Rural Development Act[133] as a company that is approved by the Secretary of Agriculture and that has entered into a participation agreement with the Secretary.[134] RBICs are intended to promote economic development and the creation of wealth and job opportunities in rural areas and among individuals

[123] *See* Section II.A above for a summary of the categories of entities covered by the current rule.

[124] *See* Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3).

[125] *See* Rule 242 Adopting Release at 6363.

[126] *See* Exemption of Limited Offers and Sales by Corporate Issuers, Release No. 33–6121 (September 11, 1979) [44 FR 54258 at 54259 (Sept. 18, 1979)].

[127] *See* Regulation D 1982 Adopting Release.

[128] *See* Regulation D 1988 Adopting Release at 7866, noting that ''[m]ost of the states in their institutional investor exemptions already exempt securities offerings to these categories of investors.'' *See also* footnote 11 of the Regulation D 1988 Adopting Release, describing Section 402(b)(8) of the Uniform Securities Act which ''exempts any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.''

[129] The Uniform Securities Act was developed by the National Conference of Commissioners on Uniform State Laws as a model securities regulation statute that the states could choose to use as a basis for their own statutes. *See https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9b2b8f23-651c-c727-e234-3af8b5ab1b6e&forceDialog=0.*

[130] *See* Section 102(11) of the Uniform Securities Act (2002). *See also* Section 202(13) of the Uniform Securities Act (2002) (exempting a sale or offer to sell to an institutional investor from certain registration and filing requirements).

[131] *See https://www.uniformlaws.org/committees/community-home?CommunityKey=8c3c2581-0fea-4e91-8a50-27eee58da1cf.*

[132] An exempt reporting adviser is an investment adviser that qualifies for the exemption from registration under Section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, or under Rule 203(m)–1 of the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than $150 million. *See* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39646 (July 6, 2011)].

[133] 7 U.S.C. 2009cc.

[134] *See* Public Law 115–417 (2019). To be eligible to participate as an RBIC, the company must be a newly formed for-profit entity or a newly formed for-profit subsidiary of such an entity, have a management team with experience in community development financing or relevant venture capital financing, and invest in enterprises that will create wealth and job opportunities in rural areas, with an emphasis on smaller enterprises. *See* 7 U.S.C. 2009cc–3(a).

living in such areas.[135] Their purpose is similar to the purpose of SBICs, which are intended to increase access to capital for growth stage businesses.[136] Because SBICs and RBICs share the common purpose of promoting capital formation in their respective sectors, advisers to SBICs and RBICs are treated similarly under the Advisers Act in that they have the opportunity to take advantage of expanded exemptions from investment adviser registration.[137] Because of their common purpose, we also believe they should be treated similarly under the Securities Act. SBICs are already accredited investors under Rule 501(a)(1). We therefore propose to include RBICs as accredited investors under Rule 501(a)(1).

Request for Comment

21. Should RBICs be added to the list of entities specified in Rule 501(a)(1) and qualify as accredited investors, as proposed? Is there any reason to treat RBICs differently than SBICs in this regard?

3. Limited Liability Companies

Rule 501(a)(3) sets forth the following types of entities that qualify for accredited investor status if they have total assets in excess of $5 million and were not formed for the specific purpose of acquiring the securities being offered: Organizations described in section 501(c)(3) of the Internal Revenue Code, corporations, Massachusetts or similar business trusts, and partnerships.[138] This list does not include limited liability companies, which have become a widely adopted corporate form since the Commission last updated the accredited investor rules in 1989 to include additional entities.[139]

In 1977, the state of Wyoming was the first state to enact a statute authorizing the creation of a limited liability company.[140] However, more widespread adoption of the limited liability company as a corporate form did not occur until more than a decade later.[141] Indeed, it took until 1996 for all fifty states to enact limited liability company statutes.[142] The slow adoption of the limited liability company as a corporate form may help explain why limited liability companies were not included in the Regulation D 1982 Adopting Release, the Regulation D 1988 Adopting Release, or the Regulation D 1989 Adopting Release, which together expanded Rule 501(a)(3) to include the enumerated list as it exists today.

Given the widespread adoption of the limited liability company as a corporate form, we propose to include limited liability companies in Rule 501(a)(3). The proposed amendment would codify a longstanding staff position that limited liability companies that satisfy the other requirements of the definition are eligible to qualify as accredited investors under Rule 501(a)(3).[143] One commenter responding to the Concept Release supported the inclusion of limited liability companies as accredited investors under Rule 501(a)(3).[144]

Due to a lack of publicly available information about limited liability companies, we are unable to estimate the number of limited liability companies that would qualify as accredited investors under the proposed rule. We believe that limited liability companies that meet the requirements of Rule 501(a)(3), including the assets test, should be considered to have the requisite financial sophistication to qualify as accredited investors. Moreover, we are not aware of abuses or concerns associated with the current treatment of limited liability companies that satisfy the other requirements of the definition as accredited investors that would warrant their exclusion from the definition.

We are aware that some individuals may prefer to make investments through an entity instead of on an individual basis, and we understand that frequently such individuals will opt to use the limited liability company form of organization. In such cases, the limited liability company may not qualify under Rule 501(a)(3) if it was formed for the specific purpose of acquiring the securities being offered, regardless of the amount of assets held by the LLC. However, because Rule 501(a)(8) accredits any entity in which all of the equity owners are accredited investors, a limited liability company formed for this purpose may still qualify as an accredited investor under such rule.[145]

We note that Rule 501(a)(4) includes as an accredited investor any director, executive officer, or general partner of the issuer of the securities being offered or sold. The term ''executive officer'' is defined in Rule 501(f) as ''the president, any vice president in charge of a principal business unit, division or function, as well as any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer.'' We are of the view that a manager of a limited liability company performs a policy making function for the issuer equivalent to that of an executive officer of a corporation under Rule 501(f), and therefore we do not believe it is necessary to amend Rule 501(a)(4) or Rule 501(f) to specifically include managers of limited liability companies. We believe that such managers, through their knowledge and management of the issuer, are likely to be sophisticated financially and capable of fending for themselves in evaluating investments in the limited liability company's securities.

Request for Comment

22. Should limited liability companies be added to the list of entities specified in Rule 501(a)(3), as proposed?

23. If limited liability companies are listed in Rule 501(a)(3), should we further amend our rules to specifically include managers of limited liability companies as executive officers under Rule 501(f)? Instead of all managers, should we limit this provision to managing members, which would preclude third-party managers from being considered executive officers under Rule 501(f)? Alternatively, should we include managers of limited liability companies in Rule 501(a)(4)'s list of insiders who may qualify as accredited investors?

[135] *http://www.rd.usda.gov/programs-services/rural-business-investment-program.*

[136] *https://www.sba.gov/partners/sbics.*

[137] Advisers to solely RBICs and advisers to solely SBICs are exempt from investment adviser registration. Advisers Act Sections 203(b)(8) and 203(b)(7), respectively. The venture capital fund adviser exemption deems RBICs and SBICs to be venture capital funds for purposes of the exemption. 15 U.S.C. 80b–3(l). The private fund adviser exemption excludes the assets of RBICs and SBICs from counting towards the $150 million threshold. 15 U.S.C. 80b–3(m).

[138] *See* Rule 501(a)(3).

[139] *See* Regulation D 1989 Adopting Release.

[140] *See* Susan Pace Hamill, ''The Story of LLCs: Combining the Best Features of a Flawed Business Tax Structure'' in Business Tax Stories: An In-Depth Look at Ten Leading Developments in Corporate and Partnership Taxation (Foundation Press, 2005), *available at https://www.law.ua.edu/misc/bio/hamill/Chapter%2010--Business%20Tax%20Stories%20(Foundation).pdf.*

[141] *Id.* at 297 (noting that the State of Florida enacted a limited liability company statute in 1982, but that the next state to adopt a similar statute did not do so until 1990).

[142] *Id.*

[143] *See* Division of Corporation Finance interpretive letter to Wolf, Block, Schorr and Solis-Cohen (Dec. 11, 1996); and question number 255.05 of Securities Act Rules Compliance and Disclosure Interpretations, *available at https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.*

[144] *See* MFA and AIMA Letter.

[145] As discussed below in Section II.C.5, we are proposing to add a note to Rule 501(a)(8) that would clarify the application of Rule 501(a)(8) when the equity owner is itself an entity rather than a natural person.

4. Other Entities Meeting an Investments-Owned Test

In addition to limited liability companies, other types of entities, such as Indian tribes, labor unions, governmental bodies and funds, and entities organized under the laws of a foreign country, are not specifically listed in the accredited investor definition.

In the 2015 Staff Report, the Commission staff recommended that the Commission ''consider modifying the definition to permit any entity with investments in excess of $5 million, and not formed for the specific purpose of investing in the securities offered, to qualify as an accredited investor.'' [146] The staff noted that a definition of investments ''based on the definition of investments in Rule 2a51–1(b) would promote consistency across securities laws and provide a predictable framework.'' [147] Responses were mixed, with several commenters supporting the recommendation [148] and other commenters opposing it.[149]

The Concept Release requested comment on whether the Commission should revise the definition to expand the types of entities that may qualify as accredited investors, and if so, what types of entities should be included. Several commenters supported expanding the definition to include specific additional entity types, including Indian tribes [150] and certain state and local governmental entities.[151]

The Concept Release also requested comment on whether the Commission should replace all $5-million-total-assets thresholds with $5-million-total-investments thresholds, while including all entities instead of enumerating certain entities. While one commenter opposed replacing the asset test with an investments test,[152] several commenters supported allowing all entities owning $5 million in investments to qualify as an accredited investor.[153]

In response to these comments and recommendations, we are proposing to add a new category in the accredited investor definition for any entity owning investments in excess of $5 million that is not formed for the specific purpose of acquiring the securities being offered.[154] As shown by the emergence of limited liability companies, it is possible that an entirely new corporate form could gain acceptance but not come within the scope of Rule 501(a). Proposed Rule 501(a)(9) is intended to capture all existing entity forms not already included within Rule 501(a), such as Indian tribes and governmental bodies, as well as those entity types that may be created in the future.

We believe requiring $5 million in investments instead of assets for this ''catch-all'' category of entities may better demonstrate that the investor has experience in investing and is therefore more likely to have a level of financial sophistication similar to that of other institutional accredited investors. For example, certain types of entities that would be covered by the proposed amendment, such as governmental entities, may have $5 million in non-financial assets such as land, buildings, and vehicles, but not have any investment experience. With respect to this new category of entities, we believe that an investments test may be more likely than an assets-based test to serve as a reliable method for ascertaining whether an entity is likely to require the protections of Securities Act registration.

To assist both issuers and investors, we propose to incorporate the definition of investments from Rule 2a51–1(b) under the Investment Company Act, which includes, among other things: securities; real estate, commodity interests, physical commodities, and non-security financial contracts held for investment purposes; and cash and cash equivalents.[155] By using an existing definition, we hope to alleviate confusion and facilitate compliance.

Request for Comment

24. Should we add a new category to the accredited investor definition for any entity with investments in excess of $5 million that is not formed for the specific purpose of acquiring the securities being offered, while maintaining the current $5 million assets test for entities currently listed in Rules 501(a)(3) and (a)(7), as proposed? Are the entities that would be eligible under proposed Rule 501(a)(9) sufficiently different in nature from the enumerated entities in Rules 501(a)(3) and (a)(7) such that an investment test should be applied to demonstrate financial sophistication? If not, should Rule 501(a)(3) be expanded to include any entity that has more than $5 million in assets?

25. Instead of using the catch-all ''any entity'' in proposed Rule 501(a)(9), should we enumerate specific entity types? If so, which entity types should we enumerate?

26. Should any restrictions be applied with respect to entities covered by proposed Rule 501(a)(9)? For example, should we consider any restrictions on entities organized or incorporated under the laws of a foreign country?

27. Should we use an asset test instead of an investments test in proposed Rule 501(a)(9)? Should the current $5 million asset test be adjusted?

28. Is $5 million in investments the appropriate threshold for the proposed new category?

29. Proposed Rule 501(a)(9) is intended to capture all existing entity forms not already included within Rule 501(a), including Indian tribes and governmental bodies, that meet the proposed $5 million investments test. Would the investments test have a disproportionate impact on Indian tribes?

30. Should we use the definition of investments from Rule 2a51–1(b) under the Investment Company Act? If not, what definition should we use? Are market participants familiar with the definition such that implementation would not be unduly difficult?

31. We are not proposing to revise Rule 501(a)(7). As a result, trusts with investments of more than $5 million would not need purchases to be directed by a sophisticated person in order to

[146] *See* 2015 Staff Report at 92.

[147] *Id.*

[148] *See, e.g.,* letter from the Small Business Investor Alliance dated March 7, 2016 (''2016 SBIA Letter''); NSBA Letter; and 2016 NASAA Letter (''An investments test is a better gauge of financial sophistication than simply analyzing net worth or income'').

[149] *See, e.g.,* K. Beagle Letter; Cornell Law Clinic Letter; and Reardon Letter.

[150] *See* CrowdCheck Letter; NAFOA Letter; G. Clarkson Letter; J. Wallin Letter; REDCO Letter; and IMDG Letter. The NAFOA Letter, which the G. Clarkson Letter, J. Wallin Letter, REDCO Letter, and IMDG Letter all supported, recommended revising Rule 501(a)(1) to include ''any plan established and maintained by a tribal government, its political subdivisions, or any agency or instrumentality of a tribal government or its political subdivisions, for the benefit of its citizens (members), if such plan has total assets in excess of $5,000,000 in non-trust assets,'' with the term ''non-trust asset'' defined as ''an asset that is under the direct control of a tribe or tribal entity, and which is not held in trust by the United States for the benefit of the tribe.'' In addition, the 2019 Small Business Forum Report included a recommendation that the Commission revise the accredited investor definition to provide tribal governments parity with state governments.

[151] *See* CMTA Letter (supporting the inclusion of state and local governments having $100 million of assets under management as accredited investors).

[152] *See* IPA Letter (asserting that such a change would ''unduly [shrink] the current pool of eligible investors'').

[153] *See* CMTA Letter; EquityZen Letter; ICI Letter; BlackRock Letter; Artivest Letter; ABA FR of Sec. Comm. Letter; Sec. Reg. Comm. of N.Y.St. B.A. Letter; and letter from PFM Asset Management LLC dated December 6, 2019 (''PFM Letter'').

[154] Proposed Rule 501(a)(9).

[155] *See* Rule 2a51–1(b), which was adopted by the Commission in Privately Offered Investment Companies, Release No. IC–22597 (Apr. 3, 1997) [62 FR 17512 (April 9, 1997)].

qualify as an accredited investor. Is this an appropriate result? Should trusts have purchases directed by a sophisticated person in order to qualify under proposed Rule 501(a)(9)?

32. In addition to, or in lieu of, proposed Rule 501(a)(9), should we revise the definition of accredited investor by replacing the $5 million assets test that currently applies to certain entities with a $5 million investments test? If so, should we also grandfather issuers' existing investors that are accredited investors under the current definition with respect to future offerings of their securities? Alternatively, should we retain the current assets test but revise the $5 million threshold? If so, what threshold would be appropriate?

5. Proposed Note to Rule 501(a)(8)

Under Rule 501(a)(8), an entity qualifies as an accredited investor if all of the equity owners of that entity are accredited investors. Because in some instances, an equity owner of an entity is another entity, not a natural person, we are proposing to add a note to Rule 501(a)(8) that would clarify that, in determining accredited investor status under Rule 501(a)(8), one may look through various forms of equity ownership to natural persons.[156] Thus, if those natural persons are themselves accredited investors, and if all other equity owners of the entity are accredited investors, the entity would be an accredited investor under Rule 501(a)(8). We believe this approach is appropriate because the intent of Rule 501(a)(8) is to qualify as accredited investors those entities that are 100% owned by accredited investors and, for this purpose, it should not matter whether the ownership is direct or indirect.

Request for Comment

33. Should we add a note to clarify that one may look through various forms of equity ownership to natural persons when determining accredited investor status under Rule 501(a)(8)?

6. Certain Family Offices and Family Clients

In response to the 2015 Staff Report, the Commission received comments from a group of ''family offices'' recommending that the Commission amend the accredited investor definition to include ''family offices'' and ''family clients,'' as the Commission has defined those terms.[157] ''Family offices'' are entities established by wealthy families to manage their wealth, plan for their families' financial future, and provide other services to family members. The Commission has previously observed that single family offices generally serve families with at least $100 million or more of investable assets.[158] Family offices generally meet the definition of ''investment adviser'' under the Advisers Act, as the Commission has interpreted the term, because, among the variety of services provided, family offices are in the business of providing advice about securities for compensation. However, the Commission adopted the ''family office rule'' [159] in 2011 to exclude single family offices from regulation under the Advisers Act under certain conditions.[160] Under that rule, a family office generally is a company that has no clients other than ''family clients.'' [161] ''Family clients'' generally are family members, former family members, and certain key employees of the family office, as well as certain of their charitable organizations, trusts, and other types of entities.[162]

A commenter on the 2015 Staff Report stated that the public policy supporting the family office rule ''is based on the notion that members of a family will protect each other, and that the investor protections of the Investment Advisers Act do not need to apply. . . .'' [163] The commenter suggested this public policy should apply to other securities laws as well.[164] The commenter also explained that the different standards under Commission rules sometimes result in an anomaly that a particular family client might not meet the definition of accredited investor while it could meet the definition of ''qualified purchaser,'' [165] which has a higher financial threshold. The commenter reiterated these assertions in its recent comment letter on the Concept Release and suggested that we add a new category of investor to the accredited investor definition that would apply to ''(i) a Family Office with assets under management in excess of $5,000,000 and (ii) a Family Office or a Family Client (a) that is not formed for the specific purpose of acquiring the securities offered and (b) whose purchase is directed by a person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of a potential investment.'' [166] Another commenter on the Concept Release raised similar points and urged the Commission to, among other things, amend the definition of accredited investor to include a family client of a family office so long as it relied on advice and sophistication of the family office.[167]

We believe the policy rationale for adopting the family office rule also supports considering amendments to the definition of accredited investor for family offices and their family clients. We believe family offices can sustain the risk of loss of investment, given their assets. As a result, we are proposing to add new categories to the accredited investor definition for ''family offices'' and ''family clients of family offices.''

Drawing from characteristics in the current definition of accredited investor and from commenter feedback, we propose to amend the definition to include any ''family office'' with at least $5 million in assets under

[156] This proposed note is consistent with an existing staff interpretation. *See* question number 255.06 of Securities Act Rules Compliance and Disclosure Interpretations, *available at https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.*

[157] *See* letter from Martin E. Lybecker, Perkins Coie LLP (on behalf of Private Investor Coalition) dated August 8, 2016 (''2016 PIC Letter'').

[158] *See* Family Offices, Release No. IA–3098 (Oct. 12, 2010) [75 FR 63753 (Oct. 18, 2010)] (''Family Office Proposing Release''). Industry observers have estimated that there are 2,500 to 3,000 single family offices managing more than $1.2 trillion in assets. *See* 2016 PIC Letter.

[159] 17 CFR 275.202(a)(11)(G)–1.

[160] *See* Family Offices, Release No. IA–3220 (June 22, 2011) [76 FR 37983 (June 29, 2011)] (''Family Office Adopting Release''). *See also* Family Office Proposing Release (''We viewed the typical single family office as not the sort of arrangement that Congress designed the Advisers Act to regulate. We also were concerned that application of the Advisers Act would intrude on the privacy of family members. . . . The Act was not designed to regulate the interactions of family members in the management of their own wealth.'').

[161] A family office also (1) must be wholly owned by family clients and exclusively controlled (directly or indirectly) by one or more family members or family entities (each as defined in the rule), and (2) must not hold itself out to the public as an investment adviser. *See* Rule 202(a)(11)(G)-1(b).

[162] For a full list of family clients, see 17 CFR 275.202(a)(11)(G)–1(d)(4). The family office rule defines a ''family member'' to include ''all lineal descendants (including by adoption, stepchildren, foster children, and individuals that were a minor when another family member became a legal guardian of that individual) of a common ancestor (who may be living or deceased), and such lineal descendants' spouses or spousal equivalents; provided that the common ancestor is no more than 10 generations removed from the youngest generation of family members.'' 17 CFR§ 275.202(a)(11)(G)–1(d)(6).

[163] *See* 2016 PIC Letter.

[164] *See Id.* (recommending changes not only to the definition of ''accredited investor,'' but also to the definitions of ''qualified purchaser'' and ''investment company'' in the Investment Company Act).

[165] Investment Company Act Section 2(a)(51)(A) (15 U.S.C. 80a–2(a)(51)(A)).

[166] *See* 2019 PIC Letter.

[167] *See* letter from Institutional Limited Partners Association dated September 24, 2019.

management [168] and its ''family clients,'' [169] each as defined in the family office rule. We believe requiring the family office to have a minimum amount of assets under management, as suggested by commenters, would ensure the family office has sufficient assets to sustain the risk of loss. In addition, the proposed definition would apply only to a family office whose purchase is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment. In order to avoid improper reliance on the amended rule, we also propose that the family office not be formed for the specific purpose of acquiring the securities offered [170] and that a family client must be a family client of a family office that meets these requirements.[171] We expect that all or most current family offices would be accredited investors under the proposed amendments to the definition.

Request for Comment

34. Should family offices and their family clients qualify as accredited investors?

35. Do the proposed new categories for these investors have the proper scope? If not, what parameters would be more appropriate? If yes, which ones and why? If not, why not? Are we correct that all or most family offices and their clients would qualify as accredited investors under the proposed amendments?

36. Should we require that the purchase be directed by a person who has the requisite knowledge and experience in financial and business matters? How would issuers assess this in practice?

37. Would it be appropriate to impose a financial threshold for a family office to qualify as an accredited investor as proposed? Should we also impose a financial threshold for a family client to qualify? In either case, what is the appropriate threshold? For instance, should there be a minimum investment amount or minimum assets under management?

38. Are there specific categories of family clients that should be excluded? For instance, should the proposed rule exclude anyone who is not a ''family member,'' as defined in the family office rule? [172] Should a family client qualify as an accredited investor if it becomes a ''former family client,'' as defined in the family office rule? [173]

39. Rule 202(a)(11)(G) 1 under the Advisers Act deems a person who receives assets upon the death of a family member (or other involuntary transfer from a family member) to be a family client (''a beneficiary'') for only one year following the involuntary transfer.[174] Should such a beneficiary qualify as an accredited investor during that year if the beneficiary would not otherwise qualify?

D. Permit Spousal Equivalents To Pool Finances for the Purposes of Qualifying as Accredited Investors

Under the current accredited investor definition, an individual, together with a spouse, may qualify as an accredited investor by either surpassing the $300,000 joint income threshold [175] or the $1 million joint net worth threshold.[176] The Commission did not define the term ''spouse'' when it originally adopted Regulation D,[177] nor did it do so when adding the joint income test to the accredited investor definition in 1988.[178] Currently, references to ''spouse'' in Rule 501 include individuals married to persons of the same sex.

The 2015 Staff Report noted uncertainties regarding whether persons in legally recognized unions, such as domestic partnerships, civil unions, and same-sex marriages, were considered spouses for purposes of the accredited investor definition. The 2015 Staff Report recommended that the Commission consider adding the term ''spousal equivalent'' to the accredited investor definition to permit spousal equivalents to pool finances for the purpose of qualifying as accredited investors. Commenters' responses were mixed, with several commenters generally supporting the recommendation [179] and one commenter opposing it.[180]

To address any uncertainties, we propose to allow natural persons to include joint income from spousal equivalents when calculating joint income under Rule 501(a)(6), and to include spousal equivalents when determining net worth under Rule 501(a)(5). We see no reason to distinguish between different types of relationship structures for the purpose of these rules and, in that regard, believe that the proposed amendments would remove unnecessary barriers to investment opportunities for spousal equivalents.

The proposed amendments would define spousal equivalent as a cohabitant occupying a relationship generally equivalent to that of a spouse. The Commission previously has used this formulation of spousal equivalent.[181] As discussed above, a family office is exempted from regulation under the Advisers Act when the family office advises ''family clients.'' [182] The Commission defined ''family clients'' to include ''family members,'' of which ''spousal equivalents'' are a part, with ''spousal equivalent'' defined as a cohabitant occupying a relationship generally equivalent to that of a spouse.[183] The crowdfunding rules adopted to implement the requirements of Title III of the JOBS Act also use this definition of ''spousal equivalent.'' [184] In Regulation Crowdfunding, the Commission included the term ''spousal equivalent'' in the definition of the term ''member of the family of the purchaser or the equivalent,'' with ''spousal equivalent'' having the same definition used in the Advisers Act and as the one we propose in this release.[185] In response to the Concept Release, several commenters supported allowing spousal equivalents to pool finances for purposes of qualifying as accredited investors.[186]

[168] Proposed Rule 501(a)(12).

[169] Proposed Rule 501(a)(13).

[170] Proposed Rule 501(a)(12)(i).

[171] Proposed Rule 501(a)(13).

[172] *See* Rule 202(a)(11)(G)–1(d)(6).

[173] *See* Rule 202(a)(11)(G)–1(d)(7).

[174] *See* Rule 202(a)(11)(G) 1(b).

[175] Rule 501(a)(6).

[176] Rule 501(a)(5).

[177] *See* Regulation D 1982 Adopting Release.

[178] *See* Regulation D 1988 Adopting Release.

[179] *See* CFA/AFR Letter (stating that this recommended change ''helps to bring the securities laws up to date with modern values and expectations''); NSBA Letter (noting that this recommended change would ''expand opportunities to invest in small businesses to more households''); and 2016 SBIA Letter.

[180] *See* Cornell Law Clinic Letter (noting that federal law does not treat marriages as equivalent to civil unions and domestic partnerships, and that ''the family office rule, accountant independence standards, and crowdfunding rules are fundamentally different in nature from the accredited investor definition'').

[181] Though the Commission rule governing accountant independence also includes ''spousal equivalents,'' the term is not defined in that rule. *See* 17 CFR 210.2–01.

[182] *See* Family Office Adopting Release.

[183] Rule 202(a)(11)(G) 1(d)(9).

[184] The JOBS Act provides that securities issued in reliance on the crowdfunding exemption may not be transferred by the purchaser for one year after the date of purchase, except when transferred to, among other persons, ''a member of the family of the purchaser *or the equivalent*'' (emphasis added). JOBS Act Section 302(e)(1)(D).

[185] 17 CFR 227.501(c).

[186] *See* J. Wallin Letter; EquityZen Letter; 2019 SBIA Letter; IPA Letter; Artivest Letter; ABA FR of Sec. Comm. Letter; Sec. Reg. Comm. of N.Y.St. B.A. Letter; and CrowdCheck Letter. In addition to these comments, the Commission previously received a request for rulemaking petition from David L. Dallas, Jr. dated September 16, 2013, *available at https://www.sec.gov/rules/petitions/2013/petn4-*

We see no need to deviate from the definition of ''spousal equivalent'' already used in Commission rules. Revising Rule 501(a)(5) and (6) to permit spousal equivalents to pool their financial resources would promote consistency with these existing rules.

Request for Comment

40. Should we allow spousal equivalents to pool finances for the purpose of qualifying as accredited investors? If so, is our proposed definition of ''spousal equivalent'' appropriate? If not, what definition should we use?

E. Proposed Amendment to Rule 215

Rule 215 defines the term ''accredited investor'' under Section 2(a)(15) of the Securities Act [187] for purposes of Section 4(a)(5) of the Securities Act.[188] The accredited investor definition in Rule 215 has historically been substantially consistent but not identical to the accredited investor definition in Rule 501(a) of Regulation D. For example, in contrast to the definition in Rule 501(a), the scope of the accredited investor definition in Rule 215 does not include banks, insurance companies, registered investment companies, business development companies as defined in Section 2(a)(48) of the Investment Company Act, or SBICs. In addition, the accredited investor definition in Rule 215 does not contain a reasonable belief standard as in Rule 501(a).[189]

We propose to amend the accredited investor definition in Rule 215 to conform to the amendments to the accredited investor definition in Rule 501(a). To ensure uniformity in the accredited investor definition in both provisions, we propose to replace the existing definition in Rule 215 with a cross reference to the accredited investor definition in Rule 501(a). By including this cross reference, the definition of ''accredited investor'' in Rule 215 as amended would be expanded to include any amendments to the accredited investor definition in Rule 501(a), as well as those entities that are presently included in the definition in Rule 501(a) but not the definition in Rule 215. As amended, the definition would also contain the same reasonable belief standard as in Rule 501(a).

Request for Comment

41. Should the Commission amend Rule 215 by replacing the existing text with a cross reference to the accredited investor definition in Rule 501(a) as proposed? Should the Commission instead incorporate any amendments to the accredited investor definition in the text of Rule 215?

42. Would amending the scope of the accredited investor definition in Rule 215 to encompass any amendments to the accredited investor definition in Rule 501(a) as well as certain entities that are currently included in the definition in Rule 501(a) raise concerns regarding the application of the Section 4(a)(5) exemption? Would adding a reasonable belief standard to the definition in Rule 215 raise concerns?

43. Would the proposed amendment to the accredited investor definition in Rule 215 affect an issuer's considerations in determining whether to use the Section 4(a)(5) exemption? Would issuers be more likely to use the Section 4(a)(5) exemption?

F. Proposed Amendment to Rule 163B

In registered offerings under the Securities Act, issuers may engage in test-the-waters communications with qualified institutional buyers or institutional accredited investors to gauge their interest in a contemplated offering. Under Section 5(d) of the Securities Act, an emerging growth company, as defined in Securities Act Rule 405, is permitted to engage in oral or written communications with potential investors that are either qualified institutional buyers, as defined in Rule 144A(a)(1), or institutions that are accredited investors as defined in Rule 501(a), to offer securities before or after the filing of a registration statement. In September 2019, the Commission adopted Securities Act Rule 163B, which extends this testing-the-waters accommodation to all issuers.[190] Pursuant to Rule 163B, an issuer may engage in test-the-waters communications with potential investors that are, or that the issuer or person authorized to act on its behalf reasonably believes are, qualified institutional buyers, as defined in Rule 144A, or institutions that are accredited investors, as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), or (a)(8).

In connection with the proposed amendments to the accredited investor definition in Rule 501(a), we propose to amend Rule 163B to include a reference to proposed Rules 501(a)(9) and (a)(12). The proposed amendment to Rule 163B would maintain consistency between Rule 163B and Section 5(d), in that institutional accredited investors under proposed Rules 501(a)(9) and (a)(12), if adopted, would automatically fall within the scope of Section 5(d). We believe that expanding the types of entities with whom an issuer may engage in these test-the-waters communications, by amending the accredited investor definition and the qualified institutional buyer definition,[191] may increase the use of Rule 163B, as well as Section 5(d), and may result in issuers more effectively gauging market interest in contemplated registered offerings. We also believe that the expanded scope of entities that would receive these test-the-waters communications under the proposed amendment to Rule 163B have the financial sophistication to process this information and to review the registration statement that is filed with the Commission against the test-the-waters materials before making an investment decision.

Request for Comment

44. Should the Commission amend Securities Act Rule 163B to include a reference to proposed Rules 501(a)(9) and (a)(12)?

45. Would the proposed amendments to the accredited investor definition and the qualified institutional buyer definition raise concerns in connection with the test-the-waters communications that issuers may engage in pursuant to Rule 163B or Section 5(d) of the Securities Act?

G. Proposed Amendment to Exchange Act Rule 15g–1

Pursuant to Exchange Act Rule 15g–2 through Rule 15g–6, broker-dealers are required to disclose certain specified

665.pdf, requesting that the Commission ''revise Rule 501 of Regulation D to afford to persons in civil unions, domestic partnerships, and similar relationships, the same right and opportunity to qualify for accredited investor status as married persons have.''

[187] 15 U.S.C. 77b(a)(15). Section 2(a)(15) sets forth an enumerated list of entities that qualify as accredited investors as well as ''any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.''

[188] 15 U.S.C. 77d(a)(5). Section 4(a)(5) of the Securities Act provides an exemption for issuers for the offer and sale of securities to accredited investors if the aggregate offering amount does not exceed $5 million; the issuer, or anyone acting on its behalf, does not engage in general solicitation or general advertising; and the issuer files a notice on Form D with the Commission. Based on DERA staff's review of Form D filings from January 1, 2009 through November 30, 2019, no issuer reported relying on the Section 4(a)(5) exemption during that time period.

[189] Under Rule 501(a), natural persons and entities that come within any of eight enumerated categories in the definition, or that the issuer reasonably believes comes within any of the categories, are accredited investors.

[190] Solicitations of Interest Prior to a Registered Public Offering, Release No. 33–10699 (Sept. 25, 2019) [84 FR 53011 (Oct. 4, 2019)].

[191] The proposed amendments to the qualified institutional buyer definition in Rule 144A are discussed below in Section IV.

information to their customers prior to effecting a transaction in a ''penny stock,'' as defined in 17 CFR 240.3a51–1 under the Exchange Act.[192] Rule 15g–1 under the Exchange Act exempts certain transactions from these disclosure requirements. In particular, paragraph (b) of Rule 15g–1 exempts transactions in which the customer is an institutional accredited investor, as defined in Rule 501(a)(1), (2), (3), (7), or (8) of Regulation D.[193]

In connection with the proposed amendments to the accredited investor definition in Rule 501(a), we propose to amend Rule 15g–1(b) to include a reference to proposed Rules 501(a)(9) and (a)(12).[194] We believe that, like the institutional accredited investors currently within the scope of Rule 15g–1(b) as well as those that we propose to add to the accredited investor definition in Rule 501(a)(1), entities owning investments in excess of $5 million that are not formed for the specific purpose of acquiring the securities being offered and family offices are less in need of the protections provided by Rules 15g–2 through 15g–6.[195] We believe that, consistent with the categories of institutional accredited investors presently listed in Rule 15g–1(b), entities within the scope of proposed Rule 501(a)(9), family offices, and the other types of entities we propose to add to the accredited investor definition generally: Invest in speculative equity securities as part of an overall investment plan, have a good understanding of the risks of investing in penny stocks, and have the ability to obtain and evaluate independent information regarding these stocks.[196]

Request for Comment

46. Should the Commission amend Rule 15g–1(b) to include a reference to proposed Rule 501(a)(9)? Are there certain entities that would fall within the scope of proposed Rule 501(a)(9) that have more need for the disclosures required under Rules 15g–2 through 15g–6?

47. Should the Commission amend Rule 15g–1(b) to include a reference to proposed Rule 501(a)(12)?

48. As discussed above, the Commission is proposing to expand the list of entities that would qualify for accredited investor status under Rule 501(a)(1). Should the entities that are proposed to be added under Rule 501(a)(1) be included in the exemption set forth in Rule 15g–1(b)? Would certain of these entities have more need for the disclosures required under Rules 15g–2 through 15g–6?

49. As discussed above, the Commission is proposing to codify a longstanding staff position that limited liability companies that satisfy the other requirements of the definition are eligible to qualify as accredited investors under Rule 501(a)(3). Should these limited liability companies continue to be included in the exemption set forth in Rule 15g–1(b)? Do limited liability company investors have more need for the disclosures required under Rules 15g–2 through 15g–6?

III. Additional Requests for Comment on the Accredited Investor Definition

In the Concept Release, we requested comment on whether we should revise the financial thresholds in the accredited investor definition. Specifically, we requested comment on, among other things, three recommendations that the Commission staff included in the 2015 Staff Report: (1) Leaving the current income and net worth thresholds in place, subject to investment limits; (2) creating new, additional inflation-adjusted income and net worth thresholds that are not subject to investment limits; or (3) indexing all financial thresholds for inflation on a going-forward basis.[197] Table 3 below provides an overview of the feedback provided by commenters on the Concept Release about each of the three recommendations.

TABLE 3—RESPONSES TO REQUESTS FOR COMMENT ON FINANCIAL THRESHOLDS IN THE ACCREDITED INVESTOR DEFINITION

Staff request for comment	Responses from commenters
Leave the current income and net worth thresholds in place, subject to investment limits.	—Several commenters opposed subjecting the current thresholds to investment limits.[198] —Several commenters supported making the net worth and income requirements more inclusive.[199]
Add new inflation-adjusted income and net worth thresholds that are not subject to investment limits.	—Two commenters supported raising the income and net worth thresholds immediately.[200] —Several commenters opposed raising the income and net worth thresholds.[201]
Index all financial thresholds in the definition for inflation on a going-forward basis.	—Several commenters opposed indexing financial thresholds to inflation.[202] —Several commenters supported indexing financial thresholds to inflation going forward.[203]

[192] Rules 15g–1 through 15g–9 under the Exchange Act [17 CFR 240.15g–2 through 15g–9] are collectively known as the ''penny stock rules.'' *See also* Schedule 15G under the Exchange Act.

[193] In addition, Rule 15g–1(a), (d), (e), and (f) exempt certain other transactions from the disclosure requirements in Rules 15g–2 through 15g–6. Rule 15g–1(c) exempts transactions that meet the requirements of Regulation D or that are exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2). Rule 15g–1 also includes a provision the Commission can use to exempt by order any other transactions or persons from the penny stock rules as consistent with the public interest and the protection of investors.

[194] We are also proposing a technical amendment to Rule 15g–1(c) to update the reference to Section 4(2) of the Securities Act to reflect the current numbering scheme in Section 4.

[195] As discussed above, we are also proposing to amend a number of the existing categories in the accredited investor definition relating to institutional investors that fall within the scope of the exemption in Rule 15g–1(b).

[196] *See* Penny Stock Disclosure Rules, Release No. 34–29093 (Apr. 17, 1991) [56 FR 19165 (Apr. 25, 1991)] and Penny Stock Disclosure Rules, Release No. 34–30608 (Apr. 20, 1992) [57 FR 18004 (Apr. 28, 1992)].

[197] The comments on these recommendations received in response to the 2015 Staff Report are described in Section II.A.4 of the Concept Release. Following release of the 2015 Staff Report, the Commission continued to receive recommendations about revising the financial thresholds in the accredited investor definition from a number of parties. In July 2016, the Advisory Committee on Small and Emerging Companies recommended, among other things, that the Commission not change the current financial thresholds in the accredited investor definition except to adjust them, on a going-forward basis, to reflect inflation. See 2016 ACSEC Recommendations. The 2016, 2017, and 2018 Small Business Forum Reports all included a recommendation that the Commission maintain the monetary thresholds for accredited investors but did not include a recommendation for future inflation adjustments. The 2019 Small Business Forum Report included a recommendation that the Commission revise the dollar amounts in the definition to scale for geography, lowering the thresholds in states or regions with a lower cost of living.

In addition to comments received on the specific questions relating to inflation adjustments, the Commission also received input from commenters who questioned the correlation between wealth and financial sophistication and were of the view that the income and net worth tests fail to identify correctly those individuals who should be accredited investors.[204]

We believe that the current wealth-based criteria are useful for the identification of investors who do not require the protections afforded by registration, even though we also believe they have excluded investors who are financially sophisticated, such as those with certain professional certifications and designations who do not meet these criteria.[205] Accordingly, we believe the use of financial thresholds as one method of qualifying as an accredited investor is appropriate. These financial thresholds have not been adjusted for inflation since they were adopted.[206] For example, the $5 million asset test for certain entities, if adjusted for inflation since 1982 to 2019 dollars using the Consumer Price Index for All Urban Consumers (''CPI–U'') published by the Bureau of Labor Statistics (''BLS''), would result in a $13 million asset test. Similarly adjusting the $200,000 income test for natural persons results in a $520,000 threshold, while adjusting the $300,000 joint income test for natural persons from 1988 dollars to 2019 dollars would require a joint income of $632,000. Table 4 below sets forth our estimation of the approximate number and percentage of U.S. households that currently qualify as accredited investors under the existing criteria and that qualified as accredited investors in 1983 and 1989.[207]

TABLE 4—HOUSEHOLDS QUALIFYING UNDER EXISTING ACCREDITED INVESTOR CRITERIA

[Standard errors are in parentheses]

Basis for qualifying as accredited investor	1983		1989		2019	
	Number of qualifying households (millions)	Qualifying households as % of U.S. households	Number of qualifying households (millions)	Qualifying households as % of U.S. households	Number of qualifying households * (millions)	Qualifying households as % of U.S. households *
Individual income[208] threshold ($200,000)	0.44 (0.10)	0.53 (0.12)	4.3 (0.4)	4.7 (0.5)	11.2 (0.3)	8.9 (0.2)
Joint income threshold[209] ($300,000)	N/A	N/A	2.1 (0.3)	2.3 (0.4)	5.8 (0.2)	4.6 (0.2)
Net worth[210] ($1,000,000)	1.18 (0.17)	1.4 (0.20)	4.5 (1.0)	4.8 (1.1)	11.8 (0.3)	9.4 (0.2)
Overall number of qualifying households[211]	1.31 (0.18)	1.6 (0.21)	6.8 (1.0)	7.3 (1.1)	16.0 (0.3)	13.0 (0.2)

[198] *See* J. Wallin Letter; 2019 SBIA Letter; ABA FR of Sec. Comm. Letter; Sec. Reg. Comm. of N.Y.St. B.A. Letter; and CrowdCheck Letter.

[199] *See* letter from Logan B. dated June 24, 2019 (suggesting that the thresholds be lowered); letter from Herwig Konings dated June 24, 2019 (requesting the inclusion of more retail investors without specifically recommending that the thresholds be lowered); letter from J.C. dated July 10, 2019 (suggesting that the thresholds be lowered); letter from Stephen R. Steciak dated August 4, 2019 (suggesting a dollar credit against the net worth requirement if the investor was a college graduate or held a securities license); letter from Barry Hicks dated September 16, 2019 (suggesting that the thresholds be lowered); P. Rutledge Letter (suggesting that the thresholds be lowered if certain assets were excluded from the net worth definition); letter from Silicon Prairie Holdings dated September 24, 2019 (suggesting that the thresholds be lowered); letter from Luke Carriere dated September 24, 2019 (suggesting that the thresholds be lowered); letter from Steven Richards dated September 24, 2019 (suggesting that the thresholds be lowered); and REDCO Letter (suggesting that the net worth threshold be lowered for certain regions of the country).

[200] *See* letter from Marc Steinberg dated August 5, 2019; and letter from NASAA dated October 11, 2019 (''2019 NASAA Letter'').

[201] *See* Wefunder Letter; ACA Letter; HFA Letter; Funding Circle Letter; MLA Letter; J. Wallin Letter; Republic Letter; MFA and AIMA Letter; EquityZen Letter; D. Burton Letter; CoinList Letter; 2019 SBIA Letter; IPA Letter; Sec. Reg. Comm. of N.Y.St. B.A. Letter; and CrowdCheck Letter.

[202] *See* 2019 SBIA Letter; AngelList Letter; CCMC Letter; and IPA Letter.

[203] *See* Wefunder Letter; P. Rutledge Letter; CFA Institute Letter; MFA and AIMA Letter (stating that indexing to inflation would ''help to ensure that the thresholds have not been diluted over time''); Consumer Federation Letter; EquityZen Letter; ICI Letter; MA Secretary Letter; Davis Polk Letter; PIABA Letter; ADISA Letter; Artivest Letter; letter from Elizabeth D. de Fontenay et al. dated September 24, 2019 (stating that ''inflation undermines the effectiveness of the safeguards built into the Accredited Investor net-worth and income tests''); 2019 NASAA Letter; Sec. Reg. Comm. of N.Y.St. B.A. Letter; CrowdCheck Letter; and 2019 Advisory Committee Recommendation.

[204] *See, e.g.,* 2019 NASAA Letter; Consumer Federation Letter; and 2014 Investor Advisory Committee Recommendation.

[205] As described in the 2015 Staff Report, there are academic studies that lend support to the theory that wealth is correlated to financial sophistication. See Section IV.B of the 2015 Staff Report.

[206] *See* Regulation D 1982 Adopting Release; Regulation D 1988 Adopting Release; and Regulation D 1989 Adopting Release.

[207] For this analysis, we use the same methodology and variable definitions as the 2015 Staff Report. The underlying household data for this analysis was obtained from the Federal Reserve Board's Survey of Consumer Finances (the ''SCF'') for 2016, *available at https://www.federalreserve.gov/econresdata/scf/scfindex.htm.* The SCF is a triennial survey that provides insights into household income and net worth, where the household is considered to be the primary economic unit within a family. As of the date of this release, the most recent SCF data is from the 2016 survey. The SCF employs weights to make the data representative of the U.S. population. Thus, the 1983, 1989, and 2016 SCF and are representative of the U.S. population in 1983 (approximately 83.9 million households), 1989 (approximately 92.8 million households), and 2016 (approximately 125.9 million households), respectively.

The 2015 Staff Report used the definitions of income and net worth from Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Kevin B. Moore, John Sabelhaus, Jeffrey Thompson, and Richard A. Windle, Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin, Vol. 100, No. 4 (2014).

We estimate households and not individuals due to data limitations because the database underlying our analysis measures wealth and income at the household level. It should be noted that in the SCF database, income is reported at the household level. Similar to the 2015 Staff Report, we do not attempt to differentiate income based on marital status of the household because data on individual income from all sources is not publicly available in the database. As a result, accredited investor (household) estimates based on individual income thresholds are likely to be overestimated and would represent upper bounds. A household can have multiple family members with independent sources of income that qualify them as accredited investors based on income. We count them as one accredited investor for each household, which implies we are also likely underestimating the actual pool of accredited investors when we provide household estimates. Consequently, the household estimates we derive using the joint income threshold would represent a lower bound for individuals qualifying on the basis of income. The actual number of individuals that qualify as accredited investors on an income basis (individual or joint) would, in all likelihood, lie between the estimates that we derive for the individual income threshold and the joint income threshold.

The data above provides an estimate of the overall pool of qualifying households in the United States. It does not, however, represent the actual number of accredited investors that do or would invest in the Regulation D market or in other exempt offerings.[212] In addition, while we have information to estimate the number of some categories of accredited investor entities, we lack comprehensive data that will allow us to estimate the unique number of accredited investors across all categories of entities under Rule 501(a).

Notwithstanding the significant increase in the number of investors that qualify as accredited investors since 1982, we do not believe it necessary or appropriate to modify the definition's financial thresholds at this time.[213] According to the U.S. Census Bureau, the number of U.S. households has grown from approximately 83.9 million households to approximately 127.6 million households from 1983 to 2018, and the population of U.S. residents has grown from 236.4 million to an estimated 327.1 million over this same period.[214] Although it may be argued that an investor with an income of $200,000 or a net worth of $1 million in 2019 is not as ''wealthy'' as such an investor would have been in 1982, the income and net worth levels currently required in the definition still exceed, by a large margin, the mean and median household income and household net worth in all regions of the country.[215] Also, in 1982, the calculation of net worth included the value of the primary residence. In 2011, the Commission amended the net worth standard to exclude the value of the investor's primary residence.[216] Further, we believe that in evaluating the effectiveness of the current thresholds, it is appropriate to consider changes beyond the impact of inflation, such as changes over the years in the availability of information and advances in technologies. Given the rise of the internet, social media, and other forms of communication, information about issuers and other participants in the exempt markets is more readily available to a wide range of market participants. Technologies such as powerful home computers and mobile computing devices, as well software-based tools with which to evaluate investment opportunities, were not available to investors at the time the accredited investor definition was promulgated. In addition, we are not aware of widespread problems or abuses associated with Regulation D offerings to accredited investors that would indicate that an immediate and/or significant adjustment to the rule's financial thresholds is warranted.

We are also mindful that a significant reduction in the accredited investor pool through an increase in the definition's financial thresholds could have disruptive effects on the Regulation D market, which, as noted above, plays a vital role in U.S. capital formation.[217] For example, a sharp decrease in the accredited investor pool may result in a higher cost of capital for companies, particularly companies in regions of the country with lower venture capital activity who may rely on ''angel'' or other individual investors as a primary source of funding.[218] Placing limits on the amount that a person may invest under the current income and net worth thresholds could have similarly disruptive effects on the Regulation D market.

Further, raising the financial thresholds from current levels may have disparate impacts on certain investors. For example, certain geographic areas of the United States, such as the Midwest and South, have a lower cost of living compared to other geographic areas and employees in those areas may be earning lower wages relative to other areas and therefore be less likely to qualify as accredited investors under the current financial thresholds. An increase in the financial thresholds would exacerbate this current disparity and would be more likely to result in the loss of accredited investor status for investors in those geographic areas. Adjusting the thresholds upward could curtail the ability of many financially sophisticated people in certain parts of the country from investing in local companies, about which they have first-hand knowledge.

Below we present information on median and mean income and net worth of U.S. households in major U.S. geographic regions. The data shows that household income and net worth tend

[208] For purposes of this analysis, income is defined to include wage income, business income, rent income, interest and dividend income, pension income, social security income, income from retirement accounts, transfers, and other income. According to the SCF documentation, income data is collected for the year prior to the year of the SCF while family balance sheet data covers the status of the family at the time of the interview. Thus, we use income data inflation-adjusted to 2016. Further, for comparability, income data is adjusted for inflation by a factor of 1.05914411 from 2016 dollars to March 2019 dollars using Consumer Price Index for All Urban Consumers (''CPI–U'') data from the BLS.

[209] *See supra* note 207. Joint income was added to Rule 501(a) in 1988.

[210] For purposes of this analysis, net worth is defined as the difference between household assets and household debt. Assets include all financial assets (stocks, bonds, mutual funds, cash and cash management accounts, retirement assets, life insurance, managed assets like trusts and annuities, and other financial assets like deferred compensation, royalties, futures, etc.) and non-financial assets. Debt includes mortgage and home equity loans, lines of credit, credit card debt, installment loans including vehicle loans, margin loans, pension loans, and other debt (*e.g.,* loans against insurance). For comparability, we exclude the value of the household's principal residence and any outstanding mortgages associated with the principal residence from the 1983, 1989, and 2016 SCF. Further, for comparability, net worth data is adjusted for inflation by a factor of 1.05914411 from 2016 dollars to March 2019 dollars using BLS CPI data.

[211] The number of households qualifying under either the income or net worth criterion is smaller than the sum of the number of households qualifying under the income criterion and the number of households qualifying under the net worth criterion because some households may qualify under both criteria.

[212] Form D data and other data available to us on private placements do not allow us to estimate the number of unique accredited investors participating in exempt offerings.

[213] The Commission has previously considered whether to revise the financial thresholds in the accredited investor definition. In the 2007 Proposing Release, the Commission proposed to maintain the thresholds but to apply an inflation adjustor every five years. *See* 2007 Proposing Release at 45126. However, the Commission took no further action on the proposing release.

[214] *See* the U.S. Census Bureau's time-series of U.S. households, *available at https://www2.census.gov/programs-surveys/demo/tables/families/time-series/households/* and the U.S. Census Bureau's monthly estimates of the U.S. population, April 1, 1980 to July 1, 1990, *available at https://www2.census.gov/programs-surveys/popest/tables/1990-2000/national/totals/nat-total.txt* and U.S. Census Bureau's Quick Facts, *available at https://www.census.gov/quickfacts/fact/table/US/PST045218.*

[215] The median household income in the U.S. in 2018 was $61,937. *See* Household Income: 2018, American Community Survey Briefs, *available at https://www.census.gov/content/dam/Census/library/publications/2019/acs/acsbr18-01.pdf.* The median (average) net worth in the U.S. was $29,410 ($196,200) in 2016. *See* the U.S. Census Bureau's Survey of Income and Program Participation (SIPP), Wealth, Asset Ownership, & Debt of Households Detailed Tables: 2016, *available at https://www.census.gov/data/tables/2016/demo/wealth/wealth-asset-ownership.html.* The reported net worth estimates exclude the value of personal home equity from the net worth calculations.

[216] *See* Regulation D 2011 Adopting Release.

[217] For example, substantially increasing the thresholds to, for example, reflect inflation since they were adopted, would reduce significantly the number of individuals that currently qualify as accredited investors under those tests. Such an increase would reduce the percentage of qualifying households from approximately 13.0% today to approximately 4.2%.

[218] For example, Lindsey and Stein (2019) examined the effects of changes in angel financing stemming from the 2011 Dodd-Frank Act's exclusion of an investor's primary residence in determining an accredited investor's net worth. They found that a larger reduction in the pool of potential accredited investors negatively affects firm entry and reduces employment levels at small entrants and that relative wages for the startup sector decline. As the pool of potential accredited investors was reduced, they found negative affects to firm entry, reduced employment levels at small entrants, and a decline in relative wages for the startup sector.

to be lower in the Midwest and South regions.

TABLE 5—U.S. HOUSEHOLD INCOME AND NET WORTH, BY REGION [219]

($ thousands)	Northeast	Midwest	South	West
Mean household income (before-tax)	136.5	102.0	100.0	108.5
Median household income (before-tax)	64.4	54.7	51.5	57.5
Mean household net worth	851.3	658.8	636.9	873.7
Median household net worth	154.5	103.2	87.0	114.3

Moreover, increasing the total assets test to reflect inflation could cause smaller entities that currently qualify as accredited investors to no longer qualify. Such an immediate increase could be highly disruptive for smaller entities, preventing them from accessing an important segment of the private markets.

While we are not proposing to amend the financial thresholds in the accredited investor definition at this time, we are requesting further comment on possible approaches to adjusting these financial thresholds. If the financial thresholds in the definition remain constant, the pool of accredited investors would likely continue to expand as a result of inflation. It is challenging to generate a precise forecast of how much the pool of accredited investors will expand in the future, particularly over longer time periods.[220] We expect that the Commission will continue to monitor the size of this pool as well as the percentage and types of individuals from this pool who participate in our private markets, including in connection with its quadrennial review of the accredited investor definition required by the Dodd-Frank Act.

As a result, the investor protections provided by the current thresholds could erode over time due to inflation to the extent the effects of such inflation on the pool of potential accredited investors were not offset by other changes in the investing environment that enhanced the ability of investors to analyze investment opportunities and make informed investment decisions in private markets. Rather than mandate a prospective adjustment for the effects of inflation, we believe it would be more appropriate for the Commission to consider the impact, if any, of inflation on the pool of accredited investors in connection with its quadrennial review of the accredited investor definition. Under this approach, the Commission could take into account not just inflation but all developments with respect to private investing as it considers the need for any changes in the accredited investor definition. However, adjusting the financial thresholds, for example, by indexing for inflation, could raise some of the concerns discussed above or have other adverse ramifications on the Regulation D market.

In addition to feedback on possible adjustments to the financial thresholds in the definition, we are requesting further comment on whether we should permit an investor, whether a natural person or an entity, that is advised by a registered investment adviser or broker-dealer to be considered an accredited investor. The 2017 Treasury Report recommended that the Commission undertake amendments to the accredited investor definition, including by broadening the definition to include, among other things, any investor who is advised on the merits of making a Regulation D investment by a fiduciary, such as an SEC- or state-registered investment adviser. As noted in the Concept Release, being advised by a financial professional has not been a complete substitute historically for the protections of the Securities Act registration requirements and, if applicable, the Investment Company Act.[221] Commenters on the Concept Release who addressed this topic were generally supportive of expanding the accredited investor definition in this manner,[222] though other commenters were opposed to or expressed concern regarding this approach.[223] We are seeking feedback on whether amending the accredited investor definition in this manner would provide sufficient investor protections and whether additional limitations on the types or amounts of investments or other conditions may be appropriate if the Commission were to adopt such an approach in expanding the accredited investor definition.

Request for Comment

50. Should we maintain the current financial thresholds in the definition of accredited investor and index the thresholds to inflation on a going-forward basis? If so, what would be an appropriate interval to index the thresholds to inflation? For example, should the Commission consider whether adjustment for inflation is appropriate every four years in connection with the Commission's quadrennial review of the accredited investor definition required by the Dodd-Frank Act?

51. Should we make a one-time adjustment to increase the thresholds to take into account some or all of the effects of inflation on the pool of

[219] The Federal Reserve Board's 2016 SCF Chartbook, *available at https://www.federalreserve.gov/econres/files/BulletinCharts.pdf,* at 28, 29, 64, and 65. The public version of the SCF database does not provide information regarding geographical location of households. As a result, we are unable to identify in which states households that qualify as accredited investors are likely to be concentrated. Unlike Table 4, in which we exclude the value of the primary residence from net worth, Table 5 does not exclude the value of the primary residence from the net worth of households. The figures were adjusted for inflation to March 2019 dollars using BLS CPI data.

[220] The proportion of households that meets the income or net worth thresholds would depend on the evolution of nominal income (*i.e.,* income level affected by inflation and real growth,) and net worth across different levels of income and net worth. With inflation or real growth in the economy, the proportion of households that meets these thresholds at their current levels is expected to increase over time.

For example, to illustrate the effects of inflation, assuming, among other things, no change in savings, we expect households with a current net worth between approximately $985,000 and $999,999 would meet the net worth threshold if their assets grew by 1.51%, the estimated annual rate of inflation between 2013 and 2018, over one year. (To calculate this inflation rate, we use CPI–U data from the BLS, *available at https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm.*) This could increase the proportion of households that meets the net worth threshold by 0.1 percentage points, to 9.5%. Similarly, we expect that individuals with a current income between approximately $197,000 and $199,999, to the extent they experienced one year of income growth equal to the estimated annual rate of inflation between 2013 and 2018, to meet the income threshold for individuals. This could increase the proportion of individuals that meets the income threshold by 0.31 percentage points, to 9.21%. *See also supra* Table 4.

[221] *See* Concept Release at 30478.

[222] *See, e.g.,* IAA Letter, Artivest Letter, MarketPlus Letter, EquityZen Letter, 2019 SBIA Letter, IPA Letter, BlackRock Letter, and Wefunder Letter.

[223] *See, e.g.,* ICI Letter and PIABA Letter.

potential accredited investors since adoption? What would be the effects of any such change on investors and issuers? Should we also index the thresholds to inflation on a going-forward basis? Should we consider other approaches such as the recommendation in the 2015 Staff Report to leave the current thresholds for natural persons in place but subject them to investment limits? If so, what investment limits should we consider? What would be the impact of such changes on investors and on the ability of companies to raise capital, particularly small businesses?

52. Should we increase the thresholds to take into account the effects of inflation since adoption, but grandfather investors that currently meet the accredited investor definition with respect to existing investments?

53. Is there any evidence that investor protections provided by the existing thresholds have eroded over time?

54. As noted above and in the Economic Analysis below, income levels vary, sometimes substantially, in different geographic areas of the country. Should we take into account income disparities that may be attributable to different costs of living across the country in establishing financial thresholds in the accredited investor definition? If so, how should we categorize different geographic regions for these purposes and how should we calculate income differences that may be attributable to differences in cost of living?

• For example, should we categorize the regions by state, by county or parish, or by census tract? If we should instead use larger regions, how should those be defined? How often would we need to reconsider how the regions are defined?

• If income disparities that may be due to local differences in the cost of living were taken into account, would the financial thresholds need to be adjusted for certain regions? How would we determine which regions require adjustment? Similarly, how would we determine which regions should maintain the current thresholds?

• If these income disparities that may be due to differences in the local cost of living were taken into account, should we use the United States Office of Personnel Management's general schedule locality areas? Should we use a different adjustment mechanism?

• Should we consider any other changes to the accredited investor definition to address the geographic disparity in the proportion of the population that qualifies as accredited investors in different regions of the country? If so, what types of changes would be appropriate?

• Would there be difficulties for investors to demonstrate, and issuers to form a reasonable belief about, the varying financial thresholds? How would we address any such difficulties?

55. Would an inflation adjustment on an on-going basis have a disparate impact on certain types of investors, such as those in particular geographic regions or those in specific age ranges?

56. Is there evidence that any fraud in the private markets is driven or affected by the levels at which the accredited investor definition is set, or that maintaining the current financial thresholds would place investors at a greater risk of fraud?

57. Would providing for an inflation adjustment going forward have an impact on the ability of companies to raise capital, particularly small businesses? Would an inflation adjustment going forward have a disparate impact on certain small businesses, such as those in particular geographic regions with lower venture capital activity?

58. Under the current definition, the value of a person's primary residence is excluded from the net worth calculation.[224] Should the Commission consider any changes to the rules implementing this requirement? Are there other assets or liabilities that should be excluded from or included in the calculation? Should we consider excluding all or a portion of an individual's retirement accounts when calculating net worth, similar to the exclusion for an individual's primary residence? If so, what percentage of an individual's retirement account should be excluded?

59. If we index the financial thresholds, is CPI–U the appropriate inflation adjustor? 17 CFR 275.205–3(e) under the Advisers Act and certain other Commission rules use as an inflation adjustor the Personal Consumption Expenditures Chain-Type Price Index (''PCE'') (or any successor index thereto), as published by the United States Department of Commerce, which is an indicator of inflation in the prices for goods and services paid by persons living in the United States.[225] Should we use PCE instead of CPI–U? Is indexing for inflation the appropriate benchmark? Are there more appropriate benchmarks?

60. If we were to permit an investor advised by a registered investment adviser or broker-dealer to be deemed an accredited investor, under what circumstances would that registered financial professional be likely to recommend investing in a Regulation D offering? What types of investors would be likely to receive a recommendation from that registered financial professional to invest in a Regulation D offering?

61. If an investor is to be considered an accredited investor by virtue of being advised by a registered investment adviser or broker-dealer, should we consider additional investor protections? For example, should such financial professionals have to eliminate any conflicts of interest related to such advice for its advice to render an investor an accredited investor or should such a financial professional have to mitigate such conflicts of interest in a particular way? Should such financial professionals have to conduct any different due diligence before advising the investor on such investments? Should there be limits on the types or amounts of investments that such an investor could make under these circumstances?

IV. Proposed Amendment to the Qualified Institutional Buyer Definition

Rule 144A provides a non-exclusive safe harbor exemption from the registration requirements of the Securities Act for resales to qualified institutional buyers of certain restricted securities. Any person, other than the issuer or a dealer, who offers or sells securities in compliance with Rule 144A is deemed not to be engaged in a distribution of the securities and therefore not an underwriter of the securities within the meaning of Section 2(a)(11) of the Securities Act, such that the Section 4(a)(1) exemption is available for the resales of the securities.[226] When originally proposing to define a ''qualified institutional buyer,'' the Commission noted that it was ''seeking to identify a class of

[224] Section 413(a) of the Dodd-Frank Act excluded the value of a person's primary residence from the net worth calculation and directed the Commission to adjust similarly any accredited investor net worth standard in its Securities Act rules. In 2011, the Commission revised Rules 215 and 501 to exclude any positive equity that individuals have in their primary residences. *See* Regulation D 2011 Adopting Release. The revised calculation requires that any excess of indebtedness secured by the primary residence over the estimated fair market value of the residence be considered a liability for purposes of determining accredited investor status on the basis of net worth. The Commission also added a 60-day lookback period to prevent investors from artificially inflating their net worth by incurring incremental indebtedness secured by their primary residence, thereby effectively converting their home equity into cash or other assets that would be included in the net worth calculation.

[225] *See https://www.bea.gov/data/personal-consumption-expenditures-price-index.*

[226] Rule 144A(b).

investors that can be conclusively assumed to be sophisticated and in little need of the protection afforded by the Securities Act's registration provisions.'' [227]

With the exception of registered dealers, a qualified institutional buyer must in the aggregate own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with that qualified institutional buyer.[228] Under Rule 144A(a)(1)(vi), banks and other specified financial institutions are subject to an additional minimum audited net worth requirement of $25 million.[229] Rule 144A(a)(1)(i) specifies the types of institutions that are eligible for qualified institutional buyer status if they meet this $100 million in securities owned and invested threshold, which include insurance companies; registered investment companies; SBICs; employee benefit plans established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions; employee benefit plans within the meaning of Title I of the Employee Retirement Income Security Act (ERISA) of 1974; trust funds whose trustee is a bank or trust company and whose participants are employee benefit plans within the scope of Rule 144A(a)(1)(i)(D) or (E), excluding trust funds that include individual retirement accounts or H.R. 10 plans as participants; business development companies; and registered investment advisers.[230] In addition, Rule 144A(a)(1)(i)(H) sets forth the following types of eligible entities:

• Organizations described in Section 501(c)(3) of the Internal Revenue Code;

• Corporations (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution);

• Partnerships; and

• Massachusetts or similar business trusts.

A number of commenters on the Concept Release recommended that the Commission expand the list of entities that are eligible for qualified institutional buyer status. One commenter recommended that the Commission revise the qualified institutional buyer definition to include any entity.[231] Some commenters urged the Commission to expand the qualified institutional buyer definition to encompass additional state and local governmental entities and organizations [232] or non-U.S. entities such as sovereign wealth funds and non-U.S. pension funds that are substantially equivalent to the entities that currently qualify for qualified institutional buyer status.[233] A number of commenters recommended that the Commission permit bank-maintained collective investment trusts that include certain H.R. 10 plans to qualify as qualified institutional buyers [234] and/or allow collective investment trusts to qualify using the ''family of investment companies'' test available to registered investment companies under Rule 144A(a)(1)(iv).[235]

One commenter urged the Commission to clarify that the term ''similar business trust'' under Rule 144A(a)(1)(i)(H) includes central managed trusts that otherwise qualify under the definition which are managed by a foreign or domestic bank or a professional investment manager that itself qualifies as a qualified institutional buyer.[236] Another commenter recommended that the Commission adopt a calculation method based on fair market value, rather than cost basis, in determining the aggregate value of securities owned and invested for purposes of Rule 144A(a)(3).[237] Two commenters stated that the Commission should consolidate the qualified institutional buyer definition with other definitions.[238]

In light of these concerns and to avoid inconsistencies between the entity types that are eligible for accredited investor status and qualified institutional buyer status, we propose to expand the qualified institutional buyer definition by making conforming changes to Rule 144A(a)(1)(i)(C) and the list of entities in Rule 144A(a)(1)(i)(H) to correspond to the proposed amendments to Rule 501(a)(1) and Rule 501(a)(3). Specifically, we propose to add RBICs to Rule 144A(a)(1)(i)(C) and limited liability companies to Rule 144A(a)(1)(i)(H). Further, to ensure that entities that qualify for accredited investor status may also qualify for qualified institutional buyer status when they meet the $100 million in securities owned and invested threshold in Rule 144A(a)(1)(i), we propose to add new paragraph (J) to Rule 144A(a)(1)(i) that would permit institutional accredited investors under Rule 501(a), of an entity type not already included in paragraphs 144A(a)(1)(i)(A) through (I) or 144A(a)(1)(ii) through (vi), to qualify as qualified institutional buyers when they satisfy the $100 million threshold.[239] This new category in the qualified institutional buyer definition would encompass the proposed new category in the accredited investor definition for entities owning investments in excess of $5 million that are not formed for the specific purpose of acquiring the securities being offered under Regulation D,[240] as well as any other entities that may be added to the accredited investor definition in the future, but such entities would also have to meet the $100 million threshold in order to be qualified institutional buyers under Rule 144A.

[227] *See* Resale of Restricted Securities; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145, Release No. 33–6806 (Oct. 25, 1988) [53 FR 44016 (Nov. 1, 1988)].

[228] Rule 144A(a)(1)(i). A registered dealer is a qualified institutional buyer if it owns and invests in the aggregate at least $10 million of securities of non-affiliated issuers on a discretionary basis or if it is acting in a riskless principal transaction on behalf of a qualified institutional buyer. Rules 144A(a)(1)(ii) and (iii).

[229] Rule 144A(a)(1)(vi).

[230] Rule 144A(a)(1)(i)(A)–(G) and (I).

[231] *See* PFM Letter.

[232] *See* letter from San Bernardino County Treasury dated September 24, 2019; letter from South Dakota Investment Counsel dated September 24, 2019; and CMTA Letter.

[233] *See* letter from Franklin Resources, Inc. dated September 24, 2019 (''Franklin Templeton Letter'') and IAA Letter.

[234] *See* letter from Wilmington Trust, N.A. dated September 24, 2019; BlackRock Letter (also recommending that bank maintained common trust funds that include H.R. 10 plans similarly qualify); letter from Coalition of Collective Investment Trusts dated September 24, 2019; letter from Fidelity Investments dated September 24, 2019; Franklin Templeton Letter; and letter from American Bankers Association dated September 24, 2019 (''Am. Bankers Assn. Letter''). A number of these commenters noted that an H.R. 10 plan (also known as a ''Keough plan'') may qualify as a qualified institutional buyer in its own right under Rule 144A(a)(1)(i)(E) if it meets the applicable conditions but that a collective investment trust that includes such an H.R. 10 plan as a participant would not be eligible for qualified institutional buyer status under Rule 144A(a)(1)(i)(F).

[235] *See* SIFMA Letter; Franklin Templeton Letter; Shartsis Friese Letter; and Am. Bankers Assn. Letter (also recommending that bank maintained common trust funds qualify under the same test).

[236] *See* ICI Letter.

[237] *See* Shartsis Friese Letter.

[238] *See* letter from CompliGlobe Ltd. dated September 24, 2019 (recommending that the Commission consolidate the definitions of qualified purchaser, qualified investor, qualified institutional buyer, major U.S. institutional investor, and U.S. institutional investor into a single new definition) and letter from William J. Williams, Jr. dated September 25, 2019 (recommending that the Commission adopt a consolidated and simplified version of Rules 506, 144, and 144A that would limit sales to eligible purchasers).

[239] Because proposed Rule 144A(a)(1)(i)(J) would cover entities not included in paragraphs (A) through (I), a bank or other financial institution specified in those paragraphs would continue to be required to satisfy the net worth test in Rule 144A(a)(vi).

[240] Proposed Rule 501(a)(9).

We believe that these proposed changes would expand the qualified institutional buyer definition to encompass all of the entity types suggested by commenters on the Concept Release, so long as these entities meet the $100 million threshold in Rule 144A(a)(1)(i).[241] The $100 million threshold for these entities to qualify for qualified institutional buyer status should ensure that these entities have the financial sophistication and access to resources such that they do not need the protections of registration under the Securities Act. Eligible purchasers under Rule 144A(a)(1)(i) would continue to include entities formed solely for the purpose of acquiring restricted securities under Rule 144A, provided that they satisfy the test for qualified institutional buyer status.[242]

Request for Comment

62. Should Rule 144A(a)(1)(i)(C) be amended to include RBICs in a manner consistent with the proposed amendments to Rule 501(a)(1)? Should Rule 144A(a)(1)(i)(H) be amended to include limited liability companies in a manner consistent with Rule 501(a)(3)? Rather than, or in addition to, amending Rule 144A in this manner, should we add other types of entities to those currently in Rule 144A(a)(1)(i)? Are there any categories of entities included in the proposed amendment to Rule 501(a) that should not be included in the definition of qualified institutional buyer under Rule 144A?

63. Should we add a new paragraph (J) to Rule 144A(a)(1)(i) to expand the list of entities eligible to be qualified institutional buyers to include institutional accredited investors under Rule 501(a) that meet the $100 million in securities owned and invested threshold and that are an entity type not already included in paragraphs 144A(a)(1)(i)(A) through (I) or 144A(a)(1)(ii) through (vi)? Are there any types of entities that should be included under new paragraph (J) that would be excluded because of the limitation that these additional entity types may not include entities otherwise listed in existing paragraphs (a)(1)(i) through (vi) of Rule 144A? To the extent that there is overlap between the types of entities listed in the accredited investor definition and those listed in the qualified institutional buyer definition, would adding new paragraph (J) render existing paragraphs (A) through (I) under Rule 144A(a)(1)(i) unnecessary?

64. Are there certain types of entities that are less likely to have experience in the private resale market for restricted securities and may have more need for the protections afforded by the Securities Act's registration provisions? Are there concerns about amending the definition of ''qualified institutional buyer'' to encompass an expanded list of entities in Rule 144A(a)(1)(i) that meet the $100 million in securities owned and invested threshold?

65. If we were to expand the definition of qualified institutional buyer in this manner, would there be a greater likelihood of restricted securities sold under Rule 144A flowing into the public market? If so, should we consider additional modifications to Rule 144A to address this possibility?

V. Implications for Other Contexts

In addition to its central role in offerings conducted under Regulation D, the accredited investor definition plays an important role in other areas of federal securities law and in other contexts. To assist the Commission in more fully understanding the implications of amending the accredited investor definition, we are soliciting comment on the implications of the proposed amendments for these other contexts.

An issuer that is not a bank, a savings and loan holding company, or a bank holding company must register a class of equity securities under Exchange Act Section 12(g) and become an reporting company under the Exchange Act if, on the last day of its fiscal year, it has total assets of more than $10 million and the class of equity securities is held of record by either (i) 2,000 or more persons, or (ii) 500 or more persons who are not accredited investors as defined in Rule 501(a).[243] Under existing rules, a non-reporting issuer must analyze at its fiscal year end whether its total assets and the number of its record holders meet these thresholds in determining whether it must commence reporting under the Exchange Act. For Section 12(g) purposes, the determination of accredited investor status must be made as of the last day of the issuer's most recent fiscal year rather than at the time of the sale of the securities.[244] As stated above, the accredited investor definition in Rule 501(a) includes a reasonable belief standard, such that any person who comes within one or more of the categories in the definition, or whom the issuer reasonably believes comes within such category or categories, is deemed to be an accredited investor.[245] To the extent that non-reporting issuers sell securities to individuals or entities that qualify for accredited investor status under the proposed new categories in the definition, new issues and complexities in establishing a reasonable belief as to whether these individuals or entities are accredited investors as of a fiscal year end may be introduced to the Section 12(g) year-end analysis. Depending on the circumstances, this could result in complex and time-consuming determinations by issuers as of a subsequent fiscal year end if they sell securities to such individuals or entities. On the other hand, these issuers may be able to remain under the Section 12(g) thresholds and avoid having to register a class of equity securities under Section 12(g) for a longer period if they are able to sell securities to an expanded pool of accredited investors and to fewer non-accredited investors.

Regulation A limits the amount of securities that a person who is not an accredited investor can purchase in an offering conducted under Tier 2 of Regulation A when the issuer's securities are not listed on a national securities exchange to no more than 10 percent of the greater of annual income or net worth (for natural persons), or 10 percent of the greater of annual revenue or net assets at fiscal year-end (for entities).[246] As a result of the proposed amendments to the accredited investor definition, a wider pool of accredited investors would not be subject to these investment limits applicable to non-accredited investors, which could lead to more investor interest in Tier 2 offerings under Regulation A.

In addition, some states use the accredited investor definition to determine whether investment advisers to certain private funds must be

[241] For example, proposed Rule 144A(a)(1)(i)(J) would encompass bank-maintained collective investment trusts that include as participants individual retirement accounts or H.R. 10 plans that are currently excluded from the qualified institutional buyer definition pursuant to Rule 144A(a)(1)(i)(F), so long as the collective investment trust satisfies the $100 million threshold.

[242] This is in contrast to the proposed amendment to the accredited investor definition in Rule 501(a)(3), which would continue to require that the entity not be formed for the specific purpose of acquiring the securities offered.

[243] 15 U.S.C. 78l(g) and 17 CFR 240.12g–1 under the Exchange Act (''Rule 12g–1''). See Changes to Exchange Act Registration Requirements to Implement Title V and Title VI of the JOBS Act, Release No. 33–10075 (May 3, 2016) [81 FR 28689 (May 10, 2016)] (''Changes to Exchange Act Registration Requirements Release'').

[244] Rule 12g–1(b)(1) under the Exchange Act.

[245] Whether an issuer has a reasonable belief depends on the particular facts and circumstances of the determination.

[246] See 17 CFR 230.251(d)(2)(i)(C).

registered with the state [247] or incorporate the definition in a range of other contexts.[248] Further, under Rule 504 of Regulation D, issuers are permitted to use general solicitation or general advertising to offer and sell securities when the offers and sales are made (i) pursuant to state law exemptions from registration that permit general solicitation and general advertising and (ii) sales are made only to accredited investors as defined in Rule 501(a).[249]

Finally, any changes to the accredited investor definition may have an impact on the use of the Rule 506(c) exemption, which requires issuers to take reasonable steps to verify the accredited investor status of purchasers in the offering. To the extent that it may be difficult for issuers to comply with the verification requirement in Rule 506(c) with respect to new or modified categories of accredited investors, issuers may be reluctant to, or determine not to, sell securities to these investors in Rule 506(c) offerings. Conversely, to the extent that the verification requirement presents fewer difficulties for new or modified categories of accredited investors, for example, natural persons with certain professional certifications or designations that are more readily verifiable, issuers may be more willing to sell securities in Rule 506(c) offerings to these investors.

Request for Comment

66. Would the proposed new categories of accredited investors and the proposed modifications to the existing standards present issues for non-reporting issuers in determining whether individuals and entities that meet the accredited investor definition at the time of purchase continue to be accredited investors as of the end of a fiscal year for the purposes of Exchange Act Rule 12g–1?

67. Would expanding the accredited investor definition to encompass the proposed new categories of accredited investors, such as persons with certain professional certifications or designations or knowledgeable employees of private funds, raise concerns under state law provisions that incorporate the Rule 501(a) accredited investor definition? If so, what are those concerns?

68. Would the proposed amendments to the accredited investor definition give rise to issues under Rule 504 when issuers engage in general solicitation or general advertising to offer and sell securities pursuant to state law exemptions from registration that permit general solicitation and general advertising when sales are made only to accredited investors? If so, what are those issues?

69. Would there be concerns about meeting the verification requirement in Rule 506(c) with respect to the proposed new categories of accredited investors or the modifications to the existing categories in the definition? If so, what are those concerns? Would amending the accredited investor definition in this manner make it more likely or less likely that an issuer would conduct a Rule 506(c) offering?

VI. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rule amendments, specific issues discussed in this release, and other matters that may have an effect on the proposed rule amendments. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

VII. Economic Analysis

A. Introduction

The Commission is proposing to amend the ''accredited investor'' definition in Rule 501(a) of Regulation D by: (1) Adding new categories in the definition that would permit natural persons to qualify as accredited investors based on certain professional certifications or designations or other credentials, or with respect to investments in a private fund, as a ''knowledgeable employee'' of the private fund; (2) adding certain entity types to the current list of entities that may qualify as accredited investors and a new category for any entity with ''investments,'' as defined in Rule 2a51–1(b) under the Investment Company Act, in excess of $5 million and that was not formed for the specific purpose of investing in the securities offered; (3) adding family offices with at least $5 million in assets under management and their family clients to the definition; (4) adding the term ''spousal equivalent'' to the definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors; and (5) codifying certain staff interpretive positions that relate to the accredited investor definition. The Commission is also proposing to amend the definition of ''qualified institutional buyer'' in Rule 144A to expand the list of entities that are eligible to qualify as qualified institutional buyers.

We are attentive to the costs imposed by and the benefits obtained from the proposed amendments. Section 2(b) of the Securities Act [250] and Section 3(f) of the Exchange Act [251] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, Section 23(a)(2) of the Exchange Act [252] requires us, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation would have on competition and states that the Commission shall not adopt any such rule or regulation which would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

The discussion below addresses the potential economic effects of the proposed amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation. Where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In many cases, however, we are unable to quantify the economic effects because we lack the information necessary to derive a reasonable estimate. For example, we are unable to quantify, with precision, the costs to issuers and investors of verifying an investor's accredited investor status and the potential capital raising and compliance cost savings that may arise from the proposed amendments to the accredited investor definition.

B. Broad Economic Effects

Overall, because the accredited investor definition is an important

[247] *See, e.g.,* Final Order Granting Exemption From the Registration Requirements for Investment Advisers to Private Funds and Their Investment Adviser Representatives, Wisconsin Department of Financial Institutions, Division of Securities (Feb. 17, 2012); Certificate Exemption for Investment Advisers to Private Funds, Cal. Code Regs. Title 10 § 260.204.9; and Sixth Transition Order administering the Michigan Uniform Securities Act, State of Michigan Department of Energy, Labor & Economic Growth, Office of Financial and Insurance Regulation (Mar. 11, 2011).

[248] *See, e.g.,* Cal. Gov't Code § 64111 (government finance); Cal. Fin. Code § 22064 (finance lending); Fla. Stat. §§ 494.001 and 494.00115 (mortgage lending); Tex. Ins. Code § 1111A.002 (insurance); and Conn. Gen. Stat. § 36a–2 (2014) (financial institution regulation).

[249] Rule 504(b)(1)(iii).

[250] 15 U.S.C. 77b(b).

[251] 15 U.S.C. 78c(f).

[252] 17 U.S.C. 78w(a)(2).

component of several exemptions from registration, including Rules 506(b) and 506(c) of Regulation D, we expect that the proposed amendments, by expanding the pool of accredited investors, would improve the ability of issuers to raise capital in the exempt markets and reduce competition among issuers for investors, thus reducing the cost of capital. Further, the proposed amendments would permit issuers to engage in test-the-waters communications in registered offerings with a larger set of investors as a result of changes to the definition of institutional accredited investors and qualified institutional buyers. Similarly, the proposed amendments to the qualified institutional buyer definition in Rule 144A would increase the number of entities that qualify for this status, thus improving the ability of issuers to raise capital and enhancing competition among investors in this market.[253]

The proposed amendments also would impact investors, permitting investors with different attributes of financial sophistication to participate in investment opportunities that are often not available to non-accredited investors, such as investments in issuers that are not Exchange Act reporting companies, and offerings by certain private equity funds, venture capital (VC) funds, and hedge funds, which are frequently offered under Rule 506.[254] Additionally, accredited investors are not subject to investment limits in offerings made under Tier 2 of Regulation A. Thus, expanding the definition of accredited investor would permit additional investors to participate in these offerings at higher amounts, subject to the $50 million offering limit.

The accredited investor concept in Regulation D was designed to identify—with bright-line standards—a category of investors who do not need the protections of registration under the Securities Act.

The accredited investor definition uses income and net worth thresholds to identify natural persons as accredited investors. The Commission established the $200,000 individual income and $1 million net worth threshold in 1982 and the $300,000 joint income threshold in 1988 and has not updated them since, with the exception of amending the net worth standard to exclude the value of the investor's primary residence in 2011. According to data from the SCF, we estimate the number of U.S. households that qualify as accredited investors has grown from being approximately 2% of the population of U.S. households in 1983 to 13% in 2019 as a result of inflation.[255]

Regulation D also designates certain entities as accredited investors. Some entities, including but not limited to banks, savings and loan associations, registered broker-dealers, insurance companies, and investment companies registered under the Investment Company Act qualify as accredited investors based on their status alone. Other entities may qualify as accredited investors based on a combination of their status and the amount of their total assets.

While the effects of inflation have expanded the pool of accredited investors, we are not aware from our enforcement experience or otherwise of disproportionate fraud in this expanded space.

We are mindful that it is difficult to reach rigorous conclusions about the typical magnitude of investor gains and losses in exempt offerings. Therefore, it is difficult to determine definitively how the benefits to accredited investors of expanded access to the exempt market compare to the loss of protections provided by registration. While having an expanded set of investment opportunities in private markets can potentially help investors to make more efficient investment decisions, other factors—such as information asymmetry, illiquidity, and prevailing market practices—can nevertheless limit investors' opportunity set for private markets. For example, as discussed below, given the presumed financial sophistication of accredited investors, issuers may rely on Rule 506(b) and Rule 506(c) to offer securities on an unregistered basis to accredited investors without providing additional disclosure to those investors.

The proposed amendments could increase the size and alter the composition of the pool of accredited investors by providing additional measures of financial sophistication (*e.g.,* professional certifications for individuals and an investments-owned threshold for entities) to qualify for accredited investor status. If many individuals that would qualify as accredited investors under the proposed amendments already meet the income and wealth thresholds in the current accredited investor definition, then the impact of the change on the pool of individuals that qualify as accredited investors could be limited. However, for entities, we anticipate that the impact of the proposed amendments could be more significant, as we are proposing to amend the accredited investor definition to include a broad range of entities that are not covered under the current definition. Since we believe family offices have generally qualified as accredited investors under the existing definition, we expect that the effect of the amendments on them would be much smaller than on other entities.

We anticipate that the additional investors we propose to designate as accredited investors would have the resources and financial sophistication to assess private investment opportunities, despite the fact that these investments may have unique risk profiles and limited disclosure requirements. For example, investors in Regulation D offerings can be subject to investment risks not associated with registered offerings because (i) some securities law liability provisions do not apply to private offerings, (ii) issuers of securities in these offerings generally are not required to provide information comparable to that included in a registration statement, and (iii) Commission staff does not review any information that may be provided to investors in these offerings.[256]

Such risks are mitigated for accredited investors that participate in Regulation A offerings because they have access to information comparable to that accompanying registered offerings—*e.g.,* publicly available offering circulars on Form 1–A (for both Tier 1 and Tier 2 offerings), ongoing reports on an annual and semiannual basis (Tier 2 offerings), and additional requirements for interim current event updates (Tier 2 offerings). Additionally, Commission staff reviews Forms 1–A and the test-the-waters materials that issuers file in connection with Regulation A offerings.

Generally, we believe any additional risk of accredited investors experiencing harm in the capital markets as a result of the proposed amendments likely would be limited because the proposed amendments are intended to more

[253] Although Rule 144A is a non-exclusive safe harbor for resale transactions, market participants have used Rule 144A since its adoption in 1990 to facilitate capital raising by issuers. *See, e.g.,* Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33–9415 (July 10, 2013) [78 FR 44771 (July 24, 2013)].

[254] *See supra* Section II.A.

[255] *See https://www.federalreserve.gov/econresdata/scf/scfindex.htm.* For this analysis, we use the same methodology and variable definitions as Table 4, and we exclude the value of a household's primary residence when measuring net worth. *See supra* note 207. We estimate the number of U.S. households, rather than individuals, that qualify as accredited investors due to data limitations because the database underlying our analysis measures wealth and income at the household level. *See supra* Section III.

[256] *See* 2015 Staff Report.

effectively identify individuals and entities that do not need the protections rendered by registration under the Securities Act.

We believe the proposed amendments would improve capital formation by providing issuers with an expanded pool of accredited investors and additional avenues—in certain circumstances—to verify an investor's accredited investor status, while likely having a minimal impact on issuers' compliance costs. In 2018, the estimated amount of capital reported as being raised in Rule 506 offerings was $1.7 trillion,[257] which was larger than the $1.4 trillion raised in registered offerings.[258] As private capital markets have grown, the vast majority of the capital that has been raised in unregistered offerings under Regulation D has been through investment by accredited investors. For example, though securities sold in offerings conducted pursuant to Rule 506(b) are permitted to be purchased by up to 35 non-accredited investors who are sophisticated, we estimate that, from 2013 to 2018, only 6% of the offerings conducted under Rule 506(b) included non-accredited investor purchasers.[259]

By increasing potential access to private markets and providing issuers with additional tests for accredited investor status that are objective and therefore readily verifiable (*e.g.,* professional certifications and investment tests), the proposed amendments may make unregistered offerings more attractive to certain issuers and particularly facilitate small business capital formation. For example, while the aggregate amount of capital raised through Rule 506 offerings in 2018 ($1.7 trillion) is large, the median offering size was only $1.7 million, indicating that offerings in the Regulation D market typically involve relatively small issues, which is consistent with these offerings being undertaken by smaller and growth-stage firms. Unregistered offerings also can be important for these issuers, as a significant share of businesses that establish new funding relationships continue to experience unmet credit needs.[260] According to one survey, approximately 64% of small businesses relied on personal or family savings, compared to 0.5% receiving venture capital.[261] In addition, small businesses owned by underrepresented minorities faced significantly higher hurdles in obtaining external financing, which suggests that these businesses may particularly benefit from amendments intended to facilitate private market capital raising.[262] Similarly, businesses located in states or regions with a lower cost of living may uniquely benefit from the proposed amendments as the pool of accredited investors may be smaller in such states or regions. Recent research has examined the importance of the pool of accredited investors for the entry of new businesses and employment and finds that geographic areas experiencing a larger reduction in the number of potential accredited investors experienced negative effects on new firm entry and employment levels at small entrants.[263]

Lastly, we expect that the proposed amendments could have an impact on the market for registered offerings. It is possible that newly accredited investors shift capital away from registered offerings and towards unregistered offerings. Such a switch of investment focus could decrease the amount of capital flowing into registered offerings and hence negatively affect registered issuers. Due to lack of data, we are unable to quantify the magnitude of such a potential impact. It is also conceivable that newly accredited investors do not change their investment allocations to the registered offerings market but instead increase investments in unregistered offerings by diverting capital from other investment opportunities (*e.g.,* savings, real estate). In this case, we would not expect any significant effect on the market for registered offerings. We cannot determine how likely each of these scenarios is.

The remainder of this economic analysis presents the baseline; anticipated benefits and costs from the proposed amendments; potential effects on efficiency, competition, and capital formation; and alternatives to the proposed amendments.

C. Baseline and Affected Parties

The main affected parties of the proposed amendments to the accredited investor definition would be investors and issuers. For example, certain non-accredited investors, such as entities that are currently not designated accredited investors, would become accredited investors under the proposed amendments and be able to participate in an expanded array of private offerings. Correspondingly, current accredited investors may have to compete more intensively to participate in investment opportunities in this market. Similarly, we anticipate that certain issuers, such as issuers that are smaller or in early stages of development, would need to compete less intensively to solicit accredited investors under the proposed amendments.

We are not able to directly estimate the number of current accredited investors that would be affected by the proposed amendments as precise data on the number of individuals and entities that currently qualify as accredited investors are not available to us. As noted above, Rule 501(a) of Regulation D uses net worth and income as bright-line standards to identify natural persons as accredited investors.[264]

Using data on household wealth from the SCF database, we estimate that under the current income and wealth thresholds noted above, approximately 16.0 million U.S. households, representing 13% of the total population of U.S. households, qualify as accredited investors. The data provides

[257] *See* Concept Release at 30466.

[258] *See id.* at 30465.

[259] DERA staff analysis is based on Form D filings from 2013 to 2018. These estimates are based on the reported "total amount sold" at the time of the original filing—required within 15 days of the first sale—as well as any additional capital raised and reported in amended filings. The data likely underreport the actual amount sold due to two factors. First, underreporting could occur in all years because Regulation D filings can be made prior to the completion of the offering, and amendments to reflect additional amounts sold generally are not required if the offering is completed within one year and the amount sold does not exceed the original offering size by more than 10%. Second, Rule 503 requires the filing of a notice on Form D, but filing a Form D is not a condition to claiming a Regulation D safe harbor or exemption. Hence, it is possible that some issuers do not file a Form D for offerings relying on Regulation D. Finally, in their annual amendments, some funds appear to report net asset values for total amount sold under the offering. Net asset values could reflect fund performance as well as new investment into, and redemptions from, the fund. For these reasons, based on Form D data, it is not possible to distinguish between the two impacts.

[260] *See* 2015 Staff Report.

[261] *See* 2019 Kauffman Foundation Access to Capital for Entrepreneurs: Removing Barriers, *available at https://www.kauffman.org/-/media/kauffman_org/entrepreneurship-landing-page/capital-access/capitalreport_042519.pdf.* The study relies on the data from the 2016 Annual Survey of Entrepreneurs, released in August 2018.

[262] *See id.*

[263] *See* Laura Lindsey & Luke C.D. Stein, *Angels, Entrepreneurship, and Employment Dynamics: Evidence from Investor Accreditation Rules* (Working Paper, 2019) ("Lindsey & Stein (2019)"). This study examines the effects on angel finance stemming from the Dodd-Frank Act's elimination of the value of the primary residence in the determination of net worth for purposes of accredited investor status.

[264] Under the current definition, individuals may qualify as accredited investors if (i) their net worth exceeds $1 million (excluding the value of the investor's primary residence), (ii) their income exceeds $200,000 in each of the two most recent years, or (iii) their joint income with a spouse exceeds $300,000 in each of those years and the individual has a reasonable expectation of reaching the same income level in the current year.

an estimate of the overall pool of households that qualify as accredited investors in the United States. This estimate does not, however, identify the precise number of accredited investors that do or would invest in the Regulation D market or in other exempt offerings.[265]

Based on Form D filings during the period 2009–2018, we estimate that there were on average approximately 293,700 accredited investors participating annually in Regulation D offerings.[266] However, because an investor can participate in more than one Regulation D offering, this aggregation likely overstates the actual number of unique investors, and we lack data to estimate the extent of overlap. Additionally, from the information reported on Form D, we do not have the ability to distinguish accredited investors that are natural persons from accredited investors that are institutions.[267] The average number of accredited investors per offering during the period 2009–2018 was 14, and the median number was four.

Table 6 presents evidence on investor participation in Regulation D offerings by industry type during the period 2009–2018. The participation of accredited investors in Regulation D offerings during that period varied by type of issuer as well, with offerings by real estate investment trusts (REITs) having the largest average number of accredited investors per offering, and those by operating companies having the smallest average number.

TABLE 6—INVESTORS PARTICIPATING IN REGULATION D OFFERINGS: 2009–2018

	Total number of investors *	Mean investors per offering	Median investors per offering	Fraction of offerings with one or more non-accredited investor (%)
Hedge Fund	30,264	16	2	7
Private Equity Fund	26,518	18	3	3
Venture Capital Fund	8,806	14	3	1
Other Investment Fund	36,651	22	6	4
Financial Services	12,097	15	4	12
Real Estate	67,532	26	8	13
Non-financial Issuers	165,606	10	4	9
All offerings	301,286	14	4	9

* 2009–2017 data is annualized.

We are not able to directly estimate the number of individuals who may newly qualify as accredited investors as a result of the proposed professional certifications or designations as precise data on the number of current holders of each professional certification or designation are not available to us. According to data on state-registered investment advisers compiled by NASAA, there were 17,543 registered investment advisers as of December 2018.[268] Based on data from FINRA, we estimate that there were 691,041 FINRA-registered individuals as of December 2018.[269] We estimate that 334,860 individuals were registered as only broker-dealers; 294,684 were dually registered as broker-dealers and investment advisers; and 61,497 were registered as only investment advisers. However, because FINRA-registered representatives can hold multiple professional certifications, this aggregation likely overstates the actual number of individuals that hold a Series 7 or Series 82, and we have no method of estimating the extent of overlap.

We are not able to directly estimate the number of knowledgeable employees at private funds that would be immediately affected by the proposed amendments as precise data on the number of knowledgeable employees of private funds are not available to us. Using data on private fund statistics compiled by the Commission's Division of Investment Management, we estimate that there were 32,202 private funds as of fourth quarter 2018.[270]

Industry observers have estimated that there are 2,500 to 3,000 single family offices managing more than $1.2 trillion in assets.[271] We lack data to determine the number of family clients of family offices.

When identifying entities as accredited investors, the current definition enumerates specific types of entities that would qualify. Certain enumerated entities are subject to a $5 million asset threshold to qualify as accredited investors (*e.g.,* tax-exempt charitable organizations, trusts, and employee benefit plans), while others are not (*e.g.,* banks, insurance companies, registered broker-dealers, entities in which all equity owners are accredited investors, private business development companies, and SBICs). Many of the entities that are not subject to asset tests are regulated entities. An entity that is not covered specifically by

[265] Form D data and other data available to us on private placements do not allow us to estimate the number of unique accredited investors that participate in exempt offerings.

[266] We estimate the number of accredited investors as the number of total investors minus the number of non-accredited investors reported on Form D.

[267] Other limitations of the data gathered from Form D may reduce the accuracy of the estimated number of accredited investors. For example, an issuer is required to file a Form D generally no later than 15 calendar days after the first sale of securities in a Regulation D offering, regardless of whether the offering will be ongoing after the filing of the Form D. Further, issuers are required to file amendments to Form D only in limited circumstances: (i) To correct a material mistake of fact or error in a previously filed Form D, (ii) to reflect a change in certain information provided in a previously filed Form D, and (iii) on an annual basis if the offering is continuing at that time. Also, because the Form D filing requirement is not a condition to claiming an exemption under Rule 506(b) or 506(c) but rather is a requirement of Regulation D, it is possible that some issuers do not file Form D when conducting Regulation D offerings.

[268] *See* 2019 NASAA Investment Adviser Section Annual Report, *available at https://www.nasaa.org/wp-content/uploads/2019/06/2019-IA-Section-Report.pdf.*

[269] *See* 2019 FINRA Industry Snapshot, *available at https://www.finra.org/sites/default/files/2019%20Industry%20Snapshot.pdf.*

[270] *See* U.S. Securities and Exchange Commission, Division of Investment Management Fourth Quarter 2018 Private Fund Statistics, *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2018-q4.pdf.*

[271] *See* Pamela J. Black, *The Rise of the Multi-Family Office,* Financial Planning (Apr. 27, 2010), *https://www.financial-planning.com/news/the-rise-of-the-multi-family-office.* A single family office generally provides services only to members of a single family.

one of the enumerated categories, such as an Indian tribe or sovereign wealth fund, is generally not an accredited investor under the current rule.

Publicly reported information provides an indication of the number of entities, by type, that may currently qualify as accredited investors. There were 3,764 broker-dealers that filed FOCUS reports with the Commission for 2018. As of 2018, there were 4,715 FDIC-insured banks, 691 savings and loan institutions,[272] and 305 SBICs.[273] There were 104 business development companies (BDCs) as of December 31, 2018.[274] There were 5,954 insurance companies as of 2017.[275] With respect to the proposed amendments to the accredited investor definition to add other types of institutional accredited investors, there were 13,429 registered investment advisers as of 2018 and approximately 17,500 state-registered investment advisors.[276] However, we lack data to generate precise estimates of the overall number of other institutional accredited investors because disclosure of accredited investor status across all institutional investors is not required and because, while we have information to estimate the number of some categories of institutional accredited investors, we lack comprehensive data that will allow us to estimate the unique number of investors across all categories of institutional accredited investors under Rule 501(a).

We also lack data to directly estimate the number of small private firms that would be potential issuers under the proposed amendments.

Based on analysis of Form D filings, we have identified approximately 134,345 unique issuers (of which the majority were non-fund issuers) that have raised capital through Regulation D offerings from 2009 until 2017. These issuers would benefit from the expansion of the accredited investor pool under the proposed amendments. Additionally, newer issuers could be drawn to the Regulation D market by the expanded pool of accredited investors as a result of the proposed amendments.

TABLE 7—FREQUENCY OF REGULATION D OFFERINGS BY UNIQUE ISSUERS: 2009–2018

Number of offerings	Non-fund issuers		Fund issuers		All Regulation D issuers
	Number of issuers	Proportion (%)	Number of issuers	Proportion (%)	
1	71,452	75.7	49,822	95.5	121,274
2	11,418	12.1	1,733	3.3	13,151
3	4,868	5.2	299	0.6	5,167
4	2,620	2.8	116	0.2	2,736
5	1,528	1.6	46	0.1	1,574
6 or more Offerings	2,511	2.6	124	0.3	2,635
Total: Unique Issuers	94,397	....	52,140	....	146,537

Lastly, the proposed amendments to the accredited investor definition likely would impact the market for private offerings in terms of increased capital raising. As noted above, accredited investors play a prominent role in Regulation D offerings. As Table 8 shows, in 2018, issuers in the Regulation D market raised approximately $1.7 trillion. The vast majority of capital raised in this market was raised under Rule 506(b), which has no limit on the number of purchasers who are accredited investors and limits the number of non-accredited investors to 35 per offering. Offerings under Rule 506(c), under which purchasers are exclusively accredited investors, raised approximately $211 billion. The largest amount of capital raised in other exempt offerings, approximately $1.2 trillion, came from Rule 144A offerings.[277] The total amount of capital raised in the Regulation A market was approximately $736 million in 2018.

TABLE 8—OVERVIEW OF AMOUNTS RAISED IN THE EXEMPT MARKET IN 2018 [278]

Exemption	Amounts reported or estimated as raised in 2018
Rule 506(b) of Regulation D	$1.5 trillion.

[272] *See* FDIC Statistics at a Glance as of June 30, 2019, *available at https://www.fdic.gov/bank/statistical/stats/2019jun/fdic.pdf.*

[273] *See* Small Business Administration (SBA) SBIC Program Overview as of March 31, 2019, *available at https://www.sba.gov/sites/default/files/2019-05/SBIC%20Quarterly%20Report%20as%20of%20March%2031%202019_0.pdf.*

[274] *See* Securities Offering Reform for Closed-End Investment Companies, Release No. 33–10619 (Mar. 10, 2019) [84 FR 14448 (Apr. 10, 2019)].

[275] *See* Insurance Information Institute Industry Overview, *available at https://www.iii.org/fact-statistic/facts-statistics-industry-overview#Insurance.*

[276] Identified from Form ADV and FINRA data.

[277] The term ''Rule 144A offering'' refers to a primary offering of securities by an issuer to one or more financial intermediaries (commonly known as the ''initial purchasers'') in a transaction exempt from registration under the Securities Act, followed by the immediate resale of the securities by the initial purchasers to qualified institutional buyers in reliance on Rule 144A.

[278] Data on Regulation D capital raising is taken from Form D and Form D/A filings. Information on Regulation A capital raising is taken from Form 1–A and Form 1–A/A filings.

[279] ''Other exempt offerings'' are identified from Regulation Crowdfunding, Regulation S, and Rule 144A offerings. The data used to estimate the amounts raised in 2018 for other exempt offerings includes data on:

- Offerings under Section 4(a)(2) of the Securities Act that were collected from Thomson Financial's SDC Platinum, which uses information from underwriters, issuer websites, and issuer SEC filings to compile its Private Issues database;
- offerings under Regulation Crowdfunding that were collected from Form C filings on EDGAR. For offerings that have been amended, the data reflects information reported in the latest amendment as of the end of the considered period. Regulation Crowdfunding requires an issuers to file a progress update on Form C–U within 5 business days after reaching 100% of its target offering amount. The data on Regulation Crowdfunding excludes withdrawn offerings. Some withdrawn offerings may be failed offerings. Amounts raised may be lower than the target or maximum amounts sought.
- offerings under Regulation S that were collected from Thomson Financial's SDC Platinum service; and
- resale offerings under Rule 144A that were collected from Thomson Financial SDC New Issues database, Dealogic, the Mergent database, and the Asset-Backed Alert and Commercial Mortgage Alert publications to further estimate the number of exempt offerings under Section 4(a)(2) and Regulation S. We included amounts sold in Rule 144A resale offerings because those securities are typically issued initially in a transaction under Section 4(a)(2) or Regulation S but generally are not included in the Section 4(a)(2) or Regulation S data identified above.

These amounts are accurate only to the extent that these databases are able to collect such information and may understate the actual amount of capital raised under these offerings if issuers and underwriters do not make this data available.

TABLE 8—OVERVIEW OF AMOUNTS RAISED IN THE EXEMPT MARKET IN 2018[278]—Continued

Exemption	Amounts reported or estimated as raised in 2018
Rule 506(c) of Regulation D	$211 billion.
Regulation A: Tier 1	$60.5 million.
Regulation A: Tier 2	$675.3 million.
Rule 504 of Regulation D	$2 billion.
Other exempt offerings[279]	$1.2 trillion.

D. Anticipated Economic Effects

In this section, we discuss the anticipated economic benefits and costs of the proposed amendments to the accredited investor definition. Issuers and investors in unregistered offerings are the parties expected to be most affected by the proposed amendments. We first analyze the potential costs and benefits of the proposed amendments for each of these affected parties and then discuss how those effects may vary based on the characteristics of issuers and investors.

1. Potential Benefits to Issuers

We believe that issuers interested in raising capital through unregistered offerings could benefit from the proposed amendments. First, the proposed amendments would likely expand the pool of accredited investors compared to the current baseline. Expanding the availability of accredited investors could improve the likelihood of successfully raising capital in a Regulation D offering and enable a more efficient and potentially larger capital raising process. Accredited investors supply the vast majority of capital raised under Regulation D and are vital to the capital raising needs of issuers conducting unregistered offerings. By increasing the pool of accredited investors, issuers may be better able to fulfill their financing needs with possibly lower costs compared to preparing a registration statement and at a lower risk of disclosing proprietary information.

Similarly, the proposed amendments could enhance capital formation in the Regulation A market. As accredited investors are not subject to investment limits under Tier 2 of Regulation A, expanding the pool of accredited investors could enable issuers that are conducting offerings under Tier 2 of Regulation A to raise capital faster and at a relatively lower cost. In addition, the amendments to the accredited investor definition could increase capital raising under Rule 504 of Regulation D. Under Rule 504 of Regulation D, issuers are permitted to use general solicitation or general advertising to offer and sell securities when (i) offers and sales are made pursuant to state law exemptions from registration that permit general solicitation and general advertising and (ii) sales are made only to accredited investors as defined in Rule 501(a). An increase in the number of accredited investors as a result of the rule could increase reliance on Rule 504.

Expanding the definition of qualified institutional buyer under Rule 144A would increase the number of potential buyers of Rule 144A securities, thus facilitating capital formation in this market by issuers conducting Rule 144A offerings.

In addition to the effects on the ability to raise capital, we expect the proposed rule to have an effect on the liquidity of securities issued in unregistered offerings. The proposed amendments to the qualified institutional buyer definition could also facilitate resales of Rule 144A securities by holders of these securities by expanding the pool of potential purchasers in resale transactions. This could increase demand for Rule 144A securities and have an impact on the price and liquidity of these securities when offered and sold by the issuer in Rule 144A offerings and in subsequent resale transactions. We are unable to quantify, however, the impact of any such potential changes resulting from the proposed amendments to the qualified institutional buyer definition.

Additionally, an expanded accredited investor definition could impact resales under Rule 501 of Regulation Crowdfunding during the one-year resale restriction period, thus potentially affecting the liquidity discount for such securities. Securities purchased in a crowdfunding transaction generally cannot be resold for a period of one year, unless they are transferred to, among other things, an accredited investor.[280] An expanded pool of accredited investors as a result of the proposed amendments could make it easier for holders of such securities to find a potential buyer, thus potentially leading to a lower liquidity discount. Moreover, investors that are seeking to resell restricted securities and that rely on the Rule 144 safe harbor for purposes of determining whether the sale is eligible for the Section 4(a)(1) exemption are required to meet certain conditions under Rule 144, that can include holding the restricted securities for six months or one year, depending on the circumstances. An expanded accredited investor pool could make it easier to conduct a private resale of restricted securities in a time period shorter than six months or one year. For example, an investor may seek to rely on the Section 4(a)(7) exemption for the resale, which requires a number of conditions to be met, including that the purchaser is an accredited investor. If the proposed rule changes make it easier to conduct private resales of restricted securities, this could possibly reduce the liquidity discount for restricted securities when sold under Rule 506 (or another exemption), making Rule 506 more attractive to issuers as well as investors. We are unable to quantify, however, any such potential change in the liquidity for unregistered securities as a result of the proposed amendments.

Another potential benefit to issuers interested in raising capital through Rule 506(c) offerings is that the proposed amendments would provide issuers with additional ways to verify an investor's status as an accredited investor. As discussed in Section II.A above, issuers conducting offerings under Rule 506(c) are required to take reasonable steps to verify the accredited investor status of all purchasers in the offering. Compliance with this verification requirement has been cited as a potential impediment to the use of Rule 506(c) to raise capital despite the ability to use general solicitation when conducting these types of offerings.[281]

[280] *See* Rule 501 under Regulation Crowdfunding [17 CFR 227.501]. Such securities could also be transferred (i) to the issuer of the securities; (ii) as part of an offering registered with the Commission; (iii) to a member of the family of the purchaser or the equivalent, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance.

[281] *See, e.g.,* Peter Rasmussen, *Rule 506(c)'s General Solicitation Remains Generally Disappointing,* Bloomberg (May 26, 2017), *https://www.bna.com/rule-506cs-general-b73014451604/. See also,* comments of Jean Peters, Board Member, Angel Capital Association, at the 33rd Annual SEC Government-Business Forum on Small Business Capital Formation, Nov. 20, 2014, *available at https://www.sec.gov/info/smallbus/sbforum112014-final-transcript.pdf;* Manning G. Warren, *The Regulatory Vortex for Private Placements* (Univ. of Louisville Sch. of Law, Legal Studies Research Paper Series No. 2017–9, 2017) (summarizing discussions with securities counsel and the results of a survey of counsel specializing in private placements of securities regarding the reasons for reluctance to rely on Rule 506(c), including, among other factors, a reluctance to ''engage in an independent verification process in order to objectively determine the accredited investor status of each accredited investor in Rule 506(c) offerings.'' With respect to the last concern, this study states that ''[m]ost securities lawyers have not yet developed a comfort level with the necessary 'reasonable steps to verify.' . . . Moreover, this compliance requirement could chill the interests of many significant investors who have understandable reluctance to share their tax returns,

To the extent that issuers may face challenges complying with this requirement, the proposed amendments would provide issuers with additional avenues (*e.g.,* professional certifications and investment tests) to meet this requirement under certain circumstances, which could facilitate the use of Rule 506(c) as a capital raising option.

The proposed amendments also would increase the number of potential investors with whom issuers undertaking a registered offering may be able to communicate under Section 5(d) of the Securities Act and Securities Act Rule 163B (the test-the-waters provisions). By increasing the pool of potential institutional accredited investors and qualified institutional buyers, the proposed amendments would allow certain issuers to gather valuable information about investor interest before a potential registered offering. This could result in a more efficient and potentially lower-cost and lower-risk capital raising process for such issuers.

Under Section 12(g) of the Exchange Act,[282] an issuer that is not a bank, bank holding company, or savings and loan holding company is required to register a class of equity securities under the Exchange Act if, on the last day of its fiscal year, it has more than $10 million in total assets and the securities are ''held of record'' by either 2,000 or more persons, or 500 or more persons who are not accredited investors.[283] To the extent that the proposed amendments increase the pool of accredited investors, issuers may be able to raise the capital that they need by selling securities to fewer non-accredited investors, which could enable these issuers to avoid becoming an Exchange Act reporting company for a longer period. To the extent that certain issuers remain non-reporting companies to limit compliance costs and the risk of disclosure of sensitive information to potential competitors, the proposed amendments may benefit such issuers by enabling them to stay non-reporting for a longer period.

A proposed amendment to the accredited investor definition would allow knowledgeable employees of private funds to qualify as accredited investors for purposes of investing in offerings by these funds without the funds themselves losing accredited investor status when the funds have assets of $5 million or less.[284] This proposed amendment would potentially allow these private funds the ability to offer knowledgeable employees performance incentives, such as investing in the fund. Permitting employees who participate in the investment activities of a private fund to hold equity in such private funds may align incentives between such employees and investors. Although we expect that the increase in the capital that is supplied to private funds by knowledgeable employees of these private funds would likely be relatively small, the potential gains to the funds in incentive alignment and employee retention could affect fund performance positively.

2. Potential Benefits to Investors

There is recent empirical evidence that, for a number of reasons, issuers tend to stay private for longer and have been able to grow to a size historically available only to their public peers.[285] This suggests that the high-growth stage of the lifecycle of many issuers occurs while they remain private. Thus, investors that do not qualify for accredited investor status may not be able to participate in the high-growth stage of these issuers because it often occurs before they engage in registered offerings.[286] Allowing more investors to invest in unregistered offerings of private firms thus may allow them to participate in the high-growth stages of these firms.

We believe that newly eligible accredited investors could benefit from the proposed amendments as they would gain broader access to investment opportunities in private capital markets and greater freedom to make investment decisions based on their own analysis. Generally, expanding the set of investment opportunities can improve the risk-return tradeoff of an investor's portfolio.[287] While private investments may also offer the opportunity to invest in certain early-stage or high-growth firms that are not as readily available in the registered market, private investments, particularly in small and startup companies, generally pose a high level of risk. For example, based on Bureau of Labor Statistics (BLS) data on establishment survival rates, the five-year survival rates for private sector establishments formed in March 2013 was approximately 51%.[288] The higher risks of private investments may be mitigated by investing in professionally managed private funds rather than selecting private company investments directly.[289] Moreover, adding private investments to the set of investable assets could allow an investor to expand the efficient risk-return frontier and construct an optimal portfolio with risk-return properties that are better than, or similar to, the risk-return properties of a portfolio that is constrained from investing in certain asset classes. For example, recent research has shown that investments in funds of private equity funds can outperform public markets.[290]

However, comprehensive, market-wide data on the returns of private investments is not available due to a lack of required disclosure on these investment returns, the voluntary nature of disclosure of performance information by private funds, and the

brokerage statements and other confidential financial information with issuers' management and attorneys . . . [S]ome two-thirds of the respondents expressed concerns over compliance with the verification requirement . . . The possibilities that accredited investors will walk away from Rule 506(c) offerings based on privacy concerns clearly contributes to issuer reluctance to use Rule 506(c) and to a corollary preference to use Rule 506(b) as the exemption from registration.''). *See also* Larissa Lee, *The Ban Has Lifted: Now Is the Time to Change the Accredited-Investor Standard,* 2014 Utah L. Rev. 369 (2014); Elan W. Silver, *Reaching the Right Investors: Comparing Investor Solicitation in the Private-Placement Regimes of the United States and the European Union,* 89 Tul. L. Rev. 719 (2015); Dale A. Oesterle, *Intermediaries in Internet Offerings: The Future is Here,* 50 Wake Forest L. Rev. 533 (2015).

[282] 15 U.S.C. 78l(g).

[283] *Id. See also* 17 CFR 240.12g–1 (clarifying that accredited investor status for this purpose is determined as of the last day of its most recent fiscal year rather than at the time of the sale of the securities); and Changes to Exchange Act Registration Requirements Release at Section II.B. (''Under amended Rule 12g–1, an issuer will need to determine, based on facts and circumstances, whether prior information provides a basis for a reasonable belief that the security holder continues to be an accredited investor as of the last day of the fiscal year.'').

[284] Under Rule 501(a)(8), a private fund with assets of $5 million or less may qualify as an accredited investor if all of the fund's equity owners are accredited investors.

[285] *See* Michael Ewens & Joan Farre-Mensa, *The Deregulation of the Private Equity Markets and the Decline in IPOs* (Nat'l Bureau of Econ. Research, Working Paper No. 26317, Sept. 2019) (''Ewens & Farre-Mensa (2019)'').

[286] For example, according to Ritter (2019), the median age of a firm that went public in 1999 was 5, and in 2018 the median age was 10, *https://site.warrington.ufl.edu/ritter/files/2019/03/IPOs2018Age.pdf. See* Chairman Clayton, Remarks to the New York Economic Club (Sept. 9, 2019), *available at https://www.sec.gov/news/speech/speech-clayton-2019-09-09.*

[287] *See, e.g.,* John L. Maginn et al., Managing Investment Portfolios: A Dynamic Process (3rd ed. 2007) (''Maginn et al. (2007)''); Zvi Bodie, Alex Kane, & Alan J. Marcus, Investments (10th ed. 2013).

[288] *See* BLS business employment dynamics establishment age and survival data, available at *https://www.bls.gov/bdm/bdmage.htm* and *https://www.bls.gov/bdm/us_age_naics_00_table7.txt.*

[289] *See, e.g.,* the recommendation to expand retail investor access to closed-end registered investment funds with significant exposures to alternatives (*https://www.capmktsreg.org/wp-content/uploads/2018/10/Private-Equity-Report-FINAL-1.pdf*).

[290] *See, e.g.,* Robert S. Harris et al., *Financial Intermediation in Private Equity: How Well Do Funds of Funds Perform?,* 129 J. Fin. Econ. 287 (2018).

very limited nature of secondary market trading in these securities. Academic studies of the returns to private investments acknowledge limitations and biases in the available data.[291] For instance, it has been shown that the data on returns of private investments typically exhibits a survival bias due to the lack of reporting of underperforming investments and that the use of appraised valuations to construct returns on assets that are nontraded can make private investments seem less risky. There is also a lack of comprehensive data on angel investment returns[292] and entrepreneur returns on investment of their own funds and savings in starting a private business.[293]

Other aspects of the proposed amendments could provide additional benefits for investors. For example, persons that are ''knowledgeable employees'' of a private fund may benefit from increased access to investment opportunities with the fund as well as the availability of additional performance incentives. If investments by knowledgeable employees leads to better incentive alignment between the fund and investment personnel, other investors in the private fund could potentially benefit from enhanced fund performance. Additionally, family clients that are part of a family office would be able to invest in unregistered offerings as a result of the proposed amendments without the loss of investor protection benefits. Similarly, the proposed amendments to allow natural persons to include spousal equivalents when determining joint income or net worth under Rule 501 of Regulation D would remove unnecessary barriers to investment opportunities for such investors.

With respect to entities, including additional entity types within the definition of accredited investor would provide equal access to investment opportunities for entities with similar attributes of financial sophistication or the ability to fend for themselves, regardless of their organizational form. The proposed amendments thus could help level the playing field among institutional investors and avoid certain inefficiencies associated with specific corporate forms. Likewise, the proposed amendment to include a catch-all category of accredited investor for entities with investments in excess of $5 million would remove impediments to utilizing alternative legal forms and permit sophisticated investors to take advantage of novel forms of business organization that may develop in the future, without having to worry about losing their accredited investor status. Since most family offices are likely already considered accredited investors, we do not expect them to receive significant benefits as a result of the proposed amendments.

3. Potential Costs to Issuers

We also recognize that expanding the pool of accredited investors could increase the availability of capital to private firms, which could allow them to stay private longer, thus reducing the number of companies going public. For example, some academic studies suggest that the expanding role of private markets has contributed to the decline in the number of public companies.[294] Some studies have focused on the increased flexibility to deregister provided by recent U.S. regulatory reforms.[295] Yet other studies generally note the cyclical nature of offering activity more generally.[296] How large the impact of the proposed rule is on the private-public choice is uncertain since there are a number of factors (*e.g.*, liquidity, cost of capital, ownership structure, compliance costs, valuations) that an issuer would consider when determining to go public or stay private.

4. Potential Costs to Investors

Newly eligible accredited investors would have access to more investment

[291] Research has examined (i) private equity returns (*see, e.g.*, Steven N. Kaplan & Antoinette Schoar, *Private Equity Performance: Returns, Persistence, and Capital Flows,* 60 J. Fin. 1791 (2005); Andrew Metrick & Ayako Yasuda, *Venture Capital and Other Private Equity: A Survey,* 17 Eur. Fin. Mgmt. 619 (2011); Christian Diller & Christoph Kaserer, *What Drives Private Equity Returns? Fund Inflows, Skilled GPs, and/or Risk?,* 15 Eur. Fin. Mgmt. 643 (2009); Robert S. Harris et al., *Financial Intermediation in Private Equity: How Well Do Funds of Funds Perform?,* 129 J. Fin. Econ. 287 (2018); Robert S. Harris, Tim Jenkinson, & Steven N. Kaplan, *Private Equity Performance: What Do We Know?,* 69 J. Fin. 1851 (2014); Kasper Nielsen, *The Return to Direct Investment in Private Firms: New Evidence on the Private Equity Premium Puzzle,* 17 Eur. Fin. Mgmt. 436 (2011)); (ii) VC performance (*see, e.g.*, John H. Cochrane, *The Risk and Return of Venture Capital,* 75 J. Fin. Econ. 3 (2005); Arthur Korteweg & Stefan Nagel, *Risk-Adjusting the Returns to Venture Capital,* 71 J. Fin. 1437 (2016); Axel Buchner, Abdulkadir Mohamed, & Armin Schwienbacher, *Does Risk Explain Persistence in Private Equity Performance?,* 39 J. Corp. Fin. 18 (2016)); and (iii) hedge fund returns (*see, e.g.*, William Fung & David A. Hsieh, *Hedge Fund Benchmarks: A Risk-Based Approach,* Fin. Analysts J., Sept./Oct. 2004, at 65; William Fung & David A. Hsieh, *Measurement Biases in Hedge Fund Performance Data: An Update,* Fin. Analysts J., May/June 2009, at 36; Manuel Ammann, Otto R. Huber, & Markus Schmid, *Benchmarking Hedge Funds: The Choice of the Factor Model* (Working Paper, 2011); Zheng Sun, Ashley W. Wang, & Lu Zheng, *Only Winners in Tough Times Repeat: Hedge Fund Performance Persistence over Different Market Conditions,* 53 J. Fin. & Quantitative Analysis 2199 (2018); Charles Cao et al., *What Is the Nature of Hedge Fund Manager Skills? Evidence from the Risk-Arbitrage Strategy,* 51 J. Fin. & Quantitative Analysis 929 (2016); Vikas Agarwal, T. Clifton Green, & Honglin Ren, *Alpha or Beta in the Eye of the Beholder: What Drives Hedge Fund Flows?,* 127 J. Fin. Econ. 417 (2018); Turan G. Bali, Stephen J. Brown, & Mustafa O. Caglayan, *Systematic Risk and the Cross Section of Hedge Fund Returns,* 106 J. Fin. Econ. 114 (2012); Turan G. Bali, Stephen J. Brown, & Mustafa O. Caglayan, *Macroeconomic Risk and Hedge Fund Returns,* 114 J. Fin. Econ. 1 (2014); Andrea Buraschi, Robert Kosowski, & Fabio Trojani, *When There Is No Place to Hide: Correlation Risk and the Cross-Section of Hedge Fund Returns,* 27 Rev. Fin. Stud. 581 (2014); Ravi Jagannathan, Alexey Malakhov, & Dmitry Novikov, *Do Hot Hands Exist Among Hedge Fund Managers? An Empirical Evaluation,* 65 J. Fin. 217 (2010); Andrea Buraschi, Robert Kosowski, & Worrawat Sritrakul, *Incentives and Endogenous Risk Taking: A Structural View on Hedge Fund Alphas,* 69 J. Fin. 2819 (2014); Ronnie Sadka, *Liquidity Risk and the Cross-Section of Hedge-Fund Returns,* 98 J. Fin. Econ. 54 (2010); Ilia D. Dichev & Gwen Yu, *Higher Risk, Lower Returns: What Hedge Fund Investors Really Earn,* 100 J. Fin. Econ. 248 (2011)).

[292] Studies we have identified have used small, selected samples—sometimes from foreign markets—that do not generalize to the entire U.S. market. *See, e.g.*, Vincenzo Capizzi, *The Returns of Business Angel Investments and Their Major Determinants,* 17 Venture Cap. 271 (2015) (using a small sample of Italian data); Colin M. Mason & Richard T. Harrison, *Is It Worth It? The Rates of Return from Informal Venture Capital Investments,* 17 J. Bus. Venturing 211 (2002) (using a small UK sample). Investments through AngelList and similar platforms allow accredited investors to make VC-like investments in startups. The returns generated by such investments have been a topic of debate in the literature (*see, e.g.*, Olga Itenberg & Erin E. Smith, *Syndicated Equity Crowdfunding: The Trade-Off Between Deal Access and Conflicts of Interest* (Simon Bus. Sch., Working Paper No. FR 17–06, Mar. 2017)).

[293] *See, e.g.*, Elisabeth Mueller, *Returns to Private Equity—Idiosyncratic Risk Does Matter!,* 15 Rev. Fin. 545 (2011) (''Mueller (2011)''); Thomas Astebro, *The Returns to Entrepreneurship,* in Oxford Handbook of Entrepreneurial Finance (Douglas Cumming ed. 2012) (''Astebro (2012)''); Thomas J. Moskowitz & Annette Vissing-Jørgensen, *The Returns to Entrepreneurial Investment: A Private Equity Premium Puzzle?,* 92 Am. Econ. Rev. 745 (2002) (''Moskowitz & Vissing-Jørgensen (2002)''). For instance, Moskowitz and Vissing-Jørgensen (2002) examine the returns to investing in U.S. non-publicly traded equity and find that, although entrepreneurial investment is extremely concentrated, the returns to private equity are no higher than the returns to public equity. They attribute the willingness of households to invest substantial amounts in a single privately held firm with a seemingly far worse risk-return trade-off to large nonpecuniary benefits, a preference for skewness, or overestimated probability of survival.

[294] *See* Ewens & Farre-Mensa (2019), *supra* note 284 and Craig Doidge et al., *Eclipse of the Public Corporation or Eclipse of the Public Markets?,* J. Applied Corp. Fin., Winter 2018, at 8.

[295] *See* Nuno Fernandes, Ugur Lel, & Darius P. Miller, *Escape from New York: The market impact of loosening disclosure requirements,* 95 J. Fin. Econ. 2 (2010) (focusing on ''Rule 12h–6, which has made it easier for foreign firms to deregister with the SEC and thereby terminate their U.S. disclosure obligations''); Craig Doidge et al., *Why Do Foreign Firms Leave U.S. Equity Markets?,* 65 J. Fin. 4, 1507–1553.

[296] *See, e.g.*, Michelle Lowry, *Why does IPO Volume fluctuate so much?,* 67 J. Fin. Econ. 1 (2003), 3–40; Alti (2005); and Chris Yung et al., *Cycles in the IPO Market,* 89 J. Fin. Econ. 1 (2008), 192–208.

options under the proposed amendments. Some of these investment options could entail greater risk of loss. Thus, newly eligible accredited investors could face greater overall investment risk under the proposed amendments. The proposal is designed to limit the costs to investors by ensuring that accredited investor status is only afforded to investors that are either financially sophisticated and therefore able to fend for themselves or are able to sustain the risk of loss. To the extent that the ways we are proposing to expand the pool of potential accredited investors would include investors that are not financially sophisticated, such investors in this expanded state would bear the costs we discuss below.

We anticipate that some natural person investors who do not meet the income and wealth thresholds under the current definition, but that would qualify as accredited investors under the proposed amendments, may not be able to sustain a loss of investment in an unregistered offering. For example, an individual that has obtained a Series 7 license or is a knowledgeable employee of a private fund may possess experience in investing but may be less able to withstand investment losses than an accredited investor qualifying on the basis of personal wealth. However, we believe this risk would be mitigated by the fact that the proposed amendments are intended to better identify investors' financial sophistication, which includes an ability to assess and avoid a risk of loss that the investor cannot sustain.

Investing in securities that are acquired in exempt offerings could reduce investors' liquidity while increasing their transaction and agency costs. Investors may experience reductions in liquidity by investing in these securities, as secondary market liquidity in these offerings remains limited. This illiquidity is generally related to legal restrictions on the transferability of securities issued in many exempt offerings; a lack—or a very limited nature—of a trading market; [297] long-term horizon for exits for private issuers; and, in cases of private funds investing in private issuers, standard contractual terms designed to enable a long-term horizon for the portfolio.[298] Investing in securities of private companies for which less information is publicly available, also could increase the agency costs for accredited investors. Since the vast majority of capital that is raised in exempt offerings is not accompanied by disclosures that are comparable to public companies' disclosures, investors would potentially have less information about these private companies compared to similar public companies, and they may not be able to effectively monitor the management of these companies. As a result, investors in securities of private companies may bear a heightened risk that management may take actions that reduce the value of their stakes in such companies without such actions being disclosed. However, we believe that the risk of accredited investors not being able to manage their liquidity or agency risk would be mitigated because these investors are presumed to be financially sophisticated.

While investing in securities acquired in exempt offerings may increase an investor's diversification (as discussed above), there are practical frictions that can make it difficult for an investor to diversify risk using these investments. For example, investment minimums demanded by certain issuers may decrease or eliminate the diversification benefits of incorporating private investments in an individual investor's portfolio. Moreover, the increased competition amongst investors under an expanded accredited investor definition could lower investors' expected returns for private assets. That is, as more capital is available in the non-registered markets, investors could receive lower returns due to the entry of newly-accredited investors with a lower required rate of return or reduced search frictions associated with finding accredited investors. Further, it has been shown that the data on returns of private investments typically exhibits smoothing due to the infrequent nature of observation of returns and/or the use of appraised valuations and other methods to construct returns on assets that are nontraded.[299] This can result in an investor significantly overestimating the diversification benefits of private investments and underestimating the risk of private investments.[300] Additionally, when compared to traded securities of public companies, private investments may be characterized by considerable downside and tail risk due to the frequently non-normally distributed returns.[301] We think that the likelihood that accredited investors misunderstand the risk profile and associated portfolio constraints of securities acquired in exempt offerings is relatively low, as these investors are presumed to be financially sophisticated.

The proposed amendments could increase agency costs and reduce efficient capital allocation if investors are solicited with less information. Further, the combined presence of small individual investors without control rights and insiders or large private investors with concentrated control rights is likely to lead to agency conflicts. Such agency conflicts, as well as potentially an inability to negotiate preferential terms (such as downside protection options, liquidation preferences, and rights of first refusal) might place individual accredited investors, dollar-for-dollar, at a disadvantage to insiders and large investors. The impact of agency conflicts on minority investors in private companies might be relatively more significant than at exchange-listed companies because private companies generally are not subject to the governance requirements of exchanges or various proxy statement disclosures. However, as accredited investors are presumed to be financially sophisticated, we anticipate that they will have the experience, resources, and incentives to screen private offerings from both non-reporting and reporting issuers.

5. Variation in Economic Effects

The magnitude of the benefits and costs discussed above are expected to vary depending on the particular attributes of the affected issuers and investors.

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[297] *See, e.g.,* David F. Larcker, Brian Tayan, & Edward Watts, *Cashing It In: Private-Company Exchanges and Employee Stock Sales Prior to IPO,* Stanford Closer Look Series (Sept. 12, 2018). *See also* Concept Release.

[298] *See, e.g.,* Private Equity: Fund Types, Risks and Returns, and Regulation (Douglas Cumming ed., 2011).

[299] *See, generally,* Gregory W. Brown, Oleg R. Gredil, & Steven N. Kaplan, *Do Private Equity Funds Manipulate Reported Returns?,* 132 J. Fin. Econ. 267 (2019); Arthur Korteweg, *Risk Adjustment in Private Equity Returns* (Working Paper, 2018).

[300] *See, generally,* Maginn et al. (2007), *supra* note 286. *See also* Kenneth Emery, *Private Equity Risk and Reward: Assessing the Stale Pricing Problem,* J. Private Equity, Spring 2003, at 43; Arthur Korteweg & Morten Sorensen, *Risk and Return Characteristics of Venture Capital-Backed Entrepreneurial Companies,* 23 Rev. Fin. Stud. 3738 (2010); Gregory W. Brown, Oleg R. Gredil, & Steven N. Kaplan, *Do Private Equity Funds Manipulate Reported Returns?,* 132 J. Fin. Econ. 267 (2019); Arthur Korteweg, *Risk Adjustment in Private Equity Returns* (Working Paper, 2018).

[301] *See, e.g.,* Mueller (2011), *supra* note 292; Astebro (2012), *supra* note 292; Moskowitz & Vissing-Jørgensen (2002), *supra* note 292. For instance, Moskowitz and Vissing-Jørgensen (2002) examine the returns to investing in U.S. non-publicly traded equity and find that, although entrepreneurial investment is extremely concentrated, the returns to private equity are no higher than the returns to public equity. They attribute the willingness of households to invest substantial amounts in a single privately held firm with a seemingly far worse risk-return trade-off to large nonpecuniary benefits, a preference for skewness, or overestimated probability of survival.

With respect to issuers, we expect the proposed changes to be most valuable for firms that have greater uncertainty about the interest in their prospective offerings, particularly ones that are small, in development stages, or in geographic areas that currently have lower concentrations of accredited investors. Household income and net worth tend to be higher in the Northeast and West regions. Thus, issuers that are not in those regions may find it more difficult to solicit qualified accredited investors. For example, based on DERA staff analysis of Form 1–A filings from June 2015 to December 2018, approximately 24% of Regulation A issuers were located in California, 10% in Florida, and 8% in New York. Additionally, small businesses typically do not have access to registered capital markets and commonly rely on personal savings, business profits, home equity loans, and friends and family as initial sources of capital.[302] Small issuers that face more challenges in raising external financing may benefit more from increased access to accredited investors.[303] In particular, businesses owned by underrepresented minorities may benefit from increased access to accredited investors. For example, based on the 2014 Annual Survey of Entrepreneurs, 28.4% of Black entrepreneurs and 17.5% of Hispanic entrepreneurs cited limited access to financial capital as having a negative impact on their firms' profitability.[304] Additionally, despite being more likely to seek new sources of funding, businesses owned by underrepresented minorities were more likely to demonstrate unmet credit needs relative to other groups,[305] which suggests that these businesses may benefit from amendments intended to facilitate private market capital raising.

We expect that issuers that predominately offer and sell securities in registered offerings or that market their offerings to non-accredited investors would be less likely to be affected by the proposed amendments. We expect the incremental benefits of the proposed amendments to be smaller for large and well-established issuers with low information asymmetry and a history of public disclosures, as these issuers likely have ready access to accredited investors, especially institutional accredited investors. Similarly, issuers with low costs of proprietary disclosure (*e.g.,* low research and development intensity and limited reliance on proprietary technology) may be less likely to benefit from the proposed amendments as they may be less reliant on exempt offerings.

With respect to investors, we expect the benefits and costs of the proposed amendments to be most immediately realized by new entrants to the pool of accredited investors, particularly entities that are not included in the current accredited investor definition and individuals that have professional certifications that do not meet the current income and net worth thresholds. We also expect that providing additional measures of financial sophistication, other than personal wealth, could expand investment opportunities for individual investors in geographic regions with a lower cost of living.

6. Competition, Efficiency, and Capital Formation

The Commission believes that the proposed amendments are likely to facilitate capital formation by increasing issuers' access to accredited investors and increasing investors' access to capital markets. The impacts of the proposed amendments on competition, efficiency, and capital formation are discussed throughout this section and elsewhere in this release. The following discussion highlights several such impacts.

Most of the proposed amendments would expand the pool of accredited investors beyond the current baseline.

The increased pool of accredited investors could result in increased amounts of capital available to private issuers, thus increasing capital formation. Expanding the pool of accredited investors could also make the capital raising process more efficient by allowing potentially newer and informed investors to enter the market for private offerings. If the newly accredited investors bring new and uncorrelated information signals to the market (*e.g.,* because of their specialized knowledge and skills), such an increase in the number of investors could improve the price discovery process and make the market for private offerings more efficient. The increased pool of accredited investors could also enhance competition among investors in the market for private offerings, thus reducing the cost of capital for potential issuers and improving allocative efficiency.

The expansion of the accredited investor pool could also reduce the capital allocated to public markets if public markets attract relatively fewer offerings. Further, to the extent that an efficient market incorporates firm-specific information quickly and correctly, such an expansion could reduce the efficiency of public markets if there are fewer companies making disclosures into public markets. As discussed previously, various academic studies have attributed the expanding role of private markets as a contributing factor to the decline in the number of public U.S. companies over the past two decades.[306] Alternatively, another strand of academic literature pinpoints changes in the economies of scope and business structure that have decreased the feasibility and attractiveness of operating as a standalone small or medium-sized company as driving factors in the decline in the number of public companies and new listings.[307] As an important caveat, while some of the cited evidence allows side-by-side comparisons of aggregate trends in listings, IPOs, private placements, and mergers, it does not necessarily establish conclusive causal relations between the expansion of private markets and the contraction in the number of public U.S. companies.

[302] *See* 2017 Treasury Report.

[303] *See* Lindsey & Stein (2019), *supra* note 262.

[304] Alicia Robb, ''Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity for U.S. Employer Firms,'' a study for the Office of Advocacy, U.S. Small Bus. Admin. (Feb. 2018), *available at https://www.sba.gov/sites/default/files/Financing_Patterns_and_Credit_Market_Experiences_report.pdf.*

[305] *Id.*

[306] *See, e.g.,* Ewens & Farre-Mensa (2019), *supra* note 284; Craig Doidge et al., *Eclipse of the Public Corporation or Eclipse of the Public Markets?,* J. Applied Corp. Fin., Winter 2018, at 8.

[307] According to this literature, small and medium-sized companies increasingly follow the path of being acquired by larger competitors in lieu of going and remaining public, which accounts for the decline in IPOs and new listings, particularly of small and medium-sized companies. Being bought by a larger firm offers potential advantages to a smaller company, including speeding a product to market and helping smaller businesses realize ''economies of scope.'' *See, e.g.,* Xiaohui Gao, Jay R. Ritter, & Zhongyan Zhu, *Where Have All the IPOs Gone?,* 48 J. Fin. & Quantitative Analysis 1663 (2013); Jay R. Ritter, *Equilibrium in the Initial Public Offerings Market,* 3 Ann. Rev. Fin. Econ. 347 (2011) (stating that although regulatory burdens account for some of the decline, much of the decline is due to a structural shift that has lessened the profitability of small independent companies relative to their value as part of a larger, more established organization that can realize economies of scope); Jay R. Ritter, *Re-Energizing the IPO Market* (Working Paper, 2012) (similarly focused on the economies of scope hypothesis); Paul Rose & Steven Davidoff Solomon, *Where Have All the IPOs Gone? The Hard Life of the Small IPO,* 6 Harv. Bus. L. Rev. 83 (2016) (examining 3,081 IPOs from 1996–2012 and concluding that the decline in small IPOs appears more attributable to the ''historical unsuitability of small firms for the public markets''); Andrea Signori & Silvio Vismara, *M&A Synergies and Trends in IPOs* (Working Paper, 2016); Jay R. Ritter, Andrea Signori, & Silvio Vismara, *Economies of Scope and IPO Activity in Europe,* in Handbook of Research on IPOs (Mario Lewis & Silvio Vismara eds., 2013), at 11 (attributing the decline in European IPOs to market conditions and to economies of scope).

To the extent that the proposed amendments better identify an investor's financial sophistication (*e.g.,* professional certifications for natural persons and an investments-owned threshold for entities), the expanded definition may increase market efficiency by allowing more informed investors into a larger segment of the capital market. The expanded pool of accredited investors could also increase the capital that is supplied to private markets, thereby potentially lowering investors' expected returns from investing in this market.

Additionally, as discussed above, expanding the accredited investor definition to include knowledgeable employees of a private fund could lead to better alignment between private funds and investors. The improved alignment could enable private funds to perform investing services more efficiently and effectively, thus potentially improving investor protection and market efficiency over the long term.

7. Alternatives

In this section, we evaluate reasonable alternatives to the proposed amendments. First, the Commission could leave the current income and net worth thresholds in place as proposed, but impose certain investment limitations. Inflation has expanded significantly the number of individuals who qualify as accredited investors based on income and net worth. Limiting investment amounts for individuals who qualify as accredited investors based solely on the current income or net worth thresholds could provide protections for those individuals who are less able to bear financial losses. For example, the Commission could consider limiting investments for individuals who qualify as accredited investors solely based on the current thresholds to a percentage of their income or net worth (*e.g.,* 10% of prior year income or 10% of net worth, as applicable, per issuer, in any 12-month period). This alternative, however, would result in a smaller pool of accredited investors, reduce capital formation, and likely increase the implementation costs associated with verifying an investor's status as an accredited investor and her eligibility to participate in an offering.

The Commission also could consider increasing the individual income thresholds from $200,000 to $538,000 and the net worth threshold from $1 million to $2.7 million to reflect the impact of inflation since 1982. Such an alternative could provide further assurance that individuals eligible for accredited investor status are those investors who do not need protections rendered by registration under the Securities Act. Using the SCF, we estimate that an immediate catch-up inflation adjustment would shrink the accredited investor pool to 5.3 million households (representing 4.2% of the population of U.S. households) from the current pool of approximately 16 million households (representing 13% of the population of U.S. households). Thus, increasing the individual income and net worth thresholds would greatly reduce the number of natural persons who would qualify as accredited investors. Moreover, an immediate catch-up inflation adjustment would likely reduce the number of accredited investors in geographic areas with lower cost of living. As such, the adjusted income and wealth thresholds also could potentially increase the costs that issuers face by reducing issuers' access to capital and reducing investors' access to private investment opportunities. As discussed above in Section VII.B, accredited investors supplied 94% of the $1.5 trillion raised in Rule 506(b) offerings in 2018. Significantly reducing the pool of accredited investors through an immediate catch-up inflation adjustment could thus have disruptive effects on capital raising activity in the Regulation D market.

The Commission also could consider indexing the financial thresholds in the definition for inflation on a going-forward basis, rounded to the nearest $10,000 every four years following the effective date of the final rule amendment. This alternative likely would reduce the change in the number of accredited investors relative to the baseline of leaving the thresholds fixed, holding all else constant. Using the 2016 SCF, we estimate that in 2019, had the current wealth and income thresholds been adjusted for inflation since 2015 and 2010, the proportion of U.S. households that would qualify as accredited investors would have been 11.4% and 10.4%, respectively, which is consistent with an inflation adjustment reducing the pool of accredited investors relative to the baseline.

If the Commission modifies the accredited investor definition as described above, the Commission also could consider grandfathering issuers' current investors who meet and continue to meet the current accredited investor standards with respect to future offerings of the securities of issuers in which the investors are invested at the time of the change. Grandfathering would provide protection from investment dilution for any person who no longer would be an accredited investor because of any changes to the definition. The grandfathering provision could apply to future investments in the same issuer only, and not to future investments in affiliates of the issuer. Grandfathering current investors would help to mitigate—although it likely would not completely eliminate—the potential disruptive effect to the Regulation D market of an immediate catch-up inflation adjustment.

As an alternative to the proposed amendments, the Commission could permit individuals with a minimum amount of investments to qualify as accredited investors. Investments may in some cases be a more meaningful measure of individuals' experience with and exposure to the financial and investing markets than income or net worth. An ''investments'' definition based on the definition of investments in Rule 2a51–1(b) would promote consistency across securities laws and provide a predictable framework. In 2007, the Commission proposed applying a $750,000 minimum investments-owned threshold.[308] Using the SCF to measure households' financial and nonfinancial wealth (excluding the value of a primary residence), we estimate that an investment-owned test of $750,000 would increase the number of households that would currently qualify as accredited investors from approximately 16 million households (representing 13% of the population of U.S. households) to 18.2 million households (representing 14.5% of the population of U.S. households). Thus, this alternative likely would increase the pool of accredited investors relative to the baseline. On the other hand, an unconditional investments-owned test that does not take into account a natural person's indebtedness or income could reduce investor protections relative to the baseline if individuals use leverage to fund their investments.

As another alternative to the proposed amendments, the Commission could permit individuals with experience investing in exempt offerings to qualify as accredited investors. For example, the Commission could consider adding a new category to the accredited investor definition that includes individuals who have invested in at least ten private securities offerings, each conducted by a different issuer, under Securities Act Section 4(a)(2), Rule 506(b), or Rule 506(c). Expanding the accredited investor definition to include individuals with relevant investment experience would recognize

[308] *See* 2007 Proposing Release.

an objective indication of financial sophistication. These individuals presumably have developed knowledge about the private capital markets, including their inherent risks. This experience may include performing due diligence, negotiating investment terms, and making valuation determinations. This alternative would increase the pool of accredited investors, although by less than the proposed amendments. At the same time, this alternative could significantly increase the implementation costs of determining an investor's status as an accredited investor, as verifying an individual's relevant investment experience likely would be cumbersome.

The Commission could also permit certain knowledgeable employees of a non-fund issuer to qualify as accredited investors in securities offerings of that issuer. For example, an employee that is an officer at a company should have access to the necessary information about that company to make an informed investment should the company decide to issue securities. Expanding the accredited investor definition to include certain knowledgeable employees of a non-fund issuer would increase the pool of accredited investors relative to the baseline, and could allow non-fund issuers to raise additional capital and potentially increase incentive alignments between employees and shareholders. On the other hand, this alternative could reduce investor protections, to the extent that a knowledgeable employee may be informed about a company's business operations, but not possess the relevant financial sophistication to assess the company's offerings.

Finally, the Commission could add even more specific entity types to the enumerated entity types in Rule 501(a), instead of the proposal to include all entities that meet an investments-owned test. For example, the Commission could expand the enumerated entity types in Rule 501(a) to include additional entity types such as Indian tribes and sovereign wealth funds. As detailed above in Section VII.D, adding specific entity types to the enumerated entity types in Rule 501(a) would expand the pool of accredited investors relative to the baseline. On the other hand, this alternative would result in a smaller number of new institutional accredited investors compared to the proposed amendments. Another alternative would be to apply an asset test for the new entities instead of an investments-owned test. An asset test would help to level the playing field among institutional investors and would reduce inefficiencies associated with specific corporate forms that could develop in the future relative to the current baseline. Moreover, an asset test would likely increase the number of new institutional investors that would qualify as accredited investors relative to an investments-owned test, as, all else equal, we expect more entities to have $5 million in assets than would have $5 million in investments. At the same time, to the extent that an investments-owned test is a better indicator of those investors who do not need the protections rendered by registration under the Securities Act than an asset test, this alternative could result in lower levels of market efficiency and investor protection compared to the proposed amendments.

Request for Comment

We request comment on all aspects of our economic analysis, including the potential benefits and costs of the proposed amendments and alternatives to the proposed amendments, and whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on the estimates of costs and benefits for the affected parties.

70. Would expanding the accredited investor definition to encompass natural persons that are advised by investment professionals impact market efficiency, competition, capital formation, or investor protection? If so, what would those impacts be?

71. Does the current exempt offering framework provide certain issuers with sufficient access to accredited investors? For example, are there capital-raising needs specific to any of the following that are currently not being met due to limited access to accredited investors: Issuers in particular industries, such as technology, biotechnology, or manufacturing; or issuers led by underrepresented minorities, women, or veterans? Is there quantitative data available that shows the extent to which accredited investors fulfill the capital raising needs of these issuers? Would amending the accredited investor definition in the manner we propose address any such financing gaps?

72. How should we evaluate whether our current exempt offering framework provides adequate investor protection for accredited investors? For example, is there quantitative data available that shows an increased incidence of fraud in particular types of exempt offerings or in the market for exempt offerings as a whole? If yes, is there any reliable way to predict whether the proposed amendments could have any effect on the incidence of fraud in exempt offerings? What other factors should we consider in assessing fraud in exempt offerings?

VIII. Paperwork Reduction Act

We do not believe that the proposed amendments would impose any new ''collection of information'' requirement as defined by the Paperwork Reduction Act of 1995,[309] nor create any new filing, reporting, recordkeeping, or disclosure requirements. As discussed in Sections II, III, V and VII above, by expanding the pool of accredited investors, the proposed amendments could facilitate exempt offerings conducted pursuant to Regulation D or Regulation A and/or enable some companies to defer becoming a public reporting company, which may impact the number of annual responses under associated collections of information.[310] It is difficult to estimate the magnitude of these effects as they would depend on a number of factors. Overall, however, we expect any impact on the annual number responses for associated collections of information to be incremental and relatively small, and therefore we are not proposing to adjust the burden estimates for these collections of information at this time. Accordingly, we are not submitting the proposed amendments to the Office of Management and Budget for review under the Paperwork Reduction Act.[311] We request comment on our assessment that the proposed amendments would not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act. We also request comment on whether the proposed amendments would impact the number of annual responses for any associated collections of information and, if so, how we should adjust our PRA burden estimates to reflect this impact.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[312] the Commission must advise OMB as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is

[309] 44 U.S.C. 3501 *et seq.*

[310] These collections of information include: Form D (3235–0076), Form 1–A (3235–0286), Form 1–K (3235–0720), Form 1–SA (3235–0721), Form 1–U (3235–0722).

[311] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[312] 5 U.S.C. 801 *et seq.*

considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

Request for Comment

We request comment on whether the proposed amendments would be a ''major rule'' for purposes of SBREFA. In particular, we request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (''RFA'') [313] requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (''IRFA'') that will describe the impact of the proposed rule on small entities.[314] This IRFA relates to proposed amendments to Rules 215 and 501(a) of the Securities Act.[315]

A. Reasons for, and Objectives of, the Proposed Action

The primary objective of the proposed amendments is to update and improve the definitions of accredited investor and qualified institutional buyer. The reasons for, and objectives of, the proposed amendments are discussed in more detail in Sections II through IV above.

B. Legal Basis

We are proposing the amendments pursuant to Sections 2(a)(11), 2(a)(15), 4(a)(1), 4(a)(3)(A), 4(a)(3)(C), 19(a), and 28 of the Securities Act and Sections 3(a)(51)(B), 3(b), 15(c), 15(g), and 23(a) of the Exchange Act.

[313] 5 U.S.C. 601 *et seq.*

[314] 5 U.S.C. 603(a).

[315] Because the proposed changes to Rule 144A of the Securities Act relate to entities that in the aggregate own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity, we do not believe the proposed changes to Rule 144A would have an impact on small entities.

C. Small Entities Subject to the Proposed Rule

The proposed amendments would affect issuers that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [316] For purposes of the RFA, under 17 CFR 230.157, an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million. Under 17 CFR 240.0–10(a), an investment company, including a business development company, is considered to be a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.

The proposed amendments would allow more investors to qualify as accredited investors, which would permit all issuers, including small entities, to offer and sell securities in the private markets to more investors. Because the proposed amendments would affect all issuers, both reporting and non-reporting, it is difficult to estimate the number of issuers that qualify as small issuers that would be eligible to rely on the proposed amendments.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments do not impose any new reporting or recordkeeping requirement, although, as with any Regulation D offering, the issuer must file a Form D with the Commission when conducing an offering under the exemptions provided in Regulation D. Further, small entities are not required to offer and sell securities to accredited investors who would be newly qualified under the proposed rules. As a result, we do not expect the proposed amendments to significantly impact existing reporting, recordkeeping, and other compliance burdens. Small entities choosing to avail themselves of the proposed amendments may seek the advice of legal or accounting professionals in connection with offers and sales to accredited investors. We discuss the economic impact, including the estimated costs and benefits, of the proposed amendments to all issuers, including small entities, in Section VII above.

[316] 5 U.S.C. 601(6).

E. Duplicative, Overlapping, or Conflicting Federal Rules

We do not believe the proposed amendments would duplicate, overlap, or conflict with other federal rules, although, as discussed in Section V, the proposed amendments could have implications for a number of other contexts under the federal securities laws.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

The proposed amendments would not establish any new reporting, recordkeeping, or compliance requirements for small entities and, as noted above, small entities are not required to offer and sell securities to accredited investors who would be newly qualified under the proposed rules. Accordingly, we do not believe it is necessary to exempt small entities from all or part of the proposed amendments or to consider different or simplified compliance requirements for these entities. To the extent that issuers may face challenges complying with the requirement in Rule 506(c) of Regulation D to verify an accredited investor's status, the proposed amendments would provide issuers, including small entities, with additional ways to meet this verification requirement that are objective and readily verifiable.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed

amendments on small entity issuers discussed in the analysis; and

- How to quantify the impact of the proposed amendments.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

XI. Statutory Authority and Text of Proposed Rule Amendments

The amendments contained in this release are being proposed under the authority set forth in Sections 2(a)(11), 2(a)(15), 4(a)(1), 4(a)(3)(A), 4(a)(3)(C), 19(a), and 28 of the Securities Act and in Sections 3(a)(51)(B), 3(b), 15(c), 15(g), and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, the Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations, as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 230.144A by:

■ a. Revising paragraphs (a)(1)(i)(C) and(H);

■ b. Removing the ''.'' at the end of paragraph (a)(1)(i)(I) and additing in its place ''and ;''; and

■ c. Adding a new paragraph (a)(1)(i)(J).

The revisions and addition read as follows:

§ 230.144A Private resales of securities to institutions.

(a) * * *

(1) * * *

(i) * * *

(C) Any *Small Business Investment Company* licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958 or any *Rural Business Investment Company* as defined in section 384A of the Consolidated Farm and Rural Development Act;

* * * * *

(H) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, limited liability company, or Massachusetts or similar business trust;

* * * * *

(J) Any institutional accredited investor, as defined in rule 501(a) under the Act (17 CFR 230.501(a)), of a type not listed in paragraphs (a)(1)(i)(A) through (I) or paragraphs (a)(1)(ii) through (vi).

* * * * *

■ 3. Amend § 230.163B by revising paragraph (c)(2) to read as follows:

§ 230.163B Exemption from section 5(b)(1) and section 5(c) of the Act for certain communications to qualified institutional buyers or institutional accredited investors.

* * * * *

(c) * * *

(2) Institutions that are accredited investors, as defined in §§ 230.501(a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), or (a)(12).

■ 4. Revise § 230.215 to read as follows:

§ 230.215 Accredited investor.

The term *accredited investor* as used in section 2(a)(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)(ii)) shall have the same meaning as the definition of that term in rule 501(a) under the Act (17 CFR 230.501(a)).

■ 5. Amend § 230.501 by:

■ a. Revising paragraphs (a)(1) and (a)(3);

■ b. Revising the first sentence of paragraph (a)(5);

■ c. Adding a note to paragraph (a)(5);

■ d. Revising paragraph (a)(6);

■ e. Removing the word ''and'' at the end of paragraph (a)(7);

■ f. Replacing the ''.'' at the end of paragraph (a)(8) with a '';'';

■ g. Adding a note to prаragraph (a)(8);

■ h. Adding paragraphs (a)(9) through (13);

■ i. And adding paragraph (j).

The revisions and additions read as follows:

§ 230.501 Definitions and terms used in Regulation D.

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

* * * * *

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds $1,000,000;

* * * * *

Note 1 to paragraph (a)(5): For the purposes of calculating joint net worth in this paragraph (a)(5): Joint net worth can be the aggregate net worth of the investor and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard of this paragraph (a)(5) does not require that the securities be purchased jointly.

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse or spousal equivalent in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

* * * * *

(8) * * *

Note 1 to paragraph (a)(8): It is permissible to look through various forms of equity ownership to natural persons in determining the accredited investor status of entities under this paragraph (a)(8). If those natural persons are themselves accredited investors, and if all other equity owners of the entity seeking accredited investor status are accredited investors, then this paragraph (a)(8) may be available.

(9) Any entity, of a type not listed in paragraphs (a)(1), (a)(2), (a)(3), (a)(7), or (a)(8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5,000,000;

Note 1 to paragraph (a)(9): For the purposes this paragraph (a)(9), ''investments'' is defined in rule 2a51–1(b) under the Investment Company Act of 1940 (17 CFR 270.2a51–1(b)).

(10) Any natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status. In determining whether to designate a professional certification or designation or credential from an accredited educational institution for purposes of this paragraph (a)(10), the Commission will consider, among others, the following attributes:

(i) The certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;

(ii) The examination or series of examinations is designed to reliably and validly demonstrate an individual's comprehension and sophistication in the areas of securities and investing;

(iii) Persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and

(iv) An indication that an individual holds the certification or designation is made publicly available by the relevant self-regulatory organization or other industry body;

Note 1 to paragraph (a)(10): The professional certifications or designations or credentials currently recognized by the Commission as satisfying the above criteria will be posted on the Commission's website.

(11) Any natural person who is a ''knowledgeable employee,'' as defined in rule 3c–5(a)(4) under the Investment Company Act of 1940 (17 CFR 270.3c–5(a)(4)), of the issuer of the securities being offered or sold where the issuer would be an investment company, as defined in section 3 of such act, but for the exclusion provided by either section 3(c)(1) or section 3(c)(7) of such act;

(12) Any ''family office,'' as defined in rule 202(a)(11)(G)–1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1):

(i) With assets under management in excess of $5,000,000,

(ii) That is not formed for the specific purpose of acquiring the securities offered, and

(iii) Whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; and

(13) Any ''family client,'' as defined in rule 202(a)(11)(G)–1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1)), of a family office meeting the requirements in paragraph (a)(12) of this section.

* * * * *

(j) *Spousal equivalent.* The term *spousal equivalent* shall mean a cohabitant occupying a relationship generally equivalent to that of a spouse.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 7. Amend § 240.15g–1 by revising paragraphs (b) and (c) to read as follows:

§ 240.15g–1 Exemptions for certain transactions.

* * * * *

(b) Transactions in which the customer is an institutional accredited investor, as defined in 17 CFR 230.501(a)(1), (2), (3), (7), (8), (9), or (12).

(c) Transactions that meet the requirements of Regulation D (17 CFR 230.500 *et seq.*), or transactions with an issuer not involving any public offering pursuant to section 4(a)(2) of the Securities Act of 1933.

* * * * *

By the Commission.

Dated: December 18, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–28304 Filed 1–14–20; 8:45 am]

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Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–04; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–04. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at (202) 550–0935 or by email at *camara.francis@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–04, FAR Case 2019–012.

RULE LISTED IN FAC 2020–04

Subject	FAR case	Analyst
Trade Agreements Thresholds	2019–012	Francis

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020–04 amends the FAR as follows:

Trade Agreements Thresholds (FAR Case 2019–012)

This final rule amends the Federal Acquisition Regulation to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to predetermined formulae under the agreements.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–04 is effective January 15, 2020.

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2020–00024 Filed 1–14–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2020–04; FAR Case 2019–012; Docket No. FAR–2019–0012; Sequence No. 1]

RIN 9000–AN95

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective:* January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at (202) 550–0935 or by email at *camara.francis@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at (202) 501–4755. Please cite FAC 2020–04, FAR case 2019–012.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately every two years, the trade agreements thresholds for the World Trade Organization Government Procurement Agreement (WTO GPA) and the free trade agreements (FTAs) are adjusted according to predetermined formulae under the agreements. These thresholds become effective on January 1, 2020. On December 23, 2019 (84 FR 70615), the United States Trade Representative published new procurement thresholds. The United States Trade Representative has specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$182,000	$182,000	$7,008,000

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
FTAs:			
Australia FTA	83,099	83,099	7,008,000
Bahrain FTA	182,000	182,000	10,802,884
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	83,099	83,099	7,008,000
Chile FTA	83,099	83,099	7,008,000
Colombia FTA	83,099	83,099	7,008,000
Korea FTA	100,000	100,000	7,008,000
Morocco FTA	182,000	182,000	7,008,000
NAFTA:			
—Canada	25,000	83,099	10,802,884
—Mexico	83,099	83,099	10,802,884
Oman FTA	182,000	182,000	10,802,884
Panama FTA	182,000	182,000	7,008,000
Peru FTA	182,000	182,000	7,008,000
Singapore FTA	83,099	83,099	7,008,000
Israeli Trade Act	50,000		

II. Discussion and Analysis

This final rule implements the new thresholds in FAR subpart 25.4, Trade Agreements, and other sections in the FAR that include trade agreements thresholds (*i.e.,* 22.1503, 25.202, 25.603, 25.1101, and 25.1102).

In addition, changes are required to the provision at 52.204–8, Annual Representations and Certifications, and the clause at 52.222–19, Child Labor—Cooperation with Authorities and Remedies, with conforming changes to the clause dates in 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations,'' 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adjusts the thresholds according to predetermined formulae to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the FAR to make minor revisions in the thresholds for application of the WTO GPA and the FTAs. The revisions do not add any new burdens or, except for the thresholds changes themselves, impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to commercial items.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply to this final rule, since the rule affects the prescriptions for use of the certification and information collection requirements in the provisions at FAR 52.225–4 and 52.225–6 and the clauses at FAR 52.225–9, 52.225–11, 52.225–21, and 52.225–23, currently approved under OMB Control Number 9000–0024, entitled ''Buy American Act, Trade Agreements, and Duty-Free Entry.'' The impact, however, is expected to be negligible, because the threshold changes are in line with inflation and maintain the status quo. As a result, there is no change to the estimated burden.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by—

■ a. Removing from paragraph (b)(3) ''$80,317'' and adding ''$83,099'' in its place; and

■ b. Removing from paragraph (b)(4) ''$180,000'' and adding ''$182,000'' in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

■ 3. Amend section 25.202 by removing from paragraph (c) ''$6,932,000'' and adding ''$7,008,000'' in its place.

■ 4. Amend section 25.402(b) by adding a heading for the table and revising the table to read as follows:

25.402 General.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$182,000	$182,000	$7,008,000
FTAs:			
Australia FTA	83,099	83,099	7,008,000
Bahrain FTA	182,000	182,000	10,802,884
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	83,099	83,099	7,008,000
Chile FTA	83,099	83,099	7,008,000
Colombia FTA	83,099	83,099	7,008,000
Korea FTA	100,000	100,000	7,008,000
Morocco FTA	182,000	182,000	7,008,000
NAFTA:			
—Canada	25,000	83,099	10,802,884
—Mexico	83,099	83,099	10,802,884
Oman FTA	182,000	182,000	10,802,884
Panama FTA	182,000	182,000	7,008,000
Peru FTA	182,000	182,000	7,008,000
Singapore FTA	83,099	83,099	7,008,000
Israeli Trade Act	50,000	....	....

25.603 [Amended]

■ 5. Amend section 25.603 by removing from paragraph (c)(1) ''$6,932,000'' and adding ''$7,008,000'' in its place.

25.1101 [Amended]

■ 6. Amend section 25.1101 by—

■ a. Removing from paragraph (b)(1)(i)(A) ''$180,000'' and adding ''$182,000'' in its place;

■ b. Removing from paragraphs (b)(1)(iii) and (iv) and (b)(2)(iii) and (iv) ''$80,317'' and adding ''$83,099'' in its place; and

■ c. Removing from paragraphs (c)(1) and (d) ''$180,000'' and adding ''$182,000'' in its place.

25.1102 [Amended]

■ 7. Amend section 25.1102 by—

■ a. Removing from the introductory text of paragraphs (a) and (c) introductory text ''$6,932,000'' and adding ''$7,008,000'' in its place;

■ b. Removing from paragraph (c)(3) ''$6,932,000'' and ''$10,441,216'' and adding ''$7,008,000'' and ''$10,802,884'' in their places, respectively; and

■ c. Removing from paragraph (d)(3) ''$6,932,000'' and ''$10,441,216'' and adding ''$7,008,000'' and ''$10,802,884'' in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.204–8 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraphs (c)(1)(xxi)(C) and (D) ''$80,317'' and adding ''$83,099'' in its place.

The revision reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (JAN 2020)

* * * * *

■ 9. Amend section 52.212–5 by revising the date of the clause and removing from paragraph (b)(26) ''(OCT 2019)'' and adding ''(JAN 2020)'' in its place to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JAN 2020)

* * * * *

■ 10. Amend section 52.213–4 by revising the date of the clause and removing from paragraph (b)(1)(ii) ''(OCT 2019)'' and adding ''(JAN 2020)'' in its place to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisition (Other Than Commercial Items) (JAN 2020)

* * * * *

■ 11. Amend section 52.222–19 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(3) ''$80,317'' and adding ''$83,099'' in its place; and

■ c. Removing from paragraph (a)(4) ''$180,000'' and adding ''$182,000'' in its place.

The revision reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (JAN 2020)

* * * * *

[FR Doc. 2020–00025 Filed 1–14–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–04; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–04, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–04, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at (202) 550–0935 or by email at *camara.francis@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–04, FAR Case 2019–012.

RULE LISTED IN FAC 2020–04

Subject	FAR Case	Analyst
Trade Agreements Thresholds	2019–012	Francis

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020–04 amends the FAR as follows:

Trade Agreements Thresholds (FAR Case 2019–012)

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William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–00026 Filed 1–14–20; 8:45 am]

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Wednesday, January 15, 2020

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 10, 2020

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